FOREST PRACTICES TRIBUNAL

PRIVATE TIMBER RESERVES - GUN 1363 and GUN 1368

BETWEEN

S Carse
C Marriott
P & J Dolan — Appellants

AND

Forest Practices Board — Respondent

This was the hearing of appeals against the grant an application for the declaration of land at Moorleah in Tasmania as Private Timber Reserves. The appeals were heard at Devonport on the 26th of June and 26th of July 2002.

K Stanton of Counsel appeared on behalf of Gunns Limited.

P Wilkinson appeared on behalf of the Forest Practices Board.

T K Boyd and L M Fox appeared in lieu of the appellant S Carse.

There was no appearance of behalf of the other appellants.

DECISION

1. Applications were made for private timber reserves 1368 and 1363. The reserves were adjacent to land owned by the appellants. The appellants lodged objections to the proposed private timber reserves, upon a number of grounds including the grounds subsequently the subject of appeal. The Forest Practices Board, not being satisfied of any of the matters referred to in section 8(2) of the Forest Practices Act 1985, granted the applications for declaration of the private timber reserves.

2. Appeals were lodged against the grant of the reserves, upon grounds raising the issues subsequently referred to in this Decision.

3. The Forest Practices Act 1985 provides for the grant or refusal of an application for declaration of land as a private timber reserve, relevantly as follows:

   "8….
   (2) an application for a declaration of land as a private timber reserve shall be refused if the Board 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 applications; 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."

4. Section 7(4) of the Act describes a "prescribed person" as including:
   "(d) a person who is the owner of land that adjoins, or is within 100 metres of, the boundary of the proposed private timber reserve;"

5. The evidence was and the Tribunal finds that each of the appellants owns land within 100 metres of one or other of the proposed private timber reserves. The appellant S Carse owned land which lay immediately to the south of and adjoined, the southern boundary of the proposed reserve 1368.

6. The appellants Dolan and Marriott did not appear at the hearing. The Tribunal was informed that at least the appellants Dolan had reached an accommodation with Gunns Limited as to the extent of the new plantation, based upon leaving a buffer zone of 20 metres between the nearest part of the plantation and the boundary with the land owned by the appellants Dolan. T K Boyd and L M Fox had purchased the land owned by the appellant Carse, and continued the appeal in her place. The grounds of the appeal as pursued by them raised the issues subsequently referred to in this Decision. The appellant Marriott did not appear at the hearing.

7. The land lies within the area controlled by the Waratah/Wynyard Planning Scheme 2000. Under that scheme, the evidence was and the Tribunal finds, the land the subject of the proposed reserves lies within the primary industries zone. In that zone "resource development" is a "primary" use.

8. The "resource development" use class is defined to include the planting, growing and harvesting of natural resources, which includes timber. Paragraph 9.4.1 issue 10.0, provides for forestry. It effectively provides that on land not declared as a private

timber reserve, an approved forest practices plan under the Forest Practices Act 1985, is required. Under clause 3.3.1 of the planning scheme, a use or development is to be treated as an application for a permitted permit under section 58 of the Land Use Planning and Approvals Act 1993, if it is in a primary use class for that zone and can demonstrate compliance with the acceptable solutions applicable to use or development in that zone and all relevant acceptable solutions in applicable schedules. A permit under section 58 of the Act, is one for a use or development for which which Council is bound to grant a permit, but may impose conditions or restrictions.

9. The above provisions of the planning scheme are relevant because it was submitted in respect of a number of issues arising under the present appeals, that, in effect, forestry was a permitted use and the granting of a private timber reserve would make no difference to that situation and to the effects upon neighbouring properties, of forestry carried on on that land. That submission is not well founded, in that Council, granting a permit for such forestry use as may be proposed on the land, would be entitled to impose conditions protecting neighbouring properties from effects such as shading and other matters potentially affecting the amenity of residences on land adjoining the proposed reserves.

10. It was submitted on behalf of the Forest Practices Board that the matters raised by the appeals would be adequately addressed through the regulatory and policy framework applying to the management of forestry operations, under the Forest Practices Act 1985 and the Forest Practices Code.

