

Forest Practices Tribunal

BETWEEN

Meander Valley Council

Appellants

AND

Forest Practices Authority

Respondent

AND

EE & IC Porter

Respondents

AND BETWEEN

J & M Hawkes

Appellants

AND

Forest Practices Authority

Respondent

AND

EE & IC Porter

Respondents

AND BETWEEN

N Hoffman

Appellant

AND

Forest Practices Authority

Respondent

AND

EE & IC Porter

Respondents

AND BETWEEN

P A Elkin

Appellant

AND

Forest Practices Authority

Respondent

AND

EE & IC Porter

Respondents

AND BETWEEN

J Leis

Appellant

AND

Forest Practices Authority

Respondent

AND

EE & IC Porter

Respondents

AND BETWEEN

J King

Appellants

AND

Forest Practices Authority

Respondent

AND

EE & IC Porter

Respondents

This was the hearing of appeals against the declaration of a Private Timber Reserve (PTR) in respect of land at Reedy Marsh.

The hearing was heard at Deloraine and Westbury on February 21st, 22nd, 23rd, 24th, March 16th and 17th, April 4th, 5th, 6th, May 22nd, 23rd, 24th, June 16th, 20th and July 4th, 14th, 25th 2006.

Submissions were subsequently made in writing

Mr C and Mrs E Porter appeared in person

The Forest Practices Authority appeared by Mr C Hawkins

Private Forests Tasmania appeared by Mr P Taylor

Gunns Ltd appeared by Mr A Colson

Meander Valley Council appeared by Mr R Loone, Ms S John, Ms J Harris and Ms A Willock

Mr J and Mrs M Hawkes appeared in person and by Mrs L Hayward

Mr N Hoffman appeared in person

Mr P Elkin appeared in person

Ms J Leis appeared by Ms S Webb

Mr J King appeared by Mr J Hayward

The Environment Association appeared by Mr A Ricketts and Ms A Woodward

Mr and Mrs B Lockhart appeared by Mr J Phelps

DECISION

The Application

1. Application was made to the Forest Practices Authority (FPA) for the declaration of PTR 1698, on land of approximately 1113 ha in area at Reedy Marsh. There were timber purchase agreements in force between Gunns Ltd and the applicants Mr and Mrs Porter, covering over 62,000 tonnes of pulpwood and sawlogs from the land. There was also a written agreement (the tripartite agreement) between Gunns, Porter, and Meander Valley Council. An existing Forest Practices Plan (FPP) is in force on the land, covering approximately 84 ha of *eucalyptus nitens* plantation approximately 4 years of age. The remainder of the property has large areas, covering approximately 69% of the property according to the photo-interpretational forest typing in evidence, the subject of previous clearfelling or selective logging, with regrowth forest which Mr F Duncan, botanist, regarded as in good condition with all expected plant species being represented. There is an existing PTR 0538 approximately 1656 ha in area about 1.2 km east of PTR 1698; and a further PTR 0307 North of 0538, approximately 728 ha in area.
2. The land subject to the application has 30 adjoining titles, with approximately 19 different landowners excluding the applicants. 6 adjoining landowners appealed pursuant to their entitlement as "prescribed persons". Approximately 16 of the adjoining owners were stated to be in support of the application.
3. The evidence was that a majority of the individual properties in Reedy Marsh are rural residential in character, with the remainder used for rural purposes or being undeveloped forest. The majority of the land area is rural and/or forested in character.

Assessment by Private Forests Tasmania, (PFT) as delegate of the FPA, and recommendation. Decision by the FPA.

4. The application was publicly notified, objections were lodged; the application was assessed by PFT as delegate of the FPA; PFT recommended approval; and the FPA approved a declaration of the PTR. Each of these steps was subject to various submissions as to validity or otherwise. The Tribunal Chairman made interim rulings with respect to these submissions, by letter dated the 8 December 2005. These rulings, save as appears below under the heading Jurisdictional Issues, are now confirmed by the Tribunal.

The Appeals

5. Appeals were lodged by six prescribed persons, on the basis of direct and material disadvantage by reason of the proposed PTR. An appeal by the Meander Valley Council (Council) was lodged on the basis of declaration of the PTR being against the public benefit. The Environment Association (TEA) was joined as a party on the basis that it could address the issue that the land was not suitable for the declaration as a PTR, which was a ground raised but subsequently abandoned by Council.

6. The appeals by the prescribed persons each raised aspects of direct and material disadvantage, as they applied to their own properties. Those aspects of direct and material disadvantage were each the subject of evidence and submissions relating to the individual prescribed persons. It is however possible and most convenient to consider each of those aspects on the basis that it potentially applies to all of the prescribed persons, taking account of their individual situations where necessary. The separate categories of direct and material disadvantage are accordingly considered individually and collected under that heading below.
7. A brief description of the situation of each of the prescribed person appellants is as follows.
8. Mr J. King owns land adjoining the eastern side of the proposed PTR; his residence is several hundred metres east of the common boundary; his land is in the Rural zone under the applicable Meander Valley Planning Scheme; the principal part of his land is in pasture; there is a plantation on Mr King's own property covered by a PTR; there are plantations on land adjacent to his property, closer to his residence than PTR 1698; and plantations to the south and east visible from his residence; there is also a sawmill visible from his residence; inspection and photographs showed that the land to the south west, the principal part of the applicants' land visible from Mr King's house, was not part of the proposed PTR. All of the grounds of individually considered direct and material disadvantage, potentially relate to him, but his principal stated concern was visual impact.
9. N Hoffman owns land adjoining the northern boundary of the proposed PTR; it is in the residential low-density C zone under the planning scheme; land owned by the appellants Hawkes adjoins his western boundary; there are plantations east of that and of the Hoffman property; there is a further plantation southwest of the Hawkes' property; Mr Hoffman's land has access from River Road. Mr Hoffman's summary of the basis of his appeal is: A granting of PTR 1698 will result in a loss of power to defend his direct and material interests. He contended he would therefore suffer direct and material disadvantage in that PTR1698 would mean an increased likelihood of industrial forestry on the Porter property, and therefore a higher probability of deleterious impacts for his life and living conditions, so bringing direct and material disadvantage.
10. Mrs J. and Mr M. Hawkes own several properties to the north of the proposed PTR; their only property adjoining the PTR land is at 400 Larcombes Rd, west of the Hoffman land and north of the PTR land; it is in the residential low-density C zone; there is an existing plantation approximately 107 m to the southwest of the boundary; their residential property is approximately 1 km to the north, and has in the past had a bed-and-breakfast enterprise in a substantial residential building, which enterprise may resume; access is from Larcombe's Road; there is a conservation covenant, by way of a Private Forest Reserve over their land; and their land adjoins the 3848 ha Reedy Marsh Forest Reserve. All of the grounds of individually considered direct and material disadvantage, potentially relate to their property, and in addition, the potential economic impact upon their bed-and-breakfast operation was relevant.
11. Mr P A Elkin has land which adjoins the western boundary of PTR; his residence is approximately 650 m from the PTR land boundary, with an intervening ridge; it is in the Rural zone under the planning scheme. Most of the individually considered grounds of direct and material disadvantage potentially relate to him.

12. Ms J Leis has land on the western boundary of the PTR; her house is approximately 300 m from the common boundary; there is a seven-year-old plantation immediately to the west, approximately 195 m from her residence; there is a private forest reserve on her property; the land is in the Rural zone under the planning scheme. In addition to the individually considered grounds of direct and material disadvantage, particular issues raised by Ms Leis were stress-related health problems and acute anxiety; she is a fabric artist, using materials from the land, which she was concerned may be adversely affected by chemicals. She has companion dogs, potentially vulnerable to 1080.
13. Mr and Mrs B Lockhart have land on the western side of the PTR; their residence is approximately 180 m from the PTR; they are in the Rural zone under the planning scheme; traffic from the PTR is unlikely to go past their residence. They have resided there for 24 years. In addition to the individually considered grounds of direct and material disadvantage, particular issues raised were as follows. Mrs Lockhart has asthma; Mr Lockhart has a heart condition. They were concerned about adverse affects from machinery, trucks, spraying, harmful chemicals, smoke, potential pollution of drinking water, and consequent loss of value

The existing position: legislation, planning scheme, zoning, permitted use status, Councils powers

14. The Forest Practices Act 1985 makes provision for the facilitation and conduct of forestry. Relevantly, and in particular it makes provision for forestry activity of any significant extent to take place only pursuant to an FPP. There is no right of public representation with respect to or appeal against approval of an FPP. There is nothing in the Act or Forest Practices Code (the Code) giving jurisdiction to impose conditions applying beyond the boundaries of FPP, but FPPs require consideration of matters such as visual impact, and water quality, thereby making provision for consideration of impacts on land beyond the boundaries of the FPP. The public interest is not a specified criterion in considering an FPP. The Forest Practices Act does not incorporate the range of objectives common to legislation under the Resource Management and Planning System
15. The Act provides for PTRs as follows. Section 5 provides for the making of an application for declaration of a PTR: section 6 provides for notice of the application to be given: section 7 provides for objections by a limited class of persons including "prescribed persons", relevantly being first, persons whose land adjoins or is within 100 m of the boundary of the proposed PTR (six of whom have appealed); and secondly, a local authority, in this case, Council. Section 8 provides for the grant or refusal of an application. Section 12 provides the effect of declaration of a PTR, and sections 13 and 14 for revocation of the PTR. It is convenient to reproduce sections 8 and 12, in particular.
16. ***"8. Grant or refusal of application for declaration of land as private timber reserve***
 - (1) *Where an application for the declaration of land as a private timber reserve complies with section 5, the Authority shall, except where the application is refused as provided in subsection (2), grant the application as soon as is reasonably practicable after—*
 - (a) *the expiration of the period referred to in the notice relating to the application published in accordance with section 6; or*

- (b) if a hearing is required to be held in respect of the application as provided by subsection (3), the conclusion of the hearing.
- (2) An application for a declaration of land as a private timber reserve shall be refused if the Authority is satisfied that—
- (a) the application has not been made in good faith and honestly;
 - (b) the land is not suitable for declaration as a private timber reserve;
 - (c) a person who has a legal or equitable interest in the land, or in timber on the land, would be disadvantaged if the application was granted;
 - (d) by virtue of the operation of any Act, the owner of the land is prohibited from establishing forests, or growing or harvesting timber, on the land; or
 - (e) it would not be in the public interest to grant the application; or
 - (f) an owner of land referred to in paragraph (d) of the definition of "prescribed person" in section 7(4) would be directly and materially disadvantaged if the application was granted.
 - (g) (2A) For the purposes of subsection (2)(d), where a planning scheme or special planning order within the meaning or for the purposes of the Land Use Planning and Approvals Act 1993 requires the owner of any land to obtain a permit or other form of approval from a municipal Council in order to establish forests or grow or harvest timber on that land, neither that requirement nor any statutory provision that purports to enforce the observance of that requirement is taken to be a prohibition of those activities on that land.
- (3) An application for the declaration of land as a private timber reserve shall not be refused unless the Authority—
- (a) has first held a hearing with respect to the application; and
 - (b) has afforded the applicant and, where a person has lodged an objection to the application in accordance with section 7, that person an opportunity to appear and to make submissions and adduce evidence at the hearing.
- (4) Where the Authority refuses an application made under section 5, it shall forthwith, by notice in writing served on the applicant, inform him or her of the refusal and of the reasons for the refusal.

- (5) *Where the Authority grants an application made under section 5 in respect of which an objection has been lodged in accordance with section 7, it shall forthwith, by notice in writing served on the person who lodged the objection, inform him or her of the granting of the application."*

"S12: *Where land has been declared as a private timber reserve in accordance with section 11(1), it shall be used only for establishing forests, or growing or harvesting timber in accordance with the Forest Practices Code and such other activities which the Authority considers to be compatible with establishing forests, or growing or harvesting timber.*

- (2) *Where land has been declared as a private timber reserve in accordance with section 11(1), any Act prescribed in the regulations, and the prescribed provisions of any Act prescribed in the regulations shall not apply to the private timber reserve."*
17. The status of PTR subsists until such time as, and if, the PTR is revoked, either at the instance of the FPA under section 13, or on the application of the owner of the reserve under section 14.
18. Also presently relevant is the *Land Use Planning and Approvals Act 1993*, s20(7) of which provides that '*nothing in any planning scheme or special planning order shall affect forestry operations on land declared to be a PTR*'.
19. Once a PTR exists there is accordingly, in essence, a legislative limitation of use of the land to forestry or approved compatible uses and developments. The provisions of the *Land Use Planning and Approvals Act 1993*, and the planning scheme are no longer of any effect with respect to the land on the subject of the PTR, once a PTR exists. Control of forestry then depends solely upon the Forest Practices System.

