

**IN THE SUPREME COURT OF WESTERN AUSTRALIA  
COMMERCIAL AND MANAGED CASES LIST**

**No. CIV 1561 of 2012**

B E T W E E N

**STEPHEN WILLIAM MARSH**

First Plaintiff

**SUSAN GENEVIEVE MARSH**

Second Plaintiff

and

**MICHAEL OWEN BAXTER**

Defendant

**SUPPLEMENTARY WITNESS STATEMENT OF  
STEPHEN WILLIAM MARSH**

I, STEPHEN WILLIAM MARSH, of RMB 555, Old Collie Road, Kojonup 6395 in the State of Western Australia, farmer, make the following statement –

**My Evidence**

1. I swore an affidavit in this proceeding on 12 April 2012 (**my affidavit**) and made a witness statement on 14 February 2013 (**my first witness statement**). The evidence that I wish to give in this proceeding is set out in my affidavit, my first witness statement and this statement.

**Crop Rotations for Eagle Rest**

2. At paragraphs [86] to [92] of my first witness statement I set out my past and projected crop rotation cycles for Eagle Rest.
3. At paragraphs [154] to [158] of my first witness statement I describe what my planned crop rotation was for the 2013 year.
4. I update and modify my crop rotations as I observe conditions on Eagle Rest each season in accordance with climatic conditions. As such, I have modified my planned crop rotations since my first witness statement.
5. I have **attached Table 5A** which sets out what my actual crop rotation was for 2013 and what my anticipated crop rotations are for 2014 to 2018.

6. In 2013 I planted oats of the variety "Swan" in paddocks 2,3,4 and 5. I planted Swan oats instead of the variety "Carrolup" which I usually plant because the NASAA Standard requires segregation of oat varieties between organic land and decertified land.
- 7.
8. In 2013, the Swan oats I planted yielded an average of 1.19 tonnes per hectare whereas the Carrolup oats I planted yielded an average of 2 tonnes per hectare.
9. As a result of the GM contamination of Eagle Rest and the subsequent decertification of paddocks 7, 8, 9, 10, 11, 12 and 13, I have had to modify my crop rotations. I have had to rotate my crops on the decertified portion of my land separately to those in the paddocks that remain certified organic.
10. The change to my usual rotation has meant that there has been a much shorter rotation of oats in paddocks 4 and 5. For example, in 2013 the Carrolup oats grown in paddock 6, which has not been cropped to oats more frequently, yielded 0.6 tonnes per hectare more than the Carrolup oats grown in paddock 5 in the same year.

### **Recertification of Eagle Rest**

11. On 25 November 2013 I received confirmation from NASAA that my organic certification had been reinstated on the portions of my property decertified in 2010. I refer to *Letter from Sachin Ayachit* [TB 0513-0515] and *NASAA Certificate of Registration* [TB 0208].
12. As a result of the reinstatement of my organic certification, I am able to sell all crops grown on Eagle Rest as "certified organic" crops, except those treated in 2013 with PyBo (a prohibited input).

### **Linseed**

13. At paragraphs [89] to [92] of my affidavit and paragraphs [47] to [52] of my first witness statement I describe the history of my relationship with Morton Seed & Grain Pty Ltd (**Morton's**) to whom I have supplied organic oats since 2004.

14. Since about 2004, I have met with Jonathan Morton (**Jonnie**) each year prior to sowing to discuss what I would plant for the year and the prices Morton's would pay me in that year.
15. In or about March 2013 I met with Jonnie at the Morton's offices to discuss what I would sow in 2013. I have previously told Jonnie that most of my land had been decertified in 2010, so we discussed what I would grow in the certified organic paddocks and also what I would grow in the decertified paddocks.
16. During this meeting, Jonnie suggested that I look into growing linseed. He explained that the production of linseed is a niche market, one with a good premium even as a non-organic product.
17. I had never grown linseed before but I was aware that it had been grown quite extensively in the area in the past. My uncle grew linseed in the 1960's for oil that was used in paints and other products. In the past it was also grown nearby in Boyup Brook where there was a mill to process the fibre used to make webbing before the use of synthetic fibres.
18. Jonnie told me that Morton's could sell me the linseed seed to plant and would buy back whatever I grew from that seed.
19. After my meeting with Jonnie I spoke to other farmers about linseed and read up about growing linseed. In particular, I read *Note Number AG0418: Growing linseed and Linola™ in Victoria* on the Victorian Department of Primary Industries website. I refer to *Growing linseed and Linola in Victoria* [not tendered].
20. I thought it would be good agronomically to try growing linseed because it is not a cereal, and I could use it in my crop rotation whilst still complying with the NASAA crop rotation requirements. At paragraph [22] of my first witness statement and paragraph [83] of my affidavit I describe the NASAA rotation requirements.
21. After my meeting with Jonnie I called several seed merchants to find out the prices for linseed seed and I found that there was a limited supply. I found one or two suppliers who agreed to sell me seed but the price they wanted was nearly double what Morton's was asking.
22. I agreed to buy about 2.45 tonnes of linseed seed from Morton's. I paid \$2,964.50 including GST for this linseed seed.

