

FOREST PRACTICES TRIBUNAL
PRIVATE TIMBER RESERVE APPLICATION -
BUR/1212

BETWEEN

G & T Brooks

Appellants

AND

J & K Burley

Respondents

This was the hearing of an appeal against the decision of the Forest Practices Board to grant an application for declaration of land at Main Road, Derby in Tasmania, as a Private Timber Reserve.

The appeal was heard at Launceston on the 9th of October 2000.

The appellants appeared in person.

Mr J Burley appeared on behalf of the respondent/applicants J & K Burley.

Mr G. Campbell appeared on behalf of Private Forests Tasmania.

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

DECISION

1. Application was made for the declaration of 15.84 hectares lying south of the Tasman Highway at Derby, as a private timber reserve. The land comprised almost all of the 16.57 hectares in four titles.
2. The site is situated on the western boundary of Derby, between the Tasman Highway and the old Brisies water race. It is owned by the applicants. Approximately 2.5 hectares adjoining the Tasman Highway was planted with *Eucalyptus nitens* in the late 1980's, and, excluding the two to three rows closest to the Tasman Highway, was clearfelled in 1999. A further seven hectares near the race at the south of the property was planted with *E. nitens* in 1997. The remainder of the area is rough grazing pasture. The proposal is to plant the pasture area, and replant the previous 2.5 hectare plantation area, with *E. nitens*.
3. Following advertisement of the application, the appellant lodged an objection to the proposal. The grounds of the objection were that the shadow cast by the proposed trees would prevent the establishment of a proposed horticulture nursery; that it would adversely affect the adjoining residential property and its amenity; and that the values of the adjoining residential properties would therefore be reduced. A note on the notice of objection indicated that there was not an objection to the "entire application".
4. The Forest Practices Board granted the application for declaration of the land as a private timber reserve, and the appellants lodged a notice of appeal. The issues raised by the appellants were the lack of consultation and advance notice of previous activities taken on the applicants' property; fire hazard; the visual and overshadowing effect of the mass of the proposed plantation within a short distance of the western boundary of the appellants' property; and a general lack of consultation with neighbours.
5. Subsection 8(2) of the Forest Practices Act 1985 sets out the criteria to be applied. Other than the issues raised in the present appeal, it was not contested that each of the criteria set out in section 8(2) was satisfied. The criteria raised by the issues in the present appeal are as follows:
"8(2).....
(a) ...
(b) the land is not suitable for declaration as a Private Timber Reserve;
(c)

- (d)
 - (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”.
6. The evidence was that the appellants’ house is situated some twenty metres from the western boundary of their property which is the common boundary with the proposal site. Previously the plantation which was clearfelled in 1999, had been at its nearest some sixty metres from the common boundary. At midday the shadow cast by the mature trees in that plantation came within about 25 metres of the appellants’ house. A sixty metre setback was adequate to ensure that there was no actual shading of the appellants’ house. At the hearing the applicant offered to observe a setback of thirty metres from the common boundary. That would, on the above historical example, be likely to produce some shading of the appellants’ house. No precise shadow diagrams were produced so it was not possible for the Tribunal to find what actual extent of the shadow was likely to be, at maximum growth of the proposed plantation prior to harvesting. The Tribunal is satisfied that to allow the establishment and growth of a plantation to the immediate north west and west of the appellants’ house, at a distance which would allow the shadow cast by the plantation to shade the appellants’ house to any appreciable degree, would be unreasonable. The evidence was further that the most productive piece of the appellants’ land was to the immediate west of the appellants’ house, between the house and the common boundary with the proposed plantation. The Tribunal is also satisfied that extensive shading of that area of land for more than the last half of the afternoon in winter would be unreasonable.
7. Evidence was also given that there are other houses established on the eastern and western boundaries of the subject land. The Tribunal is satisfied that to appreciably increase the shade on any existing residence, would not be reasonable.
8. The evidence of behalf of the appellants was further that the communications which they had had over the last few years with the applicants had left them unprepared for a number of steps which had been taken with respect of the existing plantations on the lot. Further, some nearby landowners had not been notified by direct letter, in the way that the appellants had, of the current proposal. The Tribunal notes that the present appeal concerns only the current application, and that whatever may or may not have occurred in the past, this decision must be given upon the basis that all necessary requirements are

properly enforced. With respect to notification of the current proposal, the only requirement set out in the Forest Practices Act is that in section 6(1), requiring a newspaper notice and a copy of the notice to the relevant local authorities.

9. The evidence of Mr Wilkinson for the Forest Practices Board was that if upon the present application for the grant of a declaration of a private timber reserve, the Tribunal indicated clearly that any declaration of such a reserve was based upon the premise that certain requirements would be satisfied in any subsequent forest practices plan, and the applicants agreed, then he would expect that the Forest Practices Board would ensure that those conditions were satisfied.
10. Having regard to the above evidence, the Tribunal is satisfied that if adequate protection is accorded by way of the potential for imposing conditions upon the forest practices plan, the potential disadvantages which might accrue to the appellants and other nearby landowners, and the potential for fire danger to those persons and to the township of Derby, can all be satisfactorily resolved.
11. Fire protection is particularly relevant because of the proximity of the proposed private timber reserve to the township of Derby, and because on the evidence the stronger prevailing winds are from the north west, which would tend to direct any fire in the plantation back towards Derby.
12. The evidence on behalf of Private Forests Tasmania was that such matters could be managed by appropriate conditions.
13. Similarly, the Tribunal considers that appropriate protection to the appellant's property and to the other residential properties adjoining the proposed private timber reserve, could be accorded by appropriate conditions imposed at the time of the forest practices plan.
14. The Tribunal is satisfied that other than with respect to fire danger and the potential for overshadowing on surrounding properties, all of the criteria set out in section 8(2) of the Act are satisfied by the application. With respect to fire danger and material disadvantage to the owners of the nearby properties arising from the potential from overshadowing, the Tribunal is confident that at the stage of granting a forest practices plan the Forest Practices Board will ensure that appropriate conditions with respect to fire hazard are imposed. The Tribunal is also confident that the Forest Practices Board will ensure that a condition is imposed upon the forest practices plan, precluding planting within a radius of any surrounding dwelling including that of

the appellants, which will ensure that no plantation causes overshadowing of any such residence. At the level of precision of evidence before the Tribunal, that could mean a condition precluding any plantation within a radius of approximately 80 metres of the appellants' dwelling. The appropriate distance for any other residence would need to be calculated and established by additional facts.

15. The Tribunal accordingly considers that a grant of the private timber reserve applied for was appropriate, and affirms the grant by the Forest Practices Board against which this appeal has been brought.

16. With respect to costs, the Tribunal orders that each party bear their own costs of the appeal.

Dated day of 2000

D W Grant
Member

K A M Pitt QC
Chairman

B B R Walker
Member