The existing scheme: the Meander Valley Planning Scheme 1995

20. The zoning of the land surrounding the PTR is either Rural or Low-density residential C.
21. All the land contained within the proposed PTR is zoned Rural. Forestry is a permitted use in the Rural zone: as are agriculture, and animal saleyards/animal stockyard; discretionary uses in that zone include freight transport depot, and storage facility. The 'Rural strategy' of the planning scheme refers to containment of urban land use, so as to not adversely affect rural resources; also to further the use of appropriate land for forest purposes. The Rural zone policy is inter alia to "facilitate forestry and mining activities in the appropriate locations and promote a sustainable forest products industry"; and to "protect rural land from use and development that may limit access to and continuation of forestry and mining industries". Council's 'strategic/operational plan' determined at its meeting of 10 May 2000 stated the position that PTRs either supported or had no effect upon, but were not contrary to, the 'visions' and 'values' state and Council's policy review.

22. Meander Valley Council's 'Natural Resources Management Strategy' is an expression of intent by Council but has no statutory force, unlike the Forest Practices Act and Code, constituting the Forest Practices System. Council's Strategic Plan is generally consistent with the creation of private timber reserves. The Strategic Plan, together with the planning scheme according permitted status to forestry, are factors to be taken into account, as expressions by Council, as a body representing the public, of the public interest

Existing requirement for three year referrals; Council involvement

23. Pursuant to section 27 of the Act, forestry operators and relevantly here, Gunns Ltd annually submits three year plans to the FPA with a summary to the local authority, identifying where future forestry operations are planned; planned volumes for harvesting; proposed transport routes; and re-forestation measures proposed. Gunns Ltd meets with Councils at formal three year planning meetings, where Councils have input into the plans prior to their submission to the FPA.
24. There is also a requirement for the operator under an FPP to formally notify Council of proposed activity under an FPP. The object is to allow effective communication and consultation with Council. Those matters include areas with landscape protection provisions in planning schemes; operations potentially affecting water quality in listed town water supply catchments: operations within 2 km upstream of a town water supply intake; action of new access or major upgrading of existing access in the harvesting onto local government roads; Council may at those times make requirements with respect to, for example, cartage routes and roads.

General overriding considerations with respect to conditions imposed by the planning authority.

25. If there is no PTR, and an application for development approval is made to Council for forestry or for a plantation, which will necessarily also be the subject of an FPP, Council could not impose conditions which would so substantially change the development applied for, that it would become a different development. That is because that would be tantamount to a refusal, which is an option which the planning scheme does not allow Council. For example, in the case of a development application for a plantation Council could not apply conditions with the effect of reducing the area or changing the location of a plantation to any significant extent, without substantially changing the development, the plantation, applied for. Council would have the power to impose conditions with respect to chemical or pesticide use; as to marginal screening around the FPP area; hours of operation, and the like. The extent to which Council is likely to do so is the subject of consideration below in this decision.
26. Under the existing situation, even with the applicability of the planning scheme there is no right in either adjoining owners or other members of the community, to be advised of any individual development application with respect to any proposed FPP; nor is there any right to make representations with respect to any such development application or FPP.

27. If planning approval for any given FPP is granted, as it must be under the existing situation, the only right which any person other than the applicant would have, would arise in the event that there was an appeal by the applicant against a condition of the development approval. In that case, the other person would have the right to apply to be joined as a party to the appeal; however, their rights in the appeal would be limited to only those issues relating to the condition contested by the applicant. The other party would have no right to present argument with respect to additional conditions, or to the effect that the development approval should be refused altogether: S14 of the Resource Management and Planning Appeal Tribunal Act 1993.
28. Under the existing situation there is also a right for individual community members to approach and seek to influence Council, with respect to potential amendment of the planning scheme, so as to vary its application to the subject land. For example, they could seek an amendment to the effect that forestry is a prohibited use in the rural zone.
29. Mr Elkin contended that the existing situation gave a right to ability to manage the applicants' property and his own property as a whole, having regard to a landscape scale continuum. There is however no right to do so, save and except to the extent that Council may impose conditions on one property having regard to, inter alia, the effect of the development proposed on the use of an adjoining property

The Essential Test

30. When determining the existence of any of the criteria in section 8(2) which are relevant in the present appeals, it is important to bear in mind that what has to be evaluated is the existence and effect of each difference between the existing situation on the one hand, and on the other hand the situation which would arise with declaration of the PTR.
31. The present situation entails the applicability of the planning scheme, so as to enable the imposition of conditions upon any development application for forestry, which would also necessarily be the subject of an FPP; the opportunity for the local residents to approach Council and attempt to influence it with respect to these matters; and no limitation of use of the land to forestry type uses. There is also the possibility of change of existing planning scheme provisions.
32. The existing situation also involves control under the Forest Practices System. The evidence with respect to the extent of control which Council has in the past exercised over development applications with respect to development the subject of an FPP, is set out elsewhere in this decision; but in substance was minimal by comparison with the extent of control under the Forest Practices System. Without a PTR, it is not unreasonable to expect that will continue to be the case.
33. Mr Sharples referred to the FPA having inadequate resources for supervision and control of forestry activity. That is an example of a situation which if and to the extent that it exists would continue unchanged with a PTR. Whether with or without a PTR, the likelihood is that the land will be subject to forestry, largely practiced as it presently is under the Forest Practices System; in other words, there is in this respect no significant difference in outcome between the two possibilities.

34. If a PTR is declared, the likely result would include the following consequences:

- Loss of the possibility of effective change of the planning scheme in its application to the subject land so as to provide greater control of forestry; for example that the forestry use class may be changed from a permitted to a discretionary or even prohibited use.
- The fact that it is not possible to impose conditions on the declaration of a PTR.
- The lack of certainty as to the nature and extent of forestry which might occur under the PTR, and corresponding lack of certainty as to whether any future forestry operation may or may not give rise to existence of the criteria in section 8.
- The relevance of the present owner's currently expressed intention, which according to the evidence was to increase the extent of plantation to approximately 10 to 15% of the land, with selective harvesting on much of the remainder, and the exclusion of those areas which are altogether unsuitable, such as swampy or erodible sandy soils or rocky knolls; together with the areas required for ecological conservation with observance of the conditions set out in the tripartite agreement.
- The unknown future intent of the present, or of subsequent owners; as exemplified by previous applications for FPPs, which demonstrate a variation of intent from time to time.
- The relevance of the existing tripartite agreement, which would come into play with a PTR; the fact that its enforcement is dependent upon the will of individual parties; and the fact that it can be terminated by agreement between the parties.
- The certainty that a long-term enterprise such as growing trees will not be thwarted by subsequent planning changes or other events external to the Forest Practices System.

Adequacy of the present system

35. An initial matter of great significance to the appellants' cases, was the proposition that the Forest Practices System was so inadequate that it would be unsafe to allow the proposed PTR because of the risk of adverse outcomes by breach of the system.

36. A significant amount of evidence was tendered on behalf of the appellants, in support of the proposition that the statutory Forest Practices System does not ensure that in any given case the outcomes which that system is designed to ensure, actually occur. Examples given included failure to accurately map areas of land, flora and fauna so as to ensure protection of that which should be protected; the carrying out of forestry operations on land, such as swampy land and in stream beds, contrary to the provisions of the code and other controls; the harvesting of timber outside permitted areas; aerial spraying in contravention of controls; burning without notifying neighbours; the escape of fire; inadequate construction of roads; pollution of water; and similar instances.
37. Much of this evidence of failure of the system was contested. While much of it was contested, for the purpose of determining this issue alone, the Tribunal assumes findings in accordance with the evidence on behalf of the appellants, and that there were in each of the instances of which evidence was given, failures of the Forest Practices System.
38. Even if that failure level was assumed as a worst possible case, less than a dozen instances of failure would have been established. The question which arises is whether that is a sufficient number, to enable a finding that the deficiencies of the system are such that the Tribunal could be satisfied in the case of the proposed PTR, there was a sufficient risk of adverse outcomes that any of the negative criteria in section 8(2) would be met. The uncontested evidence before the Tribunal was that approximately 1500 PTRs are in existence. That would mean a much greater number of Forest Practices Plans, both within PTR's and in addition without PTRs. The only evidence of failure, being as to the above assumed failures, was of less than 12 instances. That is an occurrence rate of approximately 0.008 even in relation to PTRs. The Tribunal cannot regard that as a statistically significant number.
39. It might be said that there might be many more instances of failure than have been assumed proven. The Tribunal is however not in a position to make any useful finding about that; beyond stating that it may well be surprising if there were no more failures, the Tribunal is not in a position on the evidence in this case or even additionally from its own knowledge, to assume a statistically significant greater number of failures. It is certainly not enough to enable the Tribunal to be satisfied that in the case of the present or any other given PTR, an adverse outcome is so likely to occur that to have the PTR would be against the public interest; or result in direct and material disadvantage to any person, prescribed or otherwise; or that for either of those reasons, the land would not be suitable for declaration as a PTR.
40. Notwithstanding the foregoing paragraphs, the crucial question is not whether the Tribunal is satisfied that forestry as it is practised under the current controls of the Forest Practices System, which entails theoretical compliance with an FPP in every case but inevitably in practice failure to comply in some cases, will result in the existence of the bases for refusal referred to in the criteria in section 8. The question is rather, does the existence of a PTR mean adverse outcomes are so much more likely that the Tribunal is satisfied of the existence of any of those adverse criteria.

Relevance of effect of declaration of a PTR on application of the planning scheme

41. It was contended for Council and the other appellants that adverse impacts on the public interest were intrinsic aspects of a PTR, because of the loss of the capacity of residents and the Council on their behalf, to affect the nature and extent of forestry once a PTR was declared. It was contended that therefore the declaration of a PTR was necessarily contrary to the public interest in virtually every case.
42. S20(7) of the Land Use Planning and Approvals Act 1993 above has the effect that in every case where a PTR is declared, the planning system will no longer apply. It is therefore inevitable that in every such case both the public and the neighbours will lose the opportunity for input through the planning system. It was contended on behalf of the appellants that this was contrary to the public interest, and in the case of the individual appellants constituted direct and material disadvantage.
43. If that result was contrary to the public interest then in every such case the declaration of the PTR would by definition, be contrary to the public interest and/or constitute a disadvantage to the neighbours. The consequence would be that every PTR would be in conflict with those criteria in section 8, and no PTR could ever be declared. Such a construction would defeat the obvious purpose of the system set up by the Forest Practices Act, which is that if appropriate, a PTR may be declared; and that the tests of appropriateness are stated in section 8. The Tribunal will accordingly determine the appeal upon the basis that a PTR is not, by definition alone, against the public interest. The factors which may or may not make it against the public interest have to be analysed in each case.

Differences between forestry with or without a PTR

The agreement

44. The evidence establishes that there is an agreement between the Porters, Gunns Ltd and the Meander Valley Council. The agreement is based upon there being a PTR as proposed. The agreement provides for forestry on the subject land to be subject to a number of measures including a buffer zone totalling 50 m in width along a number of roads and those adjacent boundaries of land in the Low-Density Residential Zone as is the case with the appellant Hoffman, and others. The agreement also covers landscape management on the southern ridge in the south section of the proposed PTR land. The agreement also caters for landscape management for the area of the land visible from the Bass Highway
45. It is only the parties to the agreement who are entitled to enforce it, which means that otherwise than through the Council, the appellants and the general public have no capacity to ensure enforcement of the agreement. Enforcement depends upon the will of the parties from time to time.
46. The principal significance of the agreement (the 'tripartite agreement') in the present context is that to the extent there is a prospect of it being effective, it provides a potential for an additional positive outcome in the event that the PTR is allowed. That consideration also tends to diminish the difference between the existing situation, and the situation if a PTR is declared.

Does a PTR mean a greater likelihood of forestry and will that forestry be more extensive than it would be otherwise.

47. A major proposition of the appellants was that the declaration of a PTR means that it is likely that there will be more forestry, and correspondingly greater adverse outcomes, affecting both the public interest, and the appellant prescribed persons, and that the land was unsuitable for declaration as a PTR.
48. The evidence was that forestry will in all probability occur on the subject land irrespective of a PTR. Does a PTR mean that it is more likely that there will be more forestry, and more likely that there will be more adverse outcomes from that forestry?
49. A PTR is designed to facilitate forestry by removing the uncertainties inherent in the potential for refusal of forestry or imposition of controls arising from application of the Resource Management and Planning System, through the land being subject to the Land Use Planning and Approvals Act 1993. The Meander Valley planning scheme will no longer apply to the land if a PTR is declared. What is the consequence of that?
50. The need for an FPP for each proposed instance of forestry, exists at present, and will continue to exist with a PTR. The additional control of development approval, as previously noted, cannot result in a refusal under the present provisions of the planning scheme, but can result in conditions. Those conditions cannot be so severe as to substantially change the extent of forestry proposed in any given FPP. As noted below, Council's approach to date, as exemplified by the provisions of its planning scheme and strategies, and the nature of conditions it has imposed on forestry development applications to date, and the matters to which it has agreed in the tripartite agreement, do not provide a basis for envisaging any significant interference by planning conditions upon forestry upon this land.
51. There is no doubt that the absence of the requirement to go through the development application and approval process, will make it easier for the applicant to plan and carry out forestry on the land. The removal of the risk of adverse planning conditions is, having regard to the foregoing, a small factor. The removal of the risk of changes to the planning scheme which would inhibit or prevent forestry is another factor.
52. On the other hand, it was common ground that there is a great deal of timber on the proposal land, which is of a value to the applicant. The Tribunal considers that even without a PTR it is realistic to expect that all reasonable efforts would be made to realise that value by harvesting it and to provide similar value for the future by re-forestation.
53. It was contended that Gunns Ltd, which on evidence has an interest in the timber on the land, would be likely to exploit the timber resource to the full. No doubt the company has a strong incentive to do so; however, subject to the terms of any agreement the landowner controls the resource, so it comes back to what the landowner is likely to do, as considered above.
54. A further matter is that while a PTR is in existence, the land can only be used for forestry or approved compatible uses; that means an absence of earning potential available from other uses of the land. That militates towards the forestry potential being utilised to a greater extent with, as opposed without, a PTR.

