

FOREST PRACTICES TRIBUNAL

PRIVATE TIMBER RESERVE APPLICATION 1419

BETWEEN

ARMATOS PTY LTD

appellant

AND

THE FOREST PRACTICES BOARD

respondent

This was the hearing of an appeal against the refusal of the Forest Practices Board to grant a Private Timber Reserve at Adventure Bay, Bruny Island.

The appeal was heard at Hobart on the 6th December 2002.

G. Wilkinson appeared on behalf of the Forest Practices Board.

A Goodsell appeared on behalf of the Kingborough Council.

C Preece and M Pettingill appeared on behalf of the appellant.

R Graham, D Boyer, A Nicholson, J Neumann and D Andrews appeared in person.

R Graham also appeared on behalf of those persons opposing the reserve, who were not present.

DECISION

1. Application was made by Armatos Pty Ltd for the declaration of a 42 hectare private timber reserve at Adventure Bay, Bruny Island. The land is identified as UPI 0090. It occupies the area between approximately 600 meters and 1 kilometer from the township at Adventure Bay.
2. The land subject to the application lies at a maximum altitude of approximately 76 metres, with a slope ranging to a maximum of approximately 30 to 35 percent. It has a rainfall approximately 1000 mm per annum. The evidence was that the land is forested. Approximately 95 percent consists of *Eucalyptus obliqua*, and the remainder of *Eucalyptus globulus*. The evidence was that the land was cleared in the 1920s, and that the regrowth forest is a relatively uniform age with very few mature trees. It was proposed that of a total of 54 hectares, 42 would be in the reserve.
3. The Forest Practices Board determined that the proposed reserve would not be in the public interest, under section 8(2)(e) of the Forest Practices Act 1985.
4. The evidence on behalf of the Forest Practices Board was that in the present case it considered the "Public Interest" to be represented by the provisions of the planning scheme, in the status which they gave to the land, and the requirement that regard be had to specified criteria in determining applications for development. In addition, broader representations in terms of amenity, visitors, peace and quietness, and the backdrop to Adventure Bay were considered to be important.
5. Under the Bruny Planning Scheme 1986 the land lies within the Rural Zone, and is also within the Adventure Bay Special Area. In that Area council approval is required for removal or destruction of trees. Forestry is a permitted use in the rural zone. The intent of the Adventure Bay Special Area is stated in clause 7.8.1 of the planning scheme as follows:

"Notwithstanding any other provisions of this Scheme, all development within the Adventure Bay Special Area shall be subject to Council Approval. In considering new proposals for land subdivision and development, the Council shall have regard to any likely environmental, aesthetic or infrastructure impact and shall ensure that all new development is compatible with existing development. Special recognition shall be given to the historical significance of the area."

6. Land clearing within Special Areas is controlled by clause 7.2 of the planning scheme, relevantly reading as follows:

“7.2.1 the purpose of this provision is to ensure the management and conservation of natural vegetation within any Special Area delineated on the Plan.

7.2.2 the clearing of land or destruction of any trees or natural understorey in a Special Area shall require the approval of Council.

7.2.3 Notwithstanding the provision of clause 4.3 the Council may refuse or may grant conditionally an application which involves land clearing in a Special Area, following consideration in accordance with clause 4.4 of this Scheme."

7. Clause 7.2.5 of the planning scheme requires that in considering any application requiring the clearing of land in a Special Area the Council shall take into consideration various matters, including the quality and extent of the vegetation to be removed; the protection of watercourses; the amenity value of the vegetation, particularly its visual significance in coastal, hilltop and mountain areas and along tourist routes; vegetation corridors to facilitate the movement of native animals from one uncleared area to another; wildlife habitats, particularly for rare or endangered species; its relationship to wetlands as a habitat environment for birds; the retention of plant species diversity or the presence of rare or endangered plant species and associations; and the remnant value of the vegetation.