23. Morton's agreed to pay me \$1,000.00 per tonne for linseed I grew from the seed and to buy as much as I had to sell at the end of the year. Jonnie told me that this was the price he was offering for non-organic linseed.
24. In or about April 2013 I sowed linseed in two locations in paddock 6, a combined area of about 1.2 hectares, and in all of paddock 11, which is about 34.42 hectares.
25. Sowing linseed did not involve any different or additional costs or work as compared with sowing oats.
26. Since I had never grown linseed before I did not know what yield to expect. I have read that the yield for brown linseed is about 1.25 tonnes per hectare when using conventional farming techniques. From my discussions with other farmers, and from observing the crop over the rest of 2013, I anticipated that my yield would be 0.6 tonnes per hectare.
27. Most of the linseed in paddock 11 did not grow properly in 2013. I think this is because it was affected by two hard frosts after sowing which did not affect paddock 6 because I sowed that paddock about a week earlier. It could also be because of insects, however I think this is less likely since paddock 6 was not affected by insects.
28. In about August 2013 I called Stoney Creek Oil Products Pty Ltd (**Stoney Creek**) to ask for their insight as to what might have gone wrong with my linseed in paddock 11. I spoke to Frederick Davies of Stoney Creek because I understood that he has had a lot of experience growing linseed.
29. During this telephone call Fred and I discussed a number of things about growing linseed. Fred explained to me how he dealt with pests on his farm, and the different types of linseed that he grew. Fred also mentioned that Stoney Creek was always seeking to find good reliable growers to sell them organic linseed. We discussed whether it would be possible for me to transport seed to Stoney Creek in Victoria.
30. During this telephone conversation Fred told me that Stoney Creek paid \$2,500 - \$3,000 per tonne for organic linseed that was machine graded, and \$2,300 – \$2,500 for farm grade organic linseed.

31. On or about 18 October 2013 I met Fred in person at the Organic Expo in Melbourne and we talked further about growing linseed, harvesting linseed and the possibility of my selling linseed to Stoney Creek in future years.
32. In or about October 2013 I green manured all but 10.48 hectares of the linseed in paddock 11 because of the loss of the crop. The linseed failed in a large area of this paddock and would not have produced any seed for sale. By using it for green manure extra nutrients were added back into the soil which I expect will benefit what is planted in that paddock in 2014.
33. I plan on growing linseed again in 2014 because the prices I can obtain from Morton's or Stoney Creek for organic linseed potentially make it a more profitable crop than oats, even if the yields are only 0.6 tonnes per hectare. Additionally, linseed fits into the NASAA crop rotation requirements.

#### **Removing Volunteer Canola from Eagle Rest**

34. At paragraph [80] of my affidavit I referred to the fact that genetically modified canola plants were found growing on Eagle Rest in the months after the genetically modified swathed canola blew onto my property.
35. There was very little advice available on how to deal with the contamination of Eagle Rest. I did seek guidance from DAFWA about how to manage the contamination but no clear strategy was proposed, so I relied on my own experience as a farmer.
36. In June 2011 I tilled and rolled the soil with a canola roller in paddocks 11, 12 and some of 13 in which swathed GM canola plants had been found, so as to encourage any spilled GM canola seeds to germinate so that I could remove them. A canola roller is a rubber tyred implement that tows behind the air seeder bar or combine and lightly compresses and levels the soil onto and around the canola seed immediately after it is sown.
37. Since the paddocks contaminated with GM canola swathes were going into crop as part of our normal rotation and we normally till our paddocks, I decided to use a canola roller to further level and lightly compress the soil to germinate as much small seed as possible, including GM canola seed. This method was successful in germinating the

GM canola in 2011 but led to some erosion of the paddocks so I did not roll the paddocks cropped in 2012.

38. After I tilled the paddocks, my wife and I searched our crops and removed all the GM canola volunteers we could find. We identified these canola plants by walking through the property in an approximately ten meter grid pattern. This took several days each time I did this. I kept a record of each how long it took to search each paddock. I refer to *2011 GM Canola Volunteer Search Records* [TB 0374-0376].
39. Even with such a thorough inspection, I found it difficult to identify the volunteer canola plants because they were among dense crops with several species of weeds including capeweed plants which, like canola plants, also have a bright yellow flower.
40. I did not rely on my harvester to remove the GM canola seeds from my crop at the time of harvest because a header does not remove all weed seeds. I know that harvesters can remove some, but not all, weed seed. Additionally, unwanted seeds can remain in the harvester which can then be spread to other paddocks and properties.
41. I do not own a professional seed cleaning system because it is too expensive for me to purchase one. I understand those systems can cost from tens up to hundreds of thousands of dollars.
42. Some farmers do own simple cleaners or screeners, however these can vary in effectiveness. For example, depending on how many tonnes an hour are put through them and how clean the sample is, and whether it has an aspirator attached.
43. I use one such screener on occasion, a simple oscillating screener with two screens, which screens about 3 to 4 tonnes of oats per hour. However, because of the time it takes and the unreliability of the result it is impractical to clean all of my grain. My screener does not remove all foreign seeds. Consequently, in 2010 I could not have relied, and I would not in future rely on my screener to remove GM canola seed from my grain harvest.
44. The costs of having all of my grain cleaned professionally offsite would be substantial and therefore prohibitive. Before I purchased our screener in 2007, I had only the seed I used for sowing professionally cleaned at Mason's Seed Cleaners (**Mason's**) South of Kojonup. However, because Mason's clean both organic and non-organic