55. Given the permitted status of forestry under the planning scheme, any development application for forestry would have to result in a permit, with the only opportunity for control by Council being by the imposition of conditions. The Tribunal finds nothing in the evidence which makes it likely that Council would impose any conditions which would substantially add to what is in the agreement and any FPP; both of which will necessarily apply to any forestry under the proposed PTR. In particular, the evidence was that the Meander Valley Council imposed conditions in the past, upon the approval of a development application the subject of a Forest practices plan. That was FPP-TAM 253, relating to a plantation approximately of 109 ha, part of the present proposed PTR; the relevant development approval, DA 123/00, contained conditions as follows: first, a roadside buffer of 20 m along portions of River Road, and Porters Bridge Road; second, a requirement that approach road junctions directly servicing the harvesting area provide satisfactory sight distance; appropriate road junction signage; and compliance with Council's requirements with respect to road maintenance. These were all matters which would potentially affect any person using the road system in the vicinity, not persons by virtue of the fact that they were prescribed persons because they adjoined the PTR land. That FPP included some 84 ha of plantation. There were no conditions with respect to matters such as hours of harvesting or transport operations, noise, effect on wildlife, the use of 1080, aerial spraying, chemical use or the like. In the present case, Council has already participated in the existing planning scheme, making forestry a permitted use. The limited extent to which Council went in stipulating controls in the tripartite agreement is also indicative of how far it was prepared to go. Further, Council's attitude to conduct of the present appeal has varied markedly, giving no basis for an expectation of or confidence in, a likelihood of Council imposing conditions additional to those which would be imposed by any FPP and also affecting the appellants.
56. An additional factor is the general tenor of the evidence given on behalf of Council, and the lack of evidence to the contrary, to the effect that Council does not have officers with specialist forestry operations expertise sufficient to enable them to carry out meaningful supervision of the day-to-day operation of forestry on the land; and the lack of any evidence that Council has the resources to devote any staff to such tasks. This decreases the likelihood that Council would see it as appropriate to impose conditions which it would not be in a position to itself enforce; and therefore, decreases the likelihood that Council would impose conditions significantly affecting either the public interest or the appellants alleging direct and material disadvantage.
57. This is consistent with Mr Colson's unchallenged evidence that Councils do not normally include conditions which would limit the commercial operations necessary for forestry. All of the criticisms which have been made of the adequacy of control of forestry, are upon the basis of forestry which has necessarily occurred under the control of an FPP. An FPP is necessary for any significant level of forestry. Those criticisms are upon the basis of the inadequacy of the Forest Practices System necessarily involving forestry pursuant to FPP's, to produce adequate outcomes which are satisfactory in that they do not invoke the criteria referred to in section 8. Even assuming for the purposes of this decision that they are validly based criticisms, that does not result in the conclusion that a PTR would make such a difference to the result, that it would not be in the public interest to grant the PTR, or that a prescribed person would suffer direct and material disadvantage.

58. The answer to the questions of whether there is any basis for finding that the difference will be so significant as to constitute a direct and material disadvantage to the prescribed persons, and/or against the public interest, depends otherwise upon the evidence. That evidence is analysed under the headings relating to the particular criteria in section 8.
59. While there may be more forestry under a PTR, and in particular may be more plantations, the Tribunal is not satisfied, on all the evidence, that the degree of difference with a PTR would be sufficient to make a significant difference to the overall amount of forestry ultimately carried out on the land.
60. The arguments on behalf of the appellants are predicated on the basis that without a PTR, there would be a realistic prospect that either the land would not be used for forestry; or if it was used for forestry, there would be less intensive forestry or less forestry of the nature of plantations.
61. For the above reasons however, the reasonably likely position in the absence of a PTR is not that there would be no forestry, or even forestry of a greatly different extent or nature than with a PTR. It would just be more difficult because of the necessity to obtain planning approvals, as there would have to be number of individual development applications for forestry the subject of individual Forest Practices Plans. Council could not refuse to approve those applications, nor modify them so substantially as to constitute substantially different proposals; the likelihood of Council imposing conditions of significant impact would be small; and third parties would have no right of input with respect to such proposals unless joined as a party in the event of an appeal brought by the applicant against a condition.
62. Nor if a PTR is refused, would there be any likelihood of a more comprehensive approach to conservation than there would be if the PTR was granted. In either case the same considerations would apply on the applications for each of the FPPs. On any individual development application Council could not take account of matters affected by more than that individual development application, so could make no assumptions as the development of the remainder of the PTR land.

The onus/burden of proof and the Precautionary Principle

63. The Tribunal considers that while the legislation does not impose a formal onus of proof, subsection 8(2) clearly requires that the FPA and in its place, the Tribunal must be satisfied of the existence of certain criteria before it can refuse the declaration of a PTR. Unless it is so satisfied, the declaration must be made. In that sense, a person asserting those criteria, will fail unless the Tribunal is satisfied they exist.
64. The other observation which must be made is that the Tribunal must be satisfied that the facts necessary to satisfy the criteria exist, not just that there is a "possibility" that those facts may exist, or that such facts "might" exist.
65. Further, the degree to which the Tribunal must be satisfied is to be determined having regard to the significance of the matters and consequences involved. In the present case, on the applicants' side, many hundreds of thousands of dollars are in issue; and on the appellants' side the ecological and social issues raised are of considerable significance. The Tribunal accordingly considers that it must be satisfied of any given matter, at least on the balance of probabilities.

66. In this context, it was contended on behalf of the appellants that a version of the "precautionary principle" should be applied; the interpretation contended for was in substance that where there was uncertainty about any fact having potential consequences for the environment, the decision should be weighted towards preserving the environment. The Tribunal considers that having regard to the requirements of subsection 8(2) that the Tribunal be satisfied of the given matters, upon the basis of the above considerations there is no room for the operation of the 'precautionary principle' in the way contended. Lack of satisfaction to the necessary degree means that the presence of uncertainty is of no relevant effect.

Directly and Materially Disadvantaged.

67. The meaning of these words was considered by Slicer J in *Hayward & Anor v Forest Practices Tribunal & Anor* [2003] TASSC 60

"30 The matter before the Tribunal was the grant of an application notwithstanding the basis of the confined objections of the adjoining land owners. The matter on appeal was that the Board was required to reject the s5 application since it ought to have been satisfied that the objectors were "directly and materially disadvantaged if the application was granted". Whilst not an appeal *strictu sensu*, the statutory Tribunal was entitled to consider the objection "afresh" but only within the parameters of the permitted ground of appeal.

40 The term "disadvantage" refers to the land and the "human condition" which optimistically is not confined to accumulation or maintenance of wealth. Ownership of land has a financial component but to an owner/occupier it includes amenity. Amenity in land has long been recognised by the law through easements or prescriptive rights of light (*Swansborough v Coventry* (1832) 9 Bing 305), lateral support (*Hunt v Peake* (1860) John 705), peaceable enjoyment (against subsistence, *Spoor v Green* (1814) Law R 9 Exch 99), water courses *ex jure natural* (*Broadbent v Ramsbothom* (1856) 11 Exch 602; *Carlyon v Lovering* (1857) 1 H - N 754), fishing (*Wickham v Hawker* (1840) 7 M & W 63, *Ewart v Graham* (1859) 7 H L Ca 331) and protected by the laws of trespass (*Star v Rooksby* (1711) 1; Salkfeld 335, *Case of Thorns* (1446) YB 6 ed IV 7, including inconvenience (*Waters v Maynard* (1924) 24 SR(NSW) 618 and nuisance (see generally, *Hawkes Bay Protein Ltd v Davidson* [2003] 1 NZLR 536; *Hunter v Canary Wharf Ltd* [1997] AC 655; *Nuisance as a Tort*, 4 Com LJ 189). Amenity is recognised in most modern legislation dealing with planning, development and use of land.

41 The term "direct" would attach the disadvantage to the ownership and use of the land, which would include access. It requires a nexus between the land which permits a right of objection and the disadvantage. The term "material" means not insignificant. To give it a meaning of "pertaining to or concerning" would be to render the use of the word "direct" *otiose* (*Barton v Westpac* (1983) 50 ALR 397; *H 1976 Nominees Pty Ltd v Galli* (1979) 30 ALR 181; *De Carmo v Ford Excavations* (1984) 52 ALR 231).

42 The term "directly affected" has been given a number of meanings dependent on the nature of the applicable legislation. It can mean absent the intervention of an intermediate agency (*R v Rent Officer Service; ex parte Maldoon and Kelly* [1996] 1 WLR 1103 - a case involving the joinder of a party within the meaning of *Rules of the Supreme Court (UK)*, O53). In *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide* (1991) 74 LGRA 15, (Debelle J), the court was required to give meaning to the legislative use of "a development that will directly affect".

43 "Material", in planning legislation, has been held to require some connection with the development which is not "*de minimus* (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All ER 636). The term "material environmental harm" has been used in Australian legislation (*Energy Pipeline Act 1983 (NT)*, s58B; *Mining Management Act 2001 (NT)*, s4) as has "material harm" (*Dangerous Goods Safety Management Act 2001 (Qld)*, Sch2)."

68. Consideration of the various matters which it was contended constituted direct and material disadvantage, follows under headings

Reduced land values

69. The appellants used various selections of land sales statistics in the area, and extending into Deloraine and further afield, as the basis for a series of calculations as to effects on value. Those calculations showed a loss of value for rural lifestyle properties near PTR's and/or plantations.

70. Mr J. Hewitt, rural sales manager with Elders real estate, gave evidence of his opinion that the existence of an adjoining or nearby PTR does not adversely affect values and can favourably affect them, by demonstrating the suitability of the land for forestry.

71. Mr R Dixon, the only certified valuer to give evidence, gave evidence as follows. He had a general knowledge of forestry and its effects; his sales activities concentrate on rural and some commercial properties, with farming and forestry; analysed 16 case studies, all examples of sales and resales of rural residential properties in conjunction with establishment of PTR's; this indicated very little or no impact on levels of values. The Deloraine residential market is a flawed comparison. It is dangerous to try to compare other markets. Mr Dixon examined the effect of dust and noise within a second independent sample related to quarries, but found no adverse effect. He subjectively assessed noise in samples, and found it of no real relevance to value. There was no expert valuation evidence as to the existing values of any of the appellant's lands, related to their past values.

72. Having regard to all of the evidence and all the submissions, the Tribunal reaches the following conclusions with respect to the effect of a PTR on adjoining or nearby property values.

73. The principal land use types in Reedy Marsh, according to the evidence, are agriculture including forestry, and rural residential. There are potential buyers in each category. In general terms, adjoining or nearby forestry, particularly plantations, will tend to diminish the value of land to a purchaser desiring lifestyle and natural values. Conversely, the presence of adjacent or nearby forestry tends to enhance the value of land sought for forestry purposes. The statistics show, not unexpectedly, that significant capital investment on a property will increase its value. There is not in the Tribunal's opinion any basis in the evidence for expecting a preponderance of lifestyle buyers on the one hand or forestry buyers on the other, in the vicinity of the subject land. The evidence shows a variety of potential purchasers having a variety of different potential uses for the land.
74. The Tribunal is not persuaded of any validity in a comparison which some appellants sought to rely upon, between suburban Deloraine price trends, and non suburban and rural areas.
75. Ultimately, on all of the evidence, the Tribunal considers neither the evidence for the appellants nor for the applicant is persuasive as to whether there is likely to be a rise or a fall in property values as a result of the PTR.
76. Accordingly, the issue of property values is not significant in establishing direct and material disadvantage, or with respect to any of the relevant s8(2) criteria.

Visual impact.

77. It was contended by the appellants that the visual impact of forestry would constitute a direct and material disadvantage to those landowners who could see forested areas from their own land. The relevant class of persons also included persons coming to and from their properties, and members of the public. This was so particularly for plantations, but in proportionately lessening degree according to the degree of intensity of visible forestry.
78. Mr B Chetwynd gave evidence as an expert in the assessment of the visual impact of forestry. In essence he was of the opinion that visual issues could be satisfactorily resolved by conditions he considered could be recommended, which would probably although not always be imposed upon any FPP. That would be so, irrespective of whether there was a PTR or not. Currently such assessments were carried out principally having regard to the impact upon the 'objective stranger' as observer. Mr Chetwynd agreed he would like see the system move toward a broader aesthetic incorporating context and sense of place, factors peculiar to residents; rather than at present, assessed from the point of view of the objective stranger as observer.
79. Mr Colson's evidence was that visual concerns would have to be addressed under the Forest Practices Code, at the time of and with any FPP. Visual impact would normally be referred to a landscape expert, with any FPP in this area.
80. Mr King was an appellant with a particular concern about visual impact. He would have a view over an eastward facing slope presently covered by forest, on portion of the eastern extreme of the proposed PTR; no significant portion of it however fell within the PTR. There are however a number of plantations in the vicinity, both on and adjacent to and visible from the King land, harvesting of which would have a greater visual impact than of the small visible area of the proposed PTR.

