

COURT: SUPREME COURT OF TASMANIA

CITATION: *Bob Brown Foundation Inc v Spicer (No 4)* [2025] TASSC 64

PARTIES: BOB BROWN FOUNDATION INC
v
SPICER, Kerri
FOREST PRACTICES AUTHORITY
FORESTRY TASMANIA t/as SUSTAINABLE TIMBER
TASMANIA
ATTORNEY-GENERAL FOR THE STATE OF
TASMANIA

FILE NO: 2023/3469

DELIVERED ON: 2 December 2025

DELIVERED AT: Hobart

HEARING DATE: 22 September 2025

JUDGMENT OF: Daly AsJ

CATCHWORDS:

Administrative Law – Judicial Review – Procedure and Evidence – Applications – Application for further and better particulars – Need for grounds to identify real basis of complaint and disclose an arguable case rather than full factual detail — Determination that the existing grounds are sufficient for the purposes of the *Judicial Review Act 2000* (Tas) and the *Supreme Court Rules 2000* — Application for particulars dismissed

Aust Dig Administrative Law [1086]

Knuth v Minister for Resource Industries [1993] 2 Qd R 263; *Lamb v Moss* (1983) 76 FLR 296; *Murchison v Keating* [1984] FCA 125; 1 FCR 341; *Jilani v Wilhelm* [2005] FCAFC 269; *Bob Brown Foundation Inc v Spicer (No.3)* [2024] TASSC 22

Judicial Review Act 2000 (Tas).

Supreme Court Rules 2000 (Tas), r 777B.

REPRESENTATION:

Counsel:

Applicant: B McTaggart KC

Respondent: A McBeth

Solicitors:

Applicant: Fitzgerald & Browne

Respondent: Abetz Curtis

Judgment Number:
Number of paragraphs:

[2025] TASSC 64
25

**BOB BROWN FOUNDATION INC v KERRI SPICER, FOREST PRACTICES
AUTHORITY, FORESTRY TASMANIA t/as SUSTAINABLE TIMBER TASMANIA
and ATTORNEY-GENERAL FOR THE STATE OF TASMANIA**

REASONS FOR JUDGMENT

**DALY AsJ
2 December 2025**

1 This is an interlocutory application seeking an order for further particulars of certain grounds of an application for an order for judicial review. The principal proceedings are brought under the *Judicial Review Act 2000*, s 17 (JRA) seeking an order of review relating to a decision to certify Forest Practices Plan KAS0023 under s 19(1)(a) of the *Forestry Practices Act 1985* on 29 September 2023. On 31 January 2024, Porter J granted interlocutory injunctive relief suspending the operation of the certification: *Bob Brown Foundation Inc v Spicer (No.3)* [2024] TASSC 19.

2 The applicant in this interlocutory application is the third respondent in the principal proceedings, to which I will refer as Sustainable Timber. The respondent (the applicant in the principal proceedings) is Bob Brown Foundation Inc to which I will refer as BBF.

3 Sustainable Timber seeks an order that BBF file further and better particulars in respect of grounds 1 and 2 of its fourth amended originating application as follows:

- (a) in respect of ground 1, what "*advice on further actions*" is it alleged that the delegate ought to have awaited before certifying the plan; and
- (b) in respect of ground 2:
 - i) the "*circumstances of this case*" which it is alleged made the decision to certify the plan unreasonable;
 - ii) what "*change in circumstances*" the applicant says the first respondent should have had regard to; and
 - iii) what "*further scrutiny*" the applicant says the first respondent ought to have applied before certifying the plan.

4 These are my reasons for determining that no such order should be made.

Legal principles

5 In support of its application for particulars, Sustainable Timber relied upon *Bob Brown Foundation Inc v Spicer (No.3)* [2024] TASSC 22. That was a case in which Porter AJ allowed an amendment to the originating application in these proceedings to include ground 3(b), but with an additional order that the applicant provide particulars of the purpose for which the power is alleged to have been exercised, other than the purpose for which the power is conferred. At [15], Porter AJ stated:

"[15] I am satisfied that, in order for the respondents to properly know the case they meet, they are entitled to particulars of the purpose for which it is alleged the power exercised by the first respondent was in fact exercised. I would grant the application to include ground 3(b) in this ground, but order that those particulars be provided [within 14 days after discovery is complete]."