grain, I was concerned that there could be accidental mixing, so I purchased the screener.

45. Prior to the contamination of Eagle Rest with GM canola swaths in October 2010, I did not need to clean our organic oats sold to Morton's.

**Expert Report of Dr Christopher Preston**

46. I have been provided with and have read a copy of the expert report of Dr Christopher Preston dated 4 December 2013.
47. At page 12 of his report, Dr Preston refers to a number of species of weeds that can cross pollinate with volunteer canola. Of those weeds named by Dr Preston my most recent inspections have identified three varieties growing on Eagle Rest: wild radish (*Raphanus raphanistrum*), wild turnip (*Brassica tournefortii*), and annual wall rocket (*Diplotaxis muralis*).

I have read the contents of this my supplementary witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

**Stephen Marsh**

Dated: 15 January 2014

Amended: 11 February 2014

**TABLE 5A – FARMING CYCLES ON THE BASIS OF SALE OF RECERTIFICATION (2013 ACTUAL; 2014-2018 PROJECTED)**

[Crop Yield – Rounded to Nearest Tonne]

	<b>Paddock Arable Area Hectares</b>	<b>Land Use 2013</b>	<b>Land Use 2014</b>	<b>Land Use 2015</b>	<b>Land Use 2016</b>	<b>Land Use 2017</b>	<b>Land Use 2018</b>
<b>BLOCK 1</b>	<b>1</b> 7.16HA	Organic Rye (7.01ha)[1t]	Green Manure	Organic Linseed [3.5t]	Organic Oats [14t]	Green Manure	Organic Linseed [3.5t]
	<b>2</b> 13.9HA	Organic Swan Oats (13.43ha)[21t]	Green Manure	Organic Linseed [7t]	Organic Oats [28t]	Green Manure	Organic Linseed [7t]
	<b>3</b> 17.45HA	Organic Swan Oats (16.73)[21t] & Organic Rye (0.8ha)[0.2t]	Green Manure	Organic Linseed [9t]	Organic Oats [35t]	Green Manure	Organic Linseed [9t]
	<b>4</b> 26.53HA	Organic Swan Oats (25.99ha)[22.5t & 4.5t decertified for PyBo]	Green Manure	Organic Linseed [13t]	Organic Oats [53t]	Green Manure	Organic Linseed [13t]
	<b>5</b> 14.66HA	Organic Swan Oats (10.4 ha)[10t] & Organic Carrolup Oats (3.65ha)[6t]	Green Manure	Organic Linseed [7t]	Organic Oats [29t]	Green Manure	Organic Linseed [7t]
	<b>6</b> 15.37HA	Organic Carrolup Oats (5.35ha)[12t]; Organic Wheat (6.57ha)[11t]; Organic Rye (1.37ha)[1t] & Organic Linseed (1.2ha)[0.5t]	Green Manure	Organic Linseed [8t]	Organic Oats [38t]	Green Manure	Organic Linseed [8t]
<b>BLOCK 2</b>	<b>7</b> 43.56HA	Decertified Pasture	Organic Linseed [22t]	Organic Oats [87t]	Green Manure	Organic Linseed [22t]	Organic Oats [87t]
	<b>8</b> 18.7HA	Green Manure	Organic Linseed [9t]	Organic Oats [37t]	Green Manure	Organic Linseed [9t]	Organic Oats [37t]
	<b>9</b> 40.93HA	Green Manure	Organic Linseed [20t]	Organic Oats [82t]	Green Manure	Organic Linseed [20t]	Organic Oats [82t]
	<b>10</b> 35.09HA	Decertified Pasture	Green Manure	Organic Oats [70t]	Green Manure	Organic Linseed [17.5]	Organic Oats [70t]
<b>BLOCK 3</b>	<b>11</b> 34.42HA	Green Manure and Decertified Linseed (10.48ha)[4.5t]	Organic Oats [69t]	Green Manure	Organic Linseed [17t]	Organic Oats [69t]	Green Manure
	<b>12</b> 27.37HA	Green Manure	Organic Oats [55t]	Green Manure	Organic Linseed [13t]	Organic Oats [55t]	Green Manure
	<b>13</b> 39.3HA	Green Manure	Organic Oats [79t]	Green Manure	Organic Linseed [20t]	Organic Oats [79t]	Green Manure