81. The submission of Mr Hoffman, and most of the other appellants with respect to the approaches to their properties along the local roads, was to like effect. That was, that the visual amenity which they and their visitors enjoyed, would be compromised by 'industrial', plantation forestry in particular; and to proportionally diminishing degree, by lessening levels of selective forestry.
82. This is again a matter which depends upon the extent to which the existence of the PTR would mean additional or more intensive forestry. The Tribunal's previous finding, that it is not satisfied there will be any significant increase to that extent, also applies here. For that reason the Tribunal is not satisfied that the additional visual impact with a PTR will make any significant difference, and therefore, whether it will cause direct and material disadvantage.
83. It was contended on behalf of the appellants, that the existence of a greater degree of particularly plantation forestry, but also of severe selective logging and clearing along roadsides, would diminish the visual amenity of tourists to the area, and destroy the attraction which to many of them was a principal attraction of coming to Tasmania. As this is a matter of a visual amenity, the above conclusions of the Tribunal under that heading are also relevant to this consideration. The Tribunal was unable to be satisfied that there will be any significant impact upon tourism by reason of the PTR on this land. Indicative in this respect, and consistent, is Gunns Ltd's evidence was that there had been an increase in visitor numbers, notwithstanding an increase in the PTR total area of land subject to tourism.

Business Losses

84. It was contended by Mr Hoffmann that the conduct of the business of his Reedy Marsh Pottery would be compromised as amenity values are eroded by forestry.
85. The evidence of Mr Hoffmann was that the 'biophysical naturalness' of the Reedy Marsh area has been a significant selling point for attracting the public to Studio Open Days and the Summer School programs he periodically conducts on his property. Further diminution of this biophysical naturalness of the Reedy Marsh amenity would take away use of this selling point for the business of Reedy Marsh Pottery into the future. He stood to be directly and materially disadvantaged by loss of ability to use this selling tool to attract customers, tutors, and students.
86. Similarly, the evidence of Mr and Mrs Hawkes was that the bed and breakfast operation which they had previously operated on their property, near but not adjoining the PTR land, and which they hoped may open again in the future, would lose a large part of its attraction to patrons if the attractiveness of the surrounding area was diminished by visible plantation forestry.
87. The Tribunal accepts that the visual attractiveness of the area visible from and the approaches to, the properties of these appellants, has been a significant factor in their viability. Again however, the same considerations which before left the Tribunal unable to conclude that there will be a significant difference in the impact of forestry with or without a PTR, mean that it is not prepared to make a finding a PTR will cause business losses to the appellants

Other Financial Losses

88. It was contended by Mr Hayward on behalf of Mr King that it was not disputed that trees designated for commercial forestry are exempt from valuation, hence from Council rates assessment, meaning that Mr King will either receive higher rates charges or fewer services. That would be because of the value of the land upon which the municipal rate base is calculated, is lessened by the removal of trees. It was also contended that log truck damage to roads is not covered by the road levy paid by the industry.
89. These matters are clearly not direct but indirect consequences of the declaration of a PTR; they accordingly do not fall within section 8(2).

1080

90. It was contended on behalf of the appellants that consequences of the use of 1080 included: a diminution of the wildlife which they appreciated on their own and neighbouring properties; it would result in an increase in the extent of gorse under-story on the plantation and thereby a potential spread; and that animals which had ingested 1080 would be likely to travel onto adjoining properties and die; and would then be eaten by the neighbours' dogs; and the carcasses would have to be cleaned up, a matter of some distress. The evidence of Messrs Colson and Barnes on behalf of Gunns Ltd was as follows. Gunns would not commit to abandoning use of 1080. 1080 use is controlled by the Poisons Act 1975; 1080 is not used on selectively logged coupes, only on plantations; and then only once or twice in 15-20 year life of a plantation; neighbours will be advised in writing in advance of any operations; alternatives such as shooting are always considered, but frequently, 1080 is the ultimate choice. Mr. Barnes' evidence was that 1080 had been used once before on the subject land, and that he had been involved in directing 1080 drops in Reedy Marsh.
91. On the evidence, this poison is used in agriculture in any event. To the extent that there is not a PTR, some of the land remains available for conventional agricultural cropping, with the potential for relatively frequent use of 1080. The evidence of Ms Weeding was that 1080 is not used on selectively logged coupes; she did not believe there was a significant risk of a lot of animals dying on adjacent properties; it depends if and where applied: she queried how long or how far poisoned animals travel before dying; she noted there was no intention to use it near Ms Leis' land. There was no evidence of any significant number of animals poisoned as a result of 1080 being found on any of the properties neighbouring the existing plantations on the applicant's land, although some common boundaries are adjoining and others are within several hundred metres of those plantations. The evidence was that 1080 had been used on at least some of those plantations. The sole evidence of such an occurrence after poisoning, was that it had been experienced by PJ Bendal, a neighbour of Mr Elkin, from another PTR. The loss of a pet dog would be extremely distressing, but there was no evidence of any dog being lost to 1080 in association with a plantation.
92. On the evidence, the probability is that on any plantation the use of 1080 would take place only once, on the establishment of a plantation; that is, once in approximately 15 to 20 years.

93. Having regard to all of the above considerations, the Tribunal is satisfied that while as a result of forestry there is a possibility of 1080 use resulting in an adverse effect upon adjoining landowners, that adverse effect is unlikely to be other than minimal in severity, and even to that extent is possible but unlikely. To that conclusion must be added the lack of probability that the declaration of a PTR is likely to result in substantially more plantation with consequent 1080 use, than would otherwise be the case.
94. In those respects the Tribunal is not satisfied that by reason of the potential use of 1080, the declaration of a PTR would give rise to a direct and material disadvantage to any adjoining or other landowner.

Shooting

95. The evidence was that shooting occurs when there is a need for control of browsing animals, when plantation seedlings are small. It normally only occurs at one period during the life of a plantation. It is normally the first choice before the use of 1080. The sound of such shooting is sometimes audible to neighbouring landowners. It often occurs with spotlighting at night.
96. Taking into account that this is a rural zone, where shooting is a normal incident of wildlife control in agriculture, together with the relative infrequency of its occurrence in a forest situation, the Tribunal does not consider that this is classified as anything other than a minimal matter, and does not fall within the description of a direct and material disadvantage within the meaning of section 8(e). e

Chemical and aerial spraying

97. On the evidence, chemicals and aerial spraying are unlikely to be used on selectively logged areas, only plantations; and then only on one occasion. Chemicals are managed under a separate statutory regime, irrespective of whether there is a PTR. neighbours will be advised in writing in advance of any operations
98. The only evidence as to toxicity was as to Atrazine, a commonly used chemical, and was that it was at about the same level of toxicity as saccharin.
99. Mr Carpenter gave evidence of their property at Weegen, adjoining land developed for plantations, which were aerially sprayed with Atrazine. Samples taken from their tank some 21 days after spraying showed Atrazine contamination of 0.72 ppb. That had altogether disappeared 12 months later. The evidence was that the limit of determination under the Australian Drinking Water Guidelines 2001 from the National Health and Medical Research Council detection is 0.5 ppb.
100. Mr King has two streams on his property which appear to have catchment on the Porter property, potentially exposing his property to chemical pollution, ground water pollution, and interception of catchment yield.
101. Mr Hoffman contended the likelihood of spray drift onto his property would be increased with PTR 1698. His home and its drinking water collection roofs are 70 and 40 metres from PTR 1698. The Porter land adjacent to his boundary was previously approved for a plantation.

102. It was contended that the evidence before the Tribunal demonstrates systematic failure of the industry to shield and protect communities from health-threatening spray drift. The number of examples in evidence however do not justify the Tribunal in drawing a conclusion that such failures are more likely than not, or that they are more than an isolated risk.
103. The evidence does not satisfy the Tribunal that the declaration of a PTR, even if it means more forestry on the land than would otherwise be the case, would give rise to direct and material disadvantage to any adjoining land owner, or any significant risk to the public, arising from spraying or chemical use.

Water Quality

104. This has been partly considered above under the issue of aerial spraying of chemicals. Apart from those matters, the evidence as to soil disturbance which may potentially cause water pollution, was as follows. Most of the appellant's properties are upstream from PTR 1698. Mr King's property is downstream but a substantial ridge separates his property from potential plantation sites; and about 2/3 of this water catchment is outside the proposed PTR.
105. There are no permanent watercourses on the site, flowing to any of the appellant's properties, and no permanent watercourses means little prospect of pollution downstream. There is only limited suitability for plantations. There is an even smaller prospect of pollution from disturbance from selective logging. Logging will be restricted to summer months, and in swampy areas and gullies is excluded by the Forest Practices Code.
106. The evidence does not satisfy the Tribunal that there is an appreciable risk of water pollution.

Water Quantity

107. On the evidence, the relatively small area suitable for potential plantation, means little likely impact on availability of water. Mr Colson contended there would be no impact on the Meander river. The evidence does not satisfy the Tribunal that there would be any appreciable impact on the availability of water.

Noise

108. It was common ground between the parties that chainsaws and logging machinery are capable of producing noise, and that such noise is capable of being heard from neighbouring land depending on distance and topography. Such noise will occur largely, if not only, in the harvesting period when the trees are being felled and loaded. Due to the prevailing north-westerly wind most of the appellant's residences are upwind of the PTR and mostly have a substantial area of forest between them and the PTR boundary. Harvesting also moves from coup to coup.
109. On all the evidence, the Tribunal concludes that there will be an increase in noise from chainsaws and logging machinery. That will be over the limited harvesting period, and not present with the same frequency as agricultural noise. There will be forestry on the site whether or not the PTR is allowed. If there is a PTR, the evidence does not satisfy the Tribunal that the difference in noise would be substantial.

110. The Tribunal considers that there may be a marginal effect from this type of noise, upon the appellants, but that it will not be so substantially different to what would otherwise occur that it is likely to be material.
111. The Tribunal is not satisfied that additional noise by reason of a PTR is likely to constitute direct and material disadvantage.

Traffic Volume

112. The evidence showed approximately 80,000 tonnes of harvestable timber is available on the land; presently it is proposed that there be removal of 60,000 tonnes over a period of 10 years; a log truck carries 25 to 30 tonnes.
113. The Tribunal calculates on that basis there would be an average of approximately 218 loads each year during a dry period of about 25 weeks, or 150 working days; a little less than 1.5 truckloads per day. An alternative calculation was that approximately 300 ha of the total area would be unsuitable for harvesting, leaving 850 ha. At an estimated 80 tonnes per hectare, that is 68,000 tonnes. That is approximately 227 truckloads per year, operating over a six-month dry season gives approximately 9 trucks per week or again, a little under 1.5 trucks a day as an overall average. It may be that harvesting would be condensed into shorter periods, of greater intensity than would be the average. There would then be greater impact over those shorter periods; but the corollary would be that there would be longer periods without any impact.
114. Having regard to those potential overall volumes, the Tribunal considers the potential traffic impact negligible. A further consideration, applicable to all traffic considerations, is that irrespective of a PTR the timber on the site constitutes a valuable resource likely to be harvested. Traffic volumes of the above order are accordingly to be expected in any event.

Traffic Noise

115. Some of the appellants, and other members of the public, live within hearing distance of the roads along which traffic to and from the land could be expected to travel. Having regard to the above volumes, the Tribunal considers the potential for impact negligible.

Traffic Safety

116. The evidence was that many of the roads in the area are narrow, and that it is difficult for two vehicles, one being a large log truck, to pass in some places. Mr Colson's evidence was that public roads in the area of the PTR have been used for carting timber over a significant period of time; a local sawmill on Porters Bridge Road has been receiving sawlogs from the northwest over two decades. The roads remain within Council jurisdiction, and arrangements are normally made to limit traffic, to avoid school hours. Use is normally made of speed limits, warning signage and the like.
117. The Tribunal considers again, that the potential volumes of less than 1.5 vehicles average per day during the operating seasons means there is likely to be negligible potential for interference with safety. The Tribunal does not consider this is sufficient to constitute and material disadvantage, or to be sufficient to be contrary to the public interest.