- 6 In *BBF v Spicer (No. 3)* at [5]-[6] Porter AJ made the following observations about the statutory starting points in the *Judicial Review Act 2000* (JRA):
- the JRA permits an application for an order of review to be made on any one or more of the specified grounds set out at s 17(2)(a)-(i);
 - the JRA s.22 requires applications for orders of review to be made as prescribed by rules of court and to set out the grounds of the application;
 - the *Supreme Court Rules 2000* r.777B deals with the contents of an application, requiring details of the date, terms of the decision, and reasons for it, but does not contain prescriptions regarding the grounds.
- 7 At [11], Porter AJ made three relevant observations about the sufficiency, and the degree of required particularity, of the grounds for an order of review:
- (i) the absence of particularity does not invalidate an application: *Knuth v Minister for Resource Industries* [1993] 2 Qd R 263 at 264.
 - (ii) an application must identify the real basis of complaint and show it is at least arguable: *Lamb v Moss* [1983] FCA 254; 76 FLR 296 at 326, cited in *Jilani v Wilhelm* [2005] FCAFC 269 at [82].
 - (iii) particularity is needed to prevent judicial review applications becoming 'fishing expeditions'. The response to a request for particulars allows the court to assess whether the application is one of substance or an attempt to find an arguable matter through interlocutory steps (*Murchison v Keating* at [1984] FCA 125; 1 FCR 341 at 344-345, cited in *Jilani v Wilhelm* at [82]).
- 8 At [12], Porter AJ identified two practical reasons why particulars are needed :
- (i) particularity is required to obtain interlocutory relief, so the claim can be properly scrutinised if challenged: *Knuth v Minister for Resource Industries* [1993] 2 Qd R 263 at 264-265.
 - (ii) particularity allows a court to determine whether to dismiss an application that lacks any reasonable basis or is frivolous, vexatious or an abuse of the court's process. The court's power to dismiss an application anticipates that grounds should be stated with reasonable particularity: *Knuth* at 264-265.
- 9 At [13] Porter AJ observed that the sufficiency of a ground of review might be established in various ways, including:
- the decision-maker's reasons;
 - additional materials before the court by way of affidavit; or
 - written submissions.
- Sustainable Timber's submissions**
- 10 Sustainable Timber submits in summary, that:
- it "remains unclear as to important aspects of the applicant's case, as set out in the request for particulars";

- none of the affidavits filed by BBF to date have any obvious relevance to any current ground in the application; and
- the actual case put by BBF remains unclear and so Sustainable Timber is not in a position to file its evidence in response.

11 Sustainable Timber submits that even though BBF has filed 11 affidavits and has substantially completed discovery, it has failed to clearly define 'the case that Sustainable Timber is required to meet'. Sustainable Timber submits that it is unclear about the case to be put by BBF at the hearing. Sustainable Timber complains that some of BBF's evidence appears to be relevant only to former grounds of the application which have since been amended. It is submitted that since BBF knows its complete case, its failure to provide the particulars prevents Sustainable Timber from adequately preparing its responsive evidence, requiring it to incur the avoidable costs of anticipating every possible argument. Therefore, in the interests of justice require BBF to provide the requested particulars.

12 Sustainable Timber submits that the decision of Porter AJ in *BBF v Spicer (No.3)* indicates that in judicial review proceedings, it may be that details of a case get "*fleshed out*" after the filing of affidavits and/or written submissions. However, it is necessary that they be appropriately fleshed out at some stage, so that the respondents understand the case they are required to meet.

BBF's submissions

13 BBF made four main submissions in reply. Firstly, BBF submitted that Sustainable Timber's premise is misconceived in that it approaches the originating application for judicial review as if it were a pleading. The ground upon which the order of review is sought need only satisfy the court that it has jurisdiction and show a *prima facie* case for review for the purposes of standing, interlocutory relief and to avoid a suggestion that the application is frivolous or vexatious. The cases of *Knuth, Jelani v Wilhelm*, and *Murchison v Keating* confirm that particulars are required for the court to be able to see that the real basis of complaint is identified and at least arguable. There is no general requirement to further particularise the material facts so that the respondent may 'meet' them. The requirements for particularisation in judicial review are minimal, having regard to r 777B. The substance of the case and the arguments in support of it are meant to be "*fleshed out*" through written submissions in a judicial review case, not through particulars.

14 Secondly, BBF submits that, even if the application for particulars is not misconceived, the particulars already provided in the fourth amended originating application sufficiently state the nature of the case to be developed in submissions. BBF contends that Ms Spicer neither sought nor received the advice she was required to obtain from the FPA in the circumstances (as to those circumstances, see below). To require BBF to specify the *content* of advice that she did not obtain and which does not therefore exist is nonsensical. Neither Ms Spicer nor the FPA sought particulars of the advice contemplated by ground 1. Any evidence of the decision maker's steps to seek or receive advice would be in the possession of those respondents. Both Ms Spicer and the FPA have already filed their evidence without apparent difficulty.

15 Thirdly, BBF submits that ground 1 already contains sufficient particulars. Ground 1(a) alleges the decision-maker, Ms. Spicer, received a swift parrot sighting notification on September 29, 2023. Ground 1(b) alleges that the receipt of this notification triggered an obligation for Ms. Spicer to immediately report the sighting to the FPA for the purpose of confirming the presence of swift parrots and to then seek the FPA's advice on appropriate actions to protect important areas for breeding. BBF contends that ground 1 contains sufficient particulars because it clearly alleges that Ms. Spicer failed to seek any advice from the FPA as contemplated in Recommendation 11b of the Forest Practices Code (as referenced on page 183 of the judge's papers), being an obligation which applied once the sighting notification was received.