8. Those criteria are directed to matters of the public good, and, the Tribunal considers, can properly be classified as aspects of the public interest.
9. It was contended for Council that forestry activity was clearly in contravention of clause 7.2.1, in that it envisaged harvesting, rather than the conservation, of the natural vegetation. In the present case, where the proposal is to establish a right to harvest the majority of the timber on the site, and then allow it to regenerate, it clearly does not constitute 'conservation'.
10. The application for the reserve noted that the area was one of high sensitivity and scenic quality from the viewpoint of Adventure Bay residences. The evidence was to the same effect, and that in addition a high quality scenic value existed when viewing from the bay. While not visible from the foreshore or other than a few points along the road leading to Adventure Bay, the evidence was that the land would be highly visible from the water. The evidence was further that there was a substantial amount of water-based tourism, and a substantial amount of activity on the water by local residents. The Tribunal is satisfied that the land upon which forestry activities would be carried out in the reserve is prominent, and that its visual amenity is enjoyed by both locals and tourists, particularly from the water. This evidence was consistent with the classification of the land as a Special Area under the planning scheme.
11. Clearing for the proposed harvesting would normally involve areas on a minimum scale of 200 to 300 metres width. A number of such areas or larger areas would be clearly visible from the water as gaps in the forest canopy. The appellant relied upon evidence that a high proportion of the land in the vicinity had already been cleared, without being visible from the water; these areas were however shown by the other evidence to have been below the 20 metre contour, and of low visibility from the water; whereas the proposed clearings would be at a median elevation of approximately 50 m, and highly visible.
12. The nearest part of the proposed reserve lies within 300 meters of the township of Adventure Bay, and the further part approximately 900 meters away. All of the harvesting activity would take place within that distance of the township, with its residents and tourist population.

Evidence was provided that a fairly large number of interstate and overseas visitors came to Bruny Island and that a capacity exists for accommodation of visitors and tourism activities in the Adventure Bay area. The evidence was, and the Tribunal accepts, that this would be likely to diminish the pleasantness and attractiveness of the area, for residents and visitors, to an appreciable degree.

13. Log trucks transporting timber from operations approved for the property would avoid the immediate vicinity of the township. However, they would be required to travel along a number of roads in the vicinity, which upon the evidence had sections which were inadequate for both log trucks and other vehicles to pass, and which upon Council's evidence would need improvement if the envisaged log transport occurred.
14. An issue was raised by those objecting to the proposed reserve, as to the likely effect of timber harvesting and road works, upon water quality in the area. The evidence satisfies the Tribunal that the general water flow across the proposed reserve is towards Adventure Bay township; and that any sedimentation arising from the harvesting and road works activities would potentially be carried by the surface and by any subterranean water, towards the township. It was observed by the appellant that any harvesting would be controlled by the provisions of the Forest Practices Code, which would be likely to provide reasonable protection for water quality. In those circumstances the Tribunal does not make any finding that forestry activities would be likely to adversely affect water quality in the vicinity.
15. The Tribunal is obliged to include in the matters to which it has regard, the financial effect of its determination on the parties to the appeal. There was evidence on behalf of a number of those opposing the reserve that they carried on income generating activities which would be likely to be adversely affected by any significant loss of amenity arising from the forestry activities likely to result from the reserve. Evidence was also given of a substantial number of businesses in the immediate area, for which tourism contributed a substantial amount of business; to the extent of any adverse effect upon tourism, those businesses would suffer commensurately. The Tribunal accepts that evidence, although it is unable to make any specific findings as to the amounts of money involved. For the appellant, a refusal to grant the

proposed reserve would result in the inability to realise the financial value of much of the forest on the site valued as timber. No evidence of the quantity or value of timber potentially available from forestry activity was presented by the appellant. A notional estimation of quantity, in the absence of assessment data, is approximately 300 tonnes of timber per hectare, which for a gross area of 42 hectares might yield approximate 12000 tonnes of timber, providing a notional net profit of approximately \$120,000. Offsetting any accurately calculated financial opportunity cost would be compensation for which the applicant may successfully apply under section 16 of the Forest Practices Act. Even in the event that the private timber reserve is refused, the appellant is still entitled to apply to Council for a permit to carry on timber removal on the land, although having regard to the matters discussed in the present appeal, it would not be realistic to expect that a permit for any substantial amount of harvesting would be granted. Subject to the question of compensation and the value of the land for other purposes acceptable to Council, the appellant may suffer a significant financial loss from refusal of the reserve.

16. In essence therefore the balance is between the potential loss to the appellant on the one hand, and the detriment to the public interest on the other hand. Having regard to all of the above matters, the Tribunal considers that the balance lies clearly in favour of refusal of the proposed reserve.
17. The order of the Tribunal is that the appeal is dismissed, and the decision of the Forest Practices Board is upheld.

Dated the twentieth of December 2002.

J Pretty
(Member)

K A M PITT QC
(Chairman)

M Higgs
(Member)