Fire Risk

118. Each appellant alleged potential for direct and material disadvantage from risk of fire.
119. For Gunns, the evidence of Mr N Denney was that with commercial forestry, the normal position was as follows. There are comprehensive statewide and regional strategies, substantial resources, regular reviews, fire breaks, reduction of fuel intensity by mechanical aggregation and burning in winter or top disposal controlled burning in autumn and spring. Intermittent burns provide recurrent "green pick" for wildlife. He considered it was less risky to burn in those controlled circumstances, than to have random wildfires. In his opinion the subject land was easy to access for fire control purposes. More effective fire protection would exist in those circumstances than on a number of adjoining blocks where no fire protection measures are taken.
120. Mr J Cashion, forester, gave evidence that he had over 14 years experience with forestry burns, and had been involved in approximately 100 burns over three years, of which only one or two escaped; normally he would take into account the existence of heavy fuel load on adjacent lands, when burning on the PTR. He expressed the view that fire did not damage the soil. Mr I Howard gave evidence of a fire escape in 2005 at another place, but because in that case there were no good fire breaks, it was not directly referable to likely risks for PTR 1698 where fire breaks would be required.
121. The Tribunal considers that there is a significant incentive to prevent the occurrence of fire damage in a forestry asset. No statistics in evidence show a greater likelihood of fire escape to surrounding areas, from forestry areas than from other areas. The Tribunal has reservations about the adequacy of Gunns' analyses of fuel conditions, but notwithstanding that the Tribunal considers that there is a significantly greater risk of the occurrence of fire escapes, in an unmanaged situation than a managed one. The Tribunal considers the fire danger constituted by the surrounding land with extremely heavy fuel loads, is greater than that likely to arise from forestry on the PTR.

Smoke from burning off.

122. The evidence was that some of the appellants were particularly sensitive to smoke, for example by reason of themselves or their families having asthma. In considering this aspect the Tribunal leaves aside the usual distinction in nuisance and environmental cases, between persons of normal sensitivity and special sensitivity. It was also contended that while the subject land comes under the jurisdiction of the Mersey Valley Council, there is the capacity for conditions to be attached to a planning permit that restricts/limits burning.
123. The evidence was that with forestry on the subject land, there would be some managed fuel reduction burns and that there would be less smoke on each occasion than with a larger uncontrolled fire, although on more frequent occasions.
124. The Tribunal considers it is difficult to see that the difference between forestry with and without a PTR would be likely to produce any material disadvantage to surrounding land owners from smoke.

Weeds

125. It was contended that forestry results in a proliferation of gorse. Mr Hoffman further contended that as a consequence of more gorse on the PTR site there would be poorer security for threatened birds, animals, and the forest reserves on and adjacent to his property.
126. The evidence was also that disturbance of the soil and opening of the forest canopy is likely to exacerbate gorse infestation. Management is, on the evidence, difficult. There was ample evidence that gorse is exacerbated as a problem in plantation areas as well as in other areas of disturbance such as selective logging areas.
127. Mr Hoffman maintained that wildlife browsing was an effective management tool; Ms S Weeding considered it was not. It is clear from all of the evidence, that both wildlife and gorse are abundant in the area; it could have been expected that if wildlife browsing was an effective management tool for gorse, there would have been much less gorse. As that is not the case, the Tribunal is not satisfied that wildlife browsing is an effective management tool for gorse. It was contended, but the evidence did not satisfy the Tribunal, that there was a greater risk of fire or more intense fire, on land with a heavy gorse infestation than on land with natural forest. That is particularly the case, where the natural forest carries a heavy fuel load, as it does in the properties adjoining the proposed PTR
128. The problem of gorse transfer is partially covered by wash down procedures, which are required by the FPC to apply to movement of vehicles from an infested area to a clean area.
129. Mr Colson's evidence was that the Forest Practices Code covers the washing down of machinery from an area carrying declared weeds; also, the Tasmanian Wash down Guidelines for Weed and Disease Control apply where deemed necessary; however, in the present context, the FPC is the only likely basis for control.
130. There would be no passage of vehicles from the applicant's land onto any of the prescribed person appellants' lands.
131. As previously noted, the extent to which there may be additional forestry because of a PTR is not shown to be at any significant level; and the Tribunal is not satisfied that a PTR will make a significant difference to the level of forestry on the land, or the nature of the controls applied to it.
132. The Tribunal considers on all the evidence, that the potential for increased gorse infestation on the site will not have a material or significant impact on the appellants' properties or the public interest.

Biodiversity.

133. The Tribunal accepts that on the evidence there are forest communities within the PTR area which require conservation and protection under the RFA or other agreement or convention, or by statute.

134. There is also on the evidence a combination of reservations required under the RFA, the requirements of the FPC respecting streamside reserves, swampy areas, wildlife habitat strips, visual retention and the like, and the likelihood on the owner's presently stated intention that most of the area will be selectively logged over a period of about 10 years.
135. Analysis of particular aspects of biodiversity is set out following, as to whether there is any reason to find forest communities or biodiversity will not be reasonably maintained in the area.

Monoculture

136. The concept of monoculture is relevant in two respects, one being reduction of biodiversity, and the other visual. The issue of biodiversity is dealt with elsewhere
137. Biodiversity aside, the objection to monoculture arose with respect to plantations rather than selective harvesting. On the evidence relatively little of the subject site is suitable for plantation. It was largely characterised in the evidence for the appellants, as 'industrial forestry', and principally objected to as appearing out of character with surrounding natural forest. Mr Chetwynd, the expert in the visual effects of forestry, agreed with that characterisation.
138. It is also necessary to take into account, however, that there are many other kinds of monoculture, including other forms of agriculture such as cropping and pasture, and to assess the impact in that light. Having regard to all of those matters, the Tribunal does not consider that the presence of what is likely to be limited monoculture here is likely to constitute a significant impact in any relevant respect.

Threatened Species

139. It was contended on behalf of the appellants that modern forestry is acknowledged to be a threatening process for biodiversity and threatened species. The evidence established that dependent upon the intensity of forestry, and the practices adopted, there was a potential for threat. Acknowledged potential threatening processes included the following. Fragmentation of and decrease in habitat, including edge effects - from the witnesses Weeding, Belcher, Lloyd; isolation or loss of connectivity - from the witnesses Belcher and Monks; botanical simplification - from the witness Weeding. Also, the use of herbicides, weedicides, and poisons having a direct effect upon flora and fauna.

140. The evidence of Ms S Weeding, a Forest Conservation Planner with Gunns, was that with commercial forestry, the normal processes would be as follows. Localised planning would be undertaken at an operational level through production of FPPs, which require rigorous assessment of site-specific special values, incorporating flora, fauna, geomorphology, landscape, soil and water. Each of those values is assessed in detail under established processes and management prescriptions. Site-specific flora and fauna management and vegetation community mapping is undertaken at that level to enable appropriate management. That would occur whenever there is an FPP and irrespective of a PTR. In addition, a PTR would enable effective property based strategic management of flora and fauna, by allowing management of the property as a whole with harvest and reserve areas to be planned effectively prior to operations commencing. Under the Code 100 metre wide wildlife habitat strips of uncut forest, should be retained each 3 to 5 km; in addition, other reserve areas identified as having significant biological values across the property, including on threatened species habitat, represented areas of inadequately reserved forest communities, sites of potential significance including rocky knolls, swamps, heaths and stream banks and a representative section of habitat types across the property; in addition, streamside reserves as prescribed under the FPC; in addition, forested areas left unharvested because unsuitable. There is routine oversight and auditing of compliance with requirements with respect to preservation of habitat.
141. The appellants contended that the Code and the Forest Practices System attempt only to protect nesting habitat; however, Ms Weeding gave evidence that the management prescriptions are also for maintaining foraging resources, for example for the swift parrot.
142. Mr Colson contended that the 'Special Values' of the land, including for threatened species, will need to be reassessed for any future forest practices plans. The existing reports on the property would serve as a good starting point in regard to the management of fauna, flora, cultural heritage, geoscience, soils and water and landscape. As they were now all out of date they would need to be reviewed and updated prior to the preparation of any future forest practices plans. The Tribunal considers that is correct, and that given the degree of public exposure this land has now had, that is likely to occur with any future FPP, irrespective of any PTR.
153. It was also contended for Council that the effect of a PTR in setting aside land for forestry, precluded its continuing use for reserves and refuges for threatened flora and fauna. That is correct, but none of the evidence satisfied the Tribunal there was a need to set this land aside for a reserve or refuge.

Flora

154. The evidence was that the property includes or has the potential to include listed, vulnerable, endangered, and conservation priority, RFA communities under the Tasmanian status classifications, including *eucalyptus amygdalina* forest on dolerite, *eucalyptus ovata* and *eucalyptus viminalis* forest and grassy woodland, the above together with *eucalyptus obliqua* damp sclerophyll and tall forest, *leptospermum* swamp forest, *eucalyptus pauciflora* Forest on Jurassic dolerite, and *e. rodwayii* forest.
155. The existence and extent of these communities is a matter which would be determined upon the more detailed inspection, which would necessarily accompany application for any FPP, whether under a PTR or otherwise.

156. Similarly, with the following plant species of which Mr F Duncan, botanist gave uncontested evidence as follows.
- *Pimelea pauciflora* (poison rice flower) exists on the land in areas unlikely to be disturbed, no special prescription recommendations.
 - *Pimelea filiformis* (trailing rice flower) is widespread in the area on Jurassic dolerite landforms: has the ability to persist in and /or recolonise even plantations ; is adequately reserved in the area; and no special prescription recommendations are made.
 - *pimelia curviflora* (Curved rice flower) - some was found on UPI 2496 associated with old tracks and cutover clearings; an exclusion zone of about 50 m radius for a significant proportion of that population may be appropriate. Recent discovery in firebreaks and hardwood plantations suggests further prescriptions are not required for the area.
157. With respect to these two latter species, the Tribunal notes the evidence that the species is recently discovered in quite heavily disturbed sites such as fire breaks and plantations; that suggests there is no need for concern.
158. *Epacris exserta*. The evidence was that this plant is normally found in the marshy/stream areas, in association with protected species such as *eucalyptus ovata*; and is therefore likely to be the subject of streamside reserve protection.
159. It was contended for The Environment Association with respect to threatened vegetation communities that substantial evidence was before the Tribunal regarding vegetation communities including S Cadman (Exhibit BB), and the several reports by F Duncan and H Waapstra (Exhibit FD); and Ms Weeding had also identified many of those vegetation communities. Mr Cadman using existing TASVEG mapping provided the only vegetation mapped extent of vegetation communities to the Tribunal. In particular he updated the TASVEG mapping by reference to the aerial photograph (Exhibit V).
160. It was contended from that reference, that it was evident from the reports and mapping that the land supports vegetation of a high conservation value.
161. A report by Mr F Duncan, botanist, hand dated 20 June 2002, provided a list of his findings with respect to threatened flora and forest communities, on UPIs 0560, 0562, 2496, 1649, and 2463. The evidence was that such a report would need to be prepared on an updated basis in respect of any FPP to be prepared for the subject site. Mr. Duncan's evidence was that the RFA mapping for the PTR land is incorrect, in particular there are areas incorrectly mapped as *E. ovata* forest. This would suggest any GIS interpretation of the RFA/TASVEG data as undertaken by TEA's witness Mr. Cadman, is inaccurate. The most appropriate method of mapping the forest communities in regard to forest practices plan preparation is in the field utilising appropriately trained FPO's and botanists.
162. Given that the existence of the above species is already noted, the Tribunal has reasonable confidence that any future FPP would take account of these threatened flora species and communities. There is no reason to suppose any different application of the FPP procedures, irrespective of whether there is a PTR or otherwise.

163. It is in the light of those further researches, that decisions can be made about the values of the species actually present on the land, and what measures are necessary to protect them, can be made.
164. Again, there is a prospect of more extensive and perhaps intensive forestry in the event a PTR is declared; however, the Tribunal does not find that the evidence establishes a PTR would give rise to a probability of such increases, to the extent that it would give rise to facts satisfying any of the criteria in s8(2).
165. The Tribunal does not find that the effect of declaration of a PTR, with respect to flora of special value, would give rise to facts satisfying any of the criteria in s8(2).

Hybridization

166. Mr Duncan's evidence (11.53.48, 23/5/06) was that it is possible for *E nitens* to hybridise with *E ovata* and *E viminalis*. Mr Duncan cited a safe distance for the prevention of hybridization as 300m. Additionally, he indicated the possibility that hybrids would produce viable seed. The viable seed would give a possibility of further spread of hybridisation.
167. The evidence was that when the operational stage is reached, and FPPs being prepared, it would be appropriate for necessary distances to be provided between plantations and any stands of susceptible species; or to use different species than *E nitens*. That evidence was not effectively challenged, and the Tribunal finds according to it.

Fauna

168. There was evidence from Dr Munks that the Forest Practices System administrators have a lack of resources which gives rise to a lack of complete information about some of the threatened species. That is a position which will exist whether or not there is a PTR declared.
169. The evidence on behalf of the applicants was that in general terms, vulnerable, threatened, special, and other communities requiring protection are assessed at an operational level, rather than at the stage of a PTR permit: threatening processes can include fragmentation, destruction and decrease of habitat, such as by conversion to plantation. A selective harvest regime would retain trees of no commercial value, streamside and other reserves, and habitat clumps.
170. The submission of The Environment Association was that assessment at the FPP stage was inappropriate, because it was limited to within the coup boundaries, and did not consider property wide impacts of the operation. The response on behalf of the applicant and the FPA was that having the PTR area within which to plan, allows segregation and the dispersal of coups throughout the area, which is an advantage for preservation of species.
171. Irrespective of the merits of this debate, the position remains that without a PTR, assessment will necessarily occur at the FPP level in any event. One comes back to the issue of whether or not forestry with a PTR would be so much more extensive or intensive that it would give rise to the criteria in section 8(2), which is an issue considered elsewhere in these reasons.