16 Fourthly, BBF submitted that ground 2 is also sufficiently particularised. BBF submits that even if it is not contrary to the statutory scheme in *every* case for a person in Ms. Spicer's situation to exercise a dual role of both preparing and certifying her own plan, it was unreasonable at least in *this* case. BBF contends that the particulars of "*the circumstances of this case*" which make Ms Spicer's decision to certify the plan unreasonable are a matter for argument and submission. BBF makes the same submission in relation to the particulars of the "*change in circumstances*" and the "*further scrutiny*" referred to in ground 2(h). BBF submits that these latter two expressions relate only to "*the fact that there was no second step*", being the step of seeking advice from the FPA as contemplated in Recommendation 11b of the Forest Practices Code following the receipt of the swift parrot sighting notification on September 29, 2023.

Determination

17 I am satisfied that the particulars of grounds 1 and 2 contain all those details required by r 777B. I am also satisfied that these grounds identify the real basis of complaint and show that BBF's complaint is arguable: *Lamb v Moss*.

18 Where Porter AJ stated in *Bob Brown Foundation Inc v Spicer (No 3)* that the respondents are entitled to particulars to properly know the case they meet, his Honour was not stating that there is a general requirement for particulars in judicial review proceedings over and above the statements in the cases which he had closely considered: *Knuth, Jelani v Wilhelm* and *Murchison v Keating*. In par [15] of *Bob Brown Foundation Inc v Spicer (No 3)*, Porter AJ was setting out his determination, on the application for amendment of the application which was then before him, that the respondents were entitled to particulars of the purpose for which BBF alleged the decision maker in fact exercised the power, if that purpose was not the purpose for which the power was conferred. That was a determination made consistently with the practical need for particularity as his Honour discussed at par [12] of his reasons. It is not a passage which favours an order for particulars on the present interlocutory application.

19 The submissions made by BBF, as set out above, cogently and carefully explain how the grounds, as currently drafted, should be read. I agree with the approach urged upon the Court by counsel for BBF. Understood in that way, it is clear that it would be illogical to order BBF to specify the content of the advice which BBF complains Ms Spicer failed to obtain from FPA. Further, BBF makes it clear, in its grounds, that it alleges that Ms Spicer failed to seek the advice from FPA as contemplated in recommendation 11b of the *Forest Practices Code*, which was applicable in the circumstances. No further particulars are required of ground 1.

20 I also accept that ground 2 should properly be read as contended by BBF. That is, the ground states that even if it is not contrary to the statutory scheme in *every* case for a person in Ms Spicer's situation to exercise the dual role of preparing and certifying her own plan, it was at least unreasonable in *this* case. I also accept that the expressions "*change in circumstances*" and "*further scrutiny*" referred to in ground 2(h) refer only to the fact that there was no second step of -seeking advice in accordance with recommendation 11b¹ of the *Forest Practices Code*.

21 Further, there are strong case management reasons why particulars should not be ordered in circumstances beyond those discussed in the cases referred to above, and as outlined in r 777B. Originating applications for judicial review of decisions of an administrative character should not be conducted as inter partes civil litigation. In public law matters there is a significant public interest in the timely disposition of the case both in terms of the public interest, time, expense, burden on the parties and on the administration of the court system.

¹ See Judges Papers pdf page 183.

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For these reasons, I dismiss Sustainable Timber's application for further particulars.

Further Directions

23 Sustainable Timber was directed to file and serve an affidavit upon which it intended to rely by 6 November 2024, but it failed to comply with that direction and it did not apply by letter to the Court, for any amendment to the timetable prior to the expiration of the time provided as required by Practice Direction 1 of 2015. This interlocutory application was filed by letter on 5 December 2024. Sustainable Timber has had ample time within which to provide its evidence.

24 I propose the following directions:

- (i) that within 14 days, Forestry Tasmania trading as Sustainable Timber is to file and serve any affidavits upon which it intends to rely;
- (ii) that after the period provided by Order 1, no further evidence may be filed by any party without the leave of the Court;
- (iii) the application is to be listed for hearing with an estimate of 2 days;
- (iv) no later than 28 days prior to the date upon which the application is listed for hearing, the applicant is to file and serve:
 - (a) a court book; and
 - (b) its written outline of contentions of fact of law;
- (v) no later than 7 days prior to the date upon which the application is listed for hearing, each respondent is to file and serve their written outlines of contentions of fact and law;
- (vi) that there be liberty to apply for further directions.

25 I will hear the parties further in relation to these proposed directions and in relation to any orders consequential upon the dismissal of the interlocutory application for particulars.