172. Consideration with respect to specific species is as follows.

Wedge tailed eagle.

173. Three eagles were seen over the general area and the PTR land on the Tribunal's inspection with the parties. The evidence was that there was one nest site within the PTR area, and one nearby within the applicant's property
174. In Ms Weeding's opinion a 10 ha reserve around each identified nest and management excluding activity during breeding seasons, would be adequate; prey species would be reduced on a small scale during forestry operations but provided there was retention of adequate other areas, not a threat. If managed appropriately forestry is unlikely to affect the eagles. The greatest threat to the eagle is habitat clearance, followed by persecution. Forest Practices Code prescriptions are adequate; they include that: discovered nests must be notified; in breeding season no forestry activity within 500m, or line of sight 1 km; outside the breeding season, inspection, and a 10 ha exclusion zone for forestry. Given particularly that the sites of the nests have been identified, the Tribunal considers it is reasonably likely that the eagles' breeding habitat will be protected. The evidence was that the eagles' hunting habitat is potentially large, and therefore unlikely to be threatened by selective logging on most of the site. There is only secondary take-up of 1080; however the effect of 1080 on the species is not significant.
175. Again, the evidence did not satisfy the Tribunal that there was such an additional risk to the eagle by reason of declaration of a PTR, as to generate any of the criteria in section 8 (2).

Eastern barred bandicoot

176. There is suitable habitat within the PTR area; Ms Weeding said 1080 or pesticides could be a problem, but unlikely to be significant because of the quantity needed to be ingested for damage. The species can live in forestry affected areas.
177. The Tribunal does not conclude on the above evidence, that with the declaration of a PTR for the site the species is likely to be adversely affected by forestry.

Bettong

178. The evidence was that they are potentially at risk from 1080 in carrot bait; however good populations have been observed in plantations previously poisoned with 1080; assuming a majority of the site has selective logging, little problem is likely from 1080. Given that they are able to thrive in plantation conditions, the Tribunal considers it unlikely that a combination of that and selective logging would adversely affect them.

Grey goshawk

179. On the evidence, there was a little suitable habitat on the land and one nest was located. On the appellants' evidence one bird was seen in the vicinity of the PTR land. Ms Weeding said the habitat is restricted to the wetter areas of the PTR area adjacent to streams, and on the flats in the western section. There is potential for secondary take-up of 1080. Adverse effect was a possibility, but not established as a likelihood sufficient to raise section 8(2)

Masked Owl

180. This species is listed under the TSP Act 1995 as Endangered. The Reedy Marsh forests are within the identified core habitat for this species. Adjoining landowners regularly see this bird in the vicinity of the proposed PTR. The evidence was that *Bell 1997* states the species is mostly found on the edges of forest and cleared land, or where there is a mosaic of open to dense vegetation. The species nests in large hollows, which are not frequent in re-growth area. In her opinion the land did not afford an optimum site.
181. Though the species might be affected by additional forestry, having regard to the previously considered differential effect of having a PTR, the Tribunal is not satisfied that it will be affected to the extent necessary to give rise to any of the criteria under section 8(2).

Green and Gold Frog.

182. There was a difference between Ms Weeding and Mr Sharples, whether there was suitable habitat on the PTR land. Whether there is or not, will be determined at the FPP stage. The possibility that there may be such habitat, is not a basis for the Tribunal finding that it is satisfied that there would be a sufficient adverse effect upon the species to raise one of the criteria in section 8(2).

Tasmania Devil

183. On all the evidence there was suitable habitat throughout the PTR area. In Ms Weeding's opinion, the species was unlikely to be affected by forestry, except by reduction of prey numbers. The other evidence did not persuade the Tribunal to the contrary. Though the species might be affected by additional forestry, having regard to the previously considered differential effect of having a PTR, the Tribunal is not satisfied that it will be affected to the extent necessary to give rise to any of the criteria under section 8(2).

Spotted Tailed Quoll.

184. Dr. Belcher's evidence was that the Tasmanian Spotted-tailed Quoll is a distinct subspecies, due to geographic isolation, classified nationally as Vulnerable and is 30-50% of the national population. That evidence was undisputed.
185. It was also undisputed that the proposed PTR land lies within the core range of the spotted tailed quoll in Tasmania, and that the land contains extensive habitat suitable for quolls. While quolls had not been seen on the land, they had been seen on adjacent areas and roadways. The evidence was that quolls normally live on forested land, and undertake occasional forays into cleared areas for food. The Tribunal finds that it is likely that there are quolls on the subject land. As to the number, the evidence was as follows. The size of the home range or territory is dependant on the quality of the site and numbers of prey species. An adult male Spotted-tailed Quoll requires a territory of from 2000 to 7000 ha. The minimum home range or territory for a breeding female Spotted-tailed Quoll is between 200 and 500 ha habitat depending on prey density/site quality. Ms Weeding said female ranges are up to 10 square kilometres and males up to 20 square km. It would accordingly appear that at the maximum the land would support one male and five females. The Tribunal finds accordingly.

186. Dr S. Monks, zoologist, said it was unlikely that forestry operations would result in the displacement of quolls, because males having a very large foraging range, are likely to be transient on any one property for much of the year.
187. Dr Belcher's evidence was also that based on a 1988 estimate the current best estimate of the Tasmanian population size of the Spotted-tailed Quoll is 3000 to 4000 animals. Population viability minimum is 3000 to 5000 animals. The population of the Tasmanian subspecies of the Spotted-tailed Quoll is at the lower end of population viability. The minimum regional context for a strategic plan for the Spotted-tailed Quoll is 10s of 1000s of hectares
188. The evidence was that threats to the species in Tasmania include habitat loss and fragmentation, silviculture practices, fire, climate change, direct killing, poison baiting, competition with introduced carnivores, and road mortality. Habitat loss is the most important threat to the species throughout its range, including Tasmania where it is estimated that 50% of the habitat from the species core distribution has been cleared, with at least half the remaining habitat having been subjected to logging practices in the last 20 years (Jones and Rose 1996). This is particularly pronounced in northern and north-western Tasmania (Kirkpatrick and Jenkin 1995).
189. It was contended for the appellants that the FPC is not adequate to conserve the quoll on the land subject to the PTR; and logging under the current prescriptions of the FPC that are described as likely for the land would result in the loss of the quolls currently resident on the land due to loss of habitat and prey species.
190. That was contested by the applicant. Ms. Weeding also considered that the segregation of coupes over time would provide a better opportunity to look after the fauna on the property. She said that having a selective harvest regime, several silvicultural options apply across the property, and would enable fauna to move between area of harvesting and no harvesting forests at different stages of regeneration.
191. Dr. Belcher's evidence included that the current FPC prescriptions for retention of vegetation leave insufficient forest cover to provide habitat for the quoll; and that areas logged to the degrees of intensity proposed for the land simply do not provide adequate breeding and foraging habitat or den sites for the quoll.
192. Dr S. Monks, zoologist, gave evidence that it was unlikely that forestry operations would result in the displacement of quolls, because males having a very large foraging range, are likely to be transient on any one property for much of the year.
193. The Tribunal considers that given that much of the PTR is re-growth with relatively few old-growth trees; areas reserved from logging will particularly include favoured quoll habitat such as drainage lines, gullies, ridges; the likelihood of logging being carried out in a mosaic pattern; and refuge areas being available in the adjoining reserves: there seems no reason or evidence to suppose that the quoll will be unduly affected. Selection logging will create greater forest diversity favouring quoll habitat in the long run.

Differential effect of a PTR

194. Again however, it is necessary to consider the difference between the position, which would obtain if a PTR was granted, and if it was not.
195. The arguments on behalf of the appellants are predicated on the basis that without a PTR, there would be a realistic prospect that either the land would not be used for forestry; or if it was used for forestry, there would be less intensive forestry or forestry of the nature of plantations.
196. For the previously considered reasons however, the reasonably likely position in the absence of a PTR is not that there would be no forestry, or even forestry of a greatly different extent or nature than with a PTR. It would just be more difficult because of the necessity to obtain planning approvals, as there would have to be number of individual development applications for forestry the subject of individual Forest Practices Plans. Council could not refuse to approve those applications, nor modify them so substantially as to constitute substantially different proposals; the likelihood of Council imposing conditions of significant impact would be small; and third parties would have no right of input unless joined as a party in the event of an appeal brought by the applicant against a condition.
197. Nor if a PTR is refused, would there be any likelihood of a more comprehensive approach to conservation than there would be if the PTR was granted. In either case the same considerations would apply on the applications for each of the FPPs. On any individual development application Council could not take account of matters affected by more than that individual development application, so could make no assumptions as the development of the remainder of the PTR land.
198. Nor if a PTR is refused, would there be any likelihood of a more comprehensive approach to conservation than there would be if the PTR was granted. In either case the same considerations would apply on the applications for each of the FPPs. On any individual development application Council could not take account of matters affected by more than that individual development application, so could make no assumptions as the development of the remainder of the PTR land.
199. Though the species might be affected by additional forestry, having regard to the previously considered differential effect of having a PTR, the Tribunal is not satisfied that the species will be affected to the extent necessary to give rise to any of the criteria under section 8(2).

The Eastern Quoll

200. The PTR application also identified the Eastern Quoll as being present on the land. It is an RFA Priority Species in Tasmania. The land contains grassland and grassy woodland. The evidence was that research in Tasmania has found some areas where both the Spotted-tailed Quoll and the Eastern Quoll co-exist, but has found that they tend to utilise different habitat within that matrix.
201. It is again necessary to consider the difference which a PTR would make, as before.
202. The Tribunal considers on all of the evidence, that the eastern quoll is unlikely to be threatened by Forest practices on the site, and therefore by the declaration of a PTR.

Swift Parrot

203. This species is listed as Endangered under the EPBC Act 1999 (Cth.), and the Threatened Species Act 1995.
204. *Eucalyptus ovata*, present in the Reedy Marsh area and on the site, forms a potential food source for the Swift Parrot in years when *Eucalyptus globulus* fails to flower. Ms Lloyd considered *e ovata* was also a potential food source for the species. The appellants' evidence was that Swift Parrots are frequent visitors to Reedy Marsh; there is suitable foraging habitat in the area; and suitable nesting habitat may occur on the land proposed for the PTR. It is again noted that virtually all of the PTR land is re-growth after past forest operation, but is still regarded as good habitat.
205. Ms Lloyd considered suitable nesting habitat does occur within the PTR. Ms Weeding said the Swift Parrot was not considered as affected here because it was not 'mapped' for Reedy Marsh, although she acknowledged the presence of *Eucalyptus ovata* as a food source for the species.
206. The appellants contended that the threatened species listed above require large areas of good quality habitat in order to persevere in an area. While the Forest Practices Code protects nesting sites, although not sufficiently, it does little to protect foraging habitat. That the land proposed for the PTR has all the listed species, suggests it is of good quality and as it is now provides for all their habitat and foraging needs. Any disturbance of native vegetation concomitant with tree harvesting eliminates either their habitat or the habitat of the many species on which these top order predators depend.
207. While the Tribunal does not necessarily consider all the latter contentions are fully correct, even assuming they are, it is again necessary to take into account what the Tribunal has found to be the differential effect of declaring a PTR. The consequence is the Tribunal is not satisfied of the existence of any of the criteria under s 8(2).

General amenity

208. It was contended by the appellants, and they gave evidence, that primary aspects of their enjoyment of the Reedy Marsh area, were appreciation and enjoyment of naturalness, wildlife, natural visual qualities, and an absence of factors, such as noise, adversely affecting rural residential amenity.
209. The Tribunal considers that the appellants have established all of those matters, and accepts that they are matters of great significance for the appellants. The specific factors upon which those matters of general amenity depend, are those considered above relating to direct and material disadvantage as those individual topics together comprise all aspects of amenity which were relied upon.
210. The crucial question which arises with respect to general amenity is the same as for those specific matters; the differential effect of a PTR; and the answer is necessarily the same.

PUBLIC INTEREST

What is public interest.

211. The Tribunal considers that it is clearly public, as opposed to private, interest. Section 8(2) (e), in conjunction with s16(3) of the Act contemplates that the public interest may include natural cultural values. s16(3) of the Forest Practices Act 1985 provides that a PTR application can be refused on public interest grounds where the declaration would threaten natural or cultural values – that is, it is in the public interest to protect “natural values” including threatened species.
212. The appellants called Dr P Hay to give evidence, on the basis that he was an expert upon the public interest. With respect to Dr Hay, the ‘public interest’ is, in the view of the Tribunal, a term describing an amorphous concept. It is not, on any of the evidence before the Tribunal, a specific field of expertise. The various matters which were here alleged to affect the public interest, such as the maintenance of biodiversity and the integrity of the environment, have aspects which form recognised topics of knowledge and are appropriately the subject of evidence, expert or otherwise, but the Tribunal does not consider that what the ‘public interest’ means is a matter of expert evidence. The evidence given by Dr Hay will however be given appropriate weight as a submission.
213. The Tribunal agrees with Dr Hay’s statement that there are, as yet, no sound criteria for identifying and evaluating the often intangible factors that constitute the public interest.
214. That being said, virtually all of the aspects of adverse impact upon adjoining landowners, where they affect numbers of different persons sufficient to constitute the public at large, are capable of affecting the public interest. The Tribunal therefore considers all the evidence under the aspect of direct and material disadvantage, to be also relevant to this aspect.
215. The Tribunal considers that the practical method of proceeding is to consider each of the factors identified by the appellants as adverse, as potentially affecting the public interest.
216. The factors identified under the heading of directly and materially affected, could each affect the public if on a sufficiently wide scale or serious impact. To the extent they have been considered above, the conclusions already reached are applicable.
217. As put by the Council, the appellants in this case contend that the application for PTR 1698 faces them with a substantial alien alteration to the character of their home landscape. They assert that harm to their social relationships, ecological patterns, and visual and travel amenity is already taking place in their community, from operations virtually identical but on a far smaller scale, than those proposed for this application. They predict the granting of PTR 1698 will irreparably intensify that harm and entrench it in perpetuity in their rural residential neighbourhood.

218. It was contended by Dr Hay that Acts of Parliament do not establish the public interest. That may in one sense be correct, but it is not correct in the sense that many statutes put in place standards to which activity is required to comply. It would normally be accepted that those standards express the public interest. It was also contended by Dr Hay that a defined locality with a sense of place, has priority over the wider and more diffuse interest; that, in the hierarchy of public interests, the local (community) public interest is the most important, followed in descending order of importance by Regional, State and, presumably, National public interests.
219. This seems to be the reverse of the usually accepted hierarchy, and is not accepted by the Tribunal.
220. The Tribunal construes Dr Hay's evidence as also defining the Reedy Marsh community, the interests of which he considered were paramount, as being only the rural residential element of that community. That was also the way in which the individual appellants put their case, insofar as it affected the public interest. The Tribunal refers to the evidence as to the number of individual landholdings around the subject land, and the analysis below of the locations of the persons subscribing to the petitions, and does not accept that the appellants represent more than a prominent special interest group. The evidence shows the next most prominent group is the primary producer, including forestry, group. Neither group is the sole constituent of the public interest.
221. Dr Ross Ullman, a medical practitioner, proceeded on the basis that the public interest was constituted by the public most immediately affected, that is, the public being the residents of Reedy Marsh. On the basis of some 16 respondents to a series of e-mails and other advertisements, he opined that the "public" of Reedy Marsh was constituted by persons like-minded to the respondents to the advertisements, who communicated with him and supplied histories. He took the histories at face value, on the basis that they were valid self diagnoses. He accepted that many may be persons of unusual susceptibility. The respondents were self-selected. In his opinion a PTR with the accompanying loss of capacity for Council representation, was likely to cause feelings of alienation, despondency and despair within the community concerned.
222. The Tribunal considers that in assessing the public interest, it is not appropriate to take into account persons of unusual susceptibility, rather that it is appropriate to take the hypothetical person of ordinary normal susceptibilities. This is, the Tribunal considers, reasonably analogous to other legal concepts involving the community, and analogous to the test which is taken when considering the application of the law of nuisance. Dr Ullman was not able to say whether the sample which he had taken into account, represented persons with unusual susceptibility, or more nearly, the population norm. Tribunal considers the broader community has an interest of more significance than the local community, although both must be taken into account in the total concept of the public interest.

Lack of opportunity for public input through the RMPS system

223. The previous consideration of this topic is again relevant here. It appears from the evidence that Council, as has its professional staff, has taken the view that the proposed PTR is consistent with the planning scheme. Such controls as Council has imposed in the past have no been more than are already the subject of the tripartite agreement relating to the present proposal. There is on the evidence little realistic prospect of conditions which would significantly impact upon the nature or extent of forestry on the land.

224. Further, having regard to the intent of the rural zoning, which is essentially for productive use, productive forestry is more consistent with that intent than is rural residential use. This would tend to militate against potential imposition of conditions favouring the latter over forestry.

Balance between forestry and preservation of the ecology

225. It was contended by many of the appellants, particularly in the context of the public interest, that the extent of forestry statewide was so great that it had been, and that the likely extent of forestry in the future was so great that it was likely to be, grossly excessive. This was in particular, because it failed to give adequate weight to the need for the preservation of the environment in the sense of biodiversity, naturalness, protection of threatened species, and the like. The Tribunal considers that these issues can only be resolved as a policy matter, at a Government level, because the information available to bodies such as the Tribunal is of necessity limited, and the Tribunal does not in appeals such as the present have the capacity to ensure that the information relevant to the statewide picture, is accurate or complete.

Petitions

226. Petitions were tendered both on behalf of the appellants and of the applicant. As best it can be extracted from the stated addresses in the petitions, approximately 95% of the TEA petitioners were from outside the Meander Valley municipality; whereas 65% of the applicant's petitioners were from inside the municipality. About 8% of the TEA petitioners had a rural address, and 32% of the applicants' petitioners had a rural address.

Unsuitability of the land itself for forestry

227. TEA relied upon the land being classified as "vulnerable" under the Forest practices regulations, and contended that it therefore should not be subject to forestry. The Forest Practices Regulations however have the effect that if land is 'vulnerable' forestry always has to be subject to subject to an FPP, no matter how small the volume of timber cut. They do not exclude forestry altogether.

The public aspect of all of the incidents of direct and material disadvantage

228. The findings, reasoning and conclusions reached previously under the heading of direct and material disadvantage, are also relevant here, on the basis that the individuals concerned are members of the public. In addition, specifically public effects are as follows.

The Visual Effect

229. In this context, the potential effect upon the public at large, includes both the adjoining landowners and members of the public, as well as the wider public. Visual impact is, on Mr Colson's evidence, normally assessed at the time of FPP assessment. The evidence of Mr Chetwynd was that recommendations would normally be made, but there are occasions when he may not be referred to, and again, when his recommendations were not followed.

230. Again, with respect to the public interest, the test is the differential effect of the declaration of the PTR. As previously noted, the extent to which there may be additional forestry because of a PTR is not shown to be at any determinable level; and the Tribunal is not satisfied that a PTR will make a significant difference to the level of forestry on the land, or the nature of the controls applied to it.

Noise

231. The Tribunal does not consider, on the evidence, that any factors arise here other than arose with respect to the neighbouring appellants. Noise is not a matter of significance in the public interest context, here.

General Ecological Effects

232. The public interest in the preservation of biological diversity, biophysical naturalness, and environmental integrity generally, is undoubted. All of the individual factors relevant to such factors have been identified and considered above.
233. Again, with respect to the public interest, the test is the differential effect of the declaration of the PTR. As previously noted, the extent to which there may be additional forestry because of a PTR is not shown to be at any determinable level; and the Tribunal is not satisfied that a PTR will make a significant difference to the level of forestry on the land, or the nature of the controls applied to it.
234. In its totality, the evidence does not satisfy the Tribunal that the difference made by declaration of a PTR would constitute a significant impact upon the public interest. It would therefore not be against the public interest.

LAND NOT SUITABLE – SECTION 8 (2)b

235. It is important to recognise that this criterion is not stated as being whether the land is suitable for forestry, in the sense of growing and harvesting and regenerating trees, but rather whether it is suitable for declaration as a private timber reserve. Suitability for forestry is a component consideration of that criterion.
236. The Act does not set out any criteria for what constitutes suitability or otherwise. The term is capable of taking into account all impacts, including environmental, economic, social and cultural, of such a declaration.
237. By schedule 7 of the Act, the primary objective of the Forest Practices System is to achieve "...sustainable management of Crown and private forests with due care for the environment..." The Act does not define the term "sustainable management", and it is therefore reasonable to use the same meaning as in 'sustainable development' in the objectives of the Resource Management and Planning System of Tasmania, i.e.

"sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- a. sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and*

- b. *safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- c. *avoiding, remedying or mitigating any adverse effects of activities on the environment”.*

238. The evidence of Mr S Cadman was that the rate of change in Meander Valley is not sustainable for conservation. It was consequently contended for the appellants that what they described as the high conservation values of the land (i.e. the presence of threatened species and vegetation communities, cultural, heritage and landscape values) balanced against timber production capacity; and the potential for conflict within the surrounding community (engendered by the intensification of industrial forestry on the land) were such that overriding the Meander Valley Planning Scheme, and legally restricting the land to nothing but commercial timber production via a PTR declaration would not be sustainable forest management. Accordingly, that the land was not suitable for declaration as a PTR.
239. The issue of the planning scheme application has been previously considered. The issue of whether forestry is sustainable is relevant only if the differential effect of declaration of a PTR would mean the resulting level or nature of forestry was unsustainable. For the reasons previously stated, the Tribunal does not consider that declaration of a PTR will make any significant difference to the level or nature of forestry carried out on the land.
240. The applicant and supporting parties claim, and the Tribunal considers it is correct, that the land is in its current condition including threatened vegetation communities and habitat for Threatened Species, notwithstanding the history of logging in the past.
241. The Tribunal notes that the evidence was that a large part of the previous forestry on the subject land had been by way of clear felling for the APPM paper mill. That extended over much of the adjoining land owned by the appellants Hawkes, Hoffman and Elkin. Other parts had been by selective logging of greater or less intensity.
242. The appellants contended that where the land is ‘uniquely suitable’ for conservation of important natural values, and that where the conservation of those values is more important than forestry, then it becomes unsuitable for declaration as a PTR. It was contended this was the case with the subject land.
243. It was further contended that as a PTR is designed to mandate forestry and only forestry or such other compatible uses as deemed fit, it is designed exclusively for forestry purposes and excludes others. In so doing it makes the land ‘not suitable’ for other uses. If a more significant use is being precluded then the land is not suitable for declaration as a PTR. The answer is the same as above.
244. Significantly, however, with respect to each of these latter two submissions, it is important to emphasise that the test is not whether forestry would have certain results, but rather whether the differential effect of a PTR would have such results. For the same reasons as previously considered with respect to this issue, the conclusion is the same as previously.

245. The Land Capability Survey for Tasmania was also stated to be relevant. The Survey provides in section 6:
- (6) *For the Tasmanian classification, agricultural land uses only are covered, and are defined as broadscale grazing and cropping uses.*
 - (7) *Land capability may be defined as a rating of the ability of land to sustain a range of land uses without degradation of the land resource. It is an interpretive and somewhat subjective assessment based on the physical limitations and hazards of the land, potential cropping and pastoral productivity, and the versatility of the land to produce a range of agricultural goods.'*
246. The Tribunal accordingly does not derive any assistance from the survey.
247. It was further submitted on behalf of the appellants that evidence concerning regeneration of long past forestry did not show replacement ecologically mature forest or replacement trees of similar size to the stumps in the vicinity; and that despite those areas being mapped in some instances (by PFT) as Tall Eucalypt forest (Exhibit L1) the growth of trees was described as slow by Mr Parsons, a horticultural expert with considerable experience in tree growing. Again this is a submission applicable to all forestry, not with respect to the differential effect of a PTR.
248. Suitability of the land for forestry activities is one aspect of suitability for declaration as a PTR. The evidence for Private Forests Tasmania was that the area has at least a 70 year history of sustainable productive forest management. There was evident excellent regeneration of forests harvested in the 1970s, 1980s, 1990s. Some areas had been established to plantation. The rainfall, geology, soil type, aspect, and terrain indicate that the land is suitable for establishing forest or tending or harvesting of timber. The majority of the area was able to be used for establishing forests, or growing or harvesting timber, either currently being forested or planned to be established to forest
249. The Tribunal considers on the evidence that much of the current forest on the PTR site is fairly even re-growth of low structural diversity, likely due to virtual clear felling for pulpwood/cordwood in the 1940s; and that demonstrates even poorly managed forestry does not preclude reasonable biodiversity in the future. It is likely, due to the much more detailed and extensive controls which now apply to forestry, that any forestry on the land will be better managed than in the past.
250. It is also likely that selective logging will create a more diverse forest structure. There is no evidence, only assertions, that properly controlled selective logging has a significant adverse effect on biodiversity. Contrast clear felling and conversion to plantations, agriculture, and residential development, all of which have a much greater effect. Only 10% of the area for plantation forest is unlikely to have a major effect.
251. Evidence on behalf of the applicant was given by Mr C Sharples, Geomorphologist, as to the suitability of the soils on the land for forestry.

252. His evidence was that 30 to 50%; or from a geomorphological and soils perspective, large areas, of the PTR are suitable for forestry operations under the Code; especially large areas of near flat to moderately sloping well-drained ground with relatively robust and probably nutrient rich stony dolerite soils, including an existing established plantation area; 'about as good as it gets' for forestry; well-drained undulating sandy ground in the basin is also suitable for reduced intensity forestry activities, although with lesser productivity and greater sensitivity to erodibility requiring appropriate management prescriptions. Much of the land is suitable for selective logging; not the steep land or the swampy land. Some is suitable for clearfelling, but not the sandy areas.
253. There was adjoining agricultural activity, particularly the clearing and ploughing of sandy lower slopes and the draining of sandy flood plains for cropping and pasture. On the evidence, at least 100 ha of the subject site also has sandy soils similar to those already utilised for agriculture on adjoining land.
254. Mr Sharples made the observation, which the Tribunal accepts, that a lot of the Forest practices code is for the purpose of minimising soil erosion; and that by comparison land cleared for farming, and ploughed, is a worst-case erosion situation, with erosion rates far in excess of those in forestry areas. The Tribunal notes that one advantage of a PTR is that the land could not be converted to other forms of cropping agriculture and may only be used for forestry. That particularly applies to the approximately 100 ha of flat land with sandy soils, adjacent to other areas used for agriculture cropping.
255. On all of the evidence, the Tribunal considers from a geomorphological and soils perspective, and taking into account the necessary habitat, slope, and other reserves that approximately under 15% of the land, is suitable for plantation; that of the remainder is suitable for selective harvesting. The Tribunal concludes that the land itself is suitable for forestry.

Climate change

256. The evidence of Mr Parsons was entered unchallenged; it was that the predicted outcome for the land is that its already poor suitability for forestry will decline even further through this century due to unavoidable climate change. Mr Parsons' evidence was in particular that the capacity of the ecosystem to regenerate after forestry, would be adversely affected by global warming.
257. To the extent that this evidence is that relevant, it is relevant only as to the undertaking of forestry, and has no significance with respect to the differential effect of declaration of a PTR.
258. Having regard to s.16(3) of the Forest Practices Act 1985, which provides that a PTR application can be refused on public interest grounds where the declaration would threaten natural or cultural values, it is clear that the Act contemplates that natural and cultural values are potential components of the public interest.

Ecological effects

259. S Cadman gave evidence that he had extensive experience with GIS & remote sensing; he had viewed TASVEG mapping and aerial photography of the site, but had not visited it. On that basis, his opinion was that the subject land has 'biophysical naturalness' and environmental values which require protection. In his opinion there needed to be in a comprehensive assessment of the biophysical qualities of the site before any forestry takes place. In his opinion the rate of biophysical change in Reedy Marsh, due to forestry is not environmentally sustainable. In his opinion there is a widespread systemic failure of administration of the Forest Practices Code.
260. The Tribunal considers, on the evidence, that the appropriate surveys and assessments will take place only at the time of any FPP, irrespective of whether there is a PTR. They would not take place at the present stage irrespective of whether a PTR is declared or otherwise.
261. Suitability in respects such as the effects on the neighbours and public interest, the ecology and the threatened species, are considered above under those specific topics.

Financial effects

262. The Tribunal is obliged to consider the financial effect of the declaration or refusal of a PTR, upon the applicant. Upon all the evidence, the Tribunal does not see that refusal of PTR in itself would be likely to have any significant financial effect. The necessity for making application for planning approval for each proposed FPP which would follow refusal of a PTR, would involve expenditure of the application fees and any consultant and other fees necessary in order to prepare the applications; however in the total context of the value of timber on the land, that is a minute proportion.
263. Giving that submission the serious consideration it requires, the Tribunal does not consider that the facts alleged in it are correct. The Tribunal does not consider that it was biased or demonstrated bias in the respects alleged or in any other respect. The Tribunal declines to disqualify itself.
264. A number of jurisdictional issues were raised prior to the hearing, and the Tribunal gave written rulings upon them. The Tribunal determines that the chairman's previous rulings stand, save as affected by the following.

Requirements of section 5.

It is a requirement of s5 of the Act that an application for a PTR is to be "in a form approved by the authority": The evidence was as follows.

265. The authority, the FPA, had published a form. This form was used by the applicant. It was not in all respects complete, but was substantially the form required. It was accepted by PFT as the delegate of the authority. Neither the PFT nor the FPA required further material in writing, which either could have done under subsection 5(3). The only conclusion which the Tribunal can reasonably draw is that the form in its incomplete state was acceptable to PFT as delegate of the authority.

266. In particular, it was contended for the appellants that the form must contain a list of all surrounding UPI's, identified land parcels. This is not a specific requirement of section 5. Whether or not the form contained such a list, it was accepted by PFT as delegate of the authority; the reason is almost certainly that the relevant particulars were already known to PFT by reason of prior applications in respect of the land in PTR 1698.
267. The evidence was further, and the Tribunal finds, that not all "prescribed persons" had been notified of application PTR 1698 by the applicant. This was not a statutory requirement. It was contended on behalf of the appellants that to have wrongly answered "yes" to the question in the application form of whether all prescribed persons had been notified, invalidated the application.
- 268.. In essence, the Tribunal considers that as notification was not a statutory requirement, then a failure to accurately answer a question as to whether there had been notification, a requirement only of the form, would not be capable of invalidating the application, as it was a matter of substantially lesser significance than the statutory requirement.

Inaccuracies in the form contents

269. The evidence also satisfies the Tribunal that the application forms were in a number of respects, inadequately or inaccurately completed. That the application contents were so deficient, is not however sufficient to satisfy the Tribunal that there was in reality, not an application at all. Once there is an application, then inaccuracy or inadequacy of the contents of the forms is not, unless it is shown that there was not good faith and honesty in making the application, made a ground of refusal of an application. The evidence overall, does not satisfy the Tribunal that there has been an absence of good faith or honesty, as opposed to the presence of mistakes or lack of adequate care.
270. The question of whether the application was made in good faith and honesty was also raised by the appellants. This issue, arising under subsection 8 (2) (a), was excluded by the Tribunal as a ground of appeal. Notwithstanding that however, the facts which are relevant to whether the application was made honestly are also relevant, in part, to whether there was or was not in reality, an application at all. That is, if the whole thing was so dishonestly made that that it was properly characterised as a bogus application.
271. One aspect which requires particular mention is, in the context of good faith and honesty, evidence that when he completed the application form, Mr Colson as an officer of Gunns, had previous knowledge of objections to the creation of a PTR on the relevant land. This did not, however, the Tribunal considers, preclude Mr Colson from honestly holding the opinion that there were no potential grounds for refusal under section 8(2).
272. The Tribunal, considering all of the evidence, finds that while there were mistakes and a lack of adequate care in the making and processing of the application, it is not satisfied that there was an absence of good faith or honesty, by the makers of the application.

273. It was further contended by the appellants that the application itself was never sent to the authority. The evidence of Mr Bower, Mr Taylor, and Mr Hawkins satisfies the Tribunal that a complete version of the application was not sent to the authority, but that what was received by the authority was a report by PFT, with accompanying documents. It is contended that as a result, the authority could not have satisfied itself that the application was complete. That is no doubt so, but it is not a required part of the statutory process, that the authority so satisfy itself as a positive act; what is required is rather that the application itself be in a form approved by the authority and not be without good faith or honesty. It is the objective existence of those latter qualities, rather than whether or what the authority thought about them, that determines the validity of the form and process.
274. It was also contended on behalf of the appellants that the authority had inadequate relevant material on which to properly base a decision. In particular, the absence of some original objections, and of the document containing the applicants response to those objections under subsection 7 (3), was relied upon by the appellants. Further, that there was a great deal of material which was relevant and tendered before the Tribunal, but which was not made available to the authority
275. Again, the Tribunal considers that there was not such an absence of material as to make the consideration by the authority, no consideration at all. Absent this, it is not to the point that there were inaccuracies or inadequacies in the materials of which the authority considered.
276. It was further contended on behalf of some appellants that before making its decision the authority was required to give them an opportunity to put material and submissions before it; and inter alia to conduct a hearing. The requirement to conduct a hearing only arises in the context of a potential refusal of a declaration; under subsection 8(3), an application for the declaration of land as a PTR shall not be refused without a hearing. Where the authority is not minded to refuse the application, there is no need for a hearing.

Natural Justice

277. Exhibit Q was a list of documents which it was stated by Mr Colson represented the final set of application documents. This exhibit was produced by Mr Colson in the course of cross examination by the appellants; it was elicited by that cross examination.
278. It was contended on behalf of numbers of the appellants, that they were not accorded natural justice, because they did not have the opportunity of cross-examining Colson when he produced exhibit Q. At that time none of the other appellants sought a further opportunity to cross-examine Mr Colson about exhibit Q. Even if they had done, it would not have been appropriate to reopen cross-examination by parties who had completed their cross-examination, simply because another party of the same interest in later cross-examination elicited a further document which was placed into evidence.

Process

279. The Tribunal is faced with an inherent difficulty in determining the application of section 8, because it is difficult to assess a PTR in terms of its effects. Such things as the area to be harvested, precise areas for any plantations, areas of natural values such as containing valuable plant communities or threatened species, types of logging systems proposed such as clearfelling or selected harvesting, rate of harvesting, roads to be used, and visual restrictions, are unable to be determined with sufficient certainty; because they cannot be certainly known at the PTR stage, but only at the FPP stage and then only on a piecemeal basis in such a large land area as the present over 1000 ha. Whatever present intentions the present landowner may have, may change, and the landowner may also change, so that there is no adequate certainty. That position also places appellants against a PTR at a significant disadvantage, because it makes it very difficult to establish any of the negative criteria in s8 (2).

Cross Examination by parties of the same interest

280. Section 36(7) of the Act provides:

"(7) A party to proceedings before the Tribunal is, at those proceedings, entitled to tender evidence to the Tribunal and to examine any other person who tenders evidence in those proceedings".


281. Had it not been for the existence of that subsection, the Tribunal would have applied a practice of convenience, that individual parties were not entitled to cross examine witnesses giving evidence in essentially the same interest, save and except with respect to evidence which was adverse to the interest of the party cross examining.
282. The appellants relied upon the above sub-section, with the result that each was entitled to and did cross examine witnesses giving evidence in the same interest, and at length. The Tribunal considers that the existence of this sub-section has the potential as was realised in the present case, of allowing a great deal of fresh factual material favourable to the party by whom the witness was called and those of the same interest, to be brought out at the hearing; with the result that the opposing parties were at a disadvantage because it such facts were not the subject of a proof delivered in advance in the normal way.
283. The Tribunal considers that the requirement in sub-section 9 (b) that the Tribunal shall observe the rules of natural justice is a sufficient basis for ensuring that parties have the opportunity to cross examine in respect of adverse evidence. The Tribunal considers the entitlement to examine spelled out in sub-section 36(7) is not only otiose but has undesirable consequences, and that it should receive legislative intention.


284. The hearing of these appeals extended of some 17 days. Many hundreds of pages of submission were subsequently received from the parties. The length of cross examination of witnesses by many of the appellants and their representatives was a principal cause of this situation. The Tribunal, particularly because of the requirement in section 36(9)(c) that it conduct the proceedings with a little formality and technically, and with as much expedition as a proper consideration of the matter permits, ultimately limited the representative to cross examination of 60 minutes each per witness. The Tribunal considers that period would have been more that sufficient to cross examine upon matters adverse to the interests of the party for whom the cross examination was being conducted.

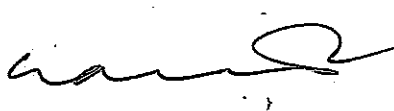
Conclusion and orders

285. As previously stated, the crucial question is not whether the Tribunal is satisfied that forestry as it is practised under the current controls of the Forest Practices System, which entails theoretical compliance with an FPP in every case, but inevitably in practice failure to comply in some cases, will result in the existence of any of the criteria for refusal referred to in section 8. The question is rather, does the existence of a PTR mean adverse outcomes are so much more likely that the Tribunal is satisfied of the existence of any of those criteria.
286. The Tribunal has found that it is not satisfied upon the evidence, that with respect to the application for PTR 1698, any of the negative criteria in S8 (2) of the Act exist.
287. It is ordered that the appeals are dismissed, and the determination of the Forest Practices Authority appealed against is affirmed.
288. The Tribunal will entertain any application for an order for costs in these appeals, if made to the Tribunal in writing with supporting submissions within the next fourteen days. If appropriate the Tribunal will reconvene to hear any evidence in respect of any matter bearing on an order for costs.
289. In the absence of any such application for an order for costs the order of the Tribunal is that each party bear its own costs.
290. It is noted in this respect that costs refers to actual expenses incurred by a party, rather than to compensation for time set aside.

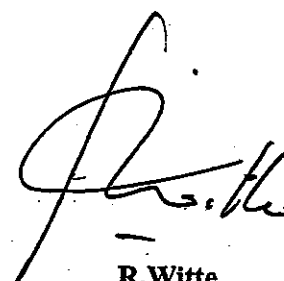
Dated this 13th day of October 2006.




R.Ellis
Tribunal Member



KAM Pitt QC
Chief Chairman



R.Witte
Tribunal Member