11. A principal ground of objection to the proposed private timber reserves, pursued by T K Boyd and L M Fox, (hereafter called "the appellants"), was that the effect of the plantation was to unreasonably overshadow their property. In this respect the evidence was that the land comprising the proposed reserve lay immediately to the north of the land owned by the appellants. The nearest portion of the proposed reserve which would be cultivated for the plantation, was set back twenty metres from the common boundary between the two properties. The residence occupied by the appellants was in turn set back approximately twenty metres from the same boundary, in a southerly direction. There would accordingly be a distance of forty metres between the nearest part of the proposed plantation, and the appellants' residence. The parties were asked at the hearing, but were unable to give specific evidence, as to the extent of overshadowing potentially arising from the plantation. The Tribunal has accordingly ascertained the following. The twenty first of June noon elevation of the sun at the latitude forty one degrees south (the relevant latitude) is approximately twenty seven degrees. A twenty metre high tree would cast a shadow of approximately forty metres at that angle of sun elevation. A ten metre tree would cast a shadow of approximately twenty metres at that elevation. On the twenty first of September at noon the elevation at the same latitude is approximately forty nine degrees, and a twenty metre tree would cast a shadow of approximately seventeen metres in length; and a ten metre tree on the same date at the same time a shadow of approximately nine metres in length.

12. The land where the nearest portion of the plantation to the appellants' house would lie, is slightly elevated from the appellants' house, and the effect of any shadow cast by that plantation would accordingly be slightly greater.

13. The evidence was that the proposed trees, *Eucalyptus nitens*, would be expected to grow at approximately two metres per year in the area. They would be harvested at a height of approximately twenty metres. That evidence was not disputed and the Tribunal finds according to it. It follows that for perhaps the last two years before harvesting, the shadow cast by the nearest of the trees in the proposed plantation, may just reach the appellants' house. For the rest of the time, while the plantation is growing and after it is harvested, the shadow will progressively fall closer to the boundary, not reaching it for at least half of the proposed plantation growth period.

The Tribunal does not consider, having regard to those matters, that the extent of overshadowing upon the appellants' residence would be unreasonable.

14. It was contended for the appellants that their water supply would potentially be affected by sprays drifting onto their roof, from which the rainwater was collected, as a result of wind drift and other spraying after-effects. In this respect the evidence on behalf of Gunns Limited was that spraying was the subject of separate control standards and systems. While they would not totally exclude aerial spraying, the land was suitable for tractor based spray application, and the potential for any spray drift thereby lessens. With respect to aerial spraying the evidence was that that is carried out under strict controls, having regard to wind direction and other relevant matters. There was no evidence that would satisfy the Tribunal that the risk of pollution from spraying of chemicals on the site is a process which carries a significant risk of harm to adjoining property or persons.

15. It was contended for the appellants that there might be some effect, from the use of specific chemicals. The chemicals which the evidence established would probably be used were 1080, Roundup, Atrazine, and Simazine. In addition spraying using insecticide may be necessary.

16. The evidence was that the use of 1080 poison was strictly controlled, a code of practice requiring notification of neighbours, proximity of baits to houses, and removal of uneaten baits and carcasses. The Agricultural and Veterinary Chemicals (Control of Use) Act and Forest Practices Code each control the use of 1080. The evidence was that the use of 1080 would be subject to direct approach by Gunns Limited to each neighbour. Evidence was also given of some of the extent of the potential impact on non-target species. The Tribunal is satisfied on all of the evidence that if the use of 1080 were not adequately controlled, there would be a potential for adverse impact upon neighbouring property owners and on non-target wildlife species; but that given the evidence of the extent of control and consultation exercised by Gunns Limited, there is no sufficient risk of adverse impact from 1080.

17. The same kind of restrictions and practices by Gunns Limited are, upon the evidence, applied to each of the other chemicals likely to be used by them in the reserve, and the Tribunal reaches the same conclusion, upon the same basis, with respect to potential use of those chemicals.

18. It was contended for the appellants that their television and mobile phone reception would be adversely affected by the proposed plantation, as the trees grew. The evidence however was that the plantation trees will be to the north of the direct line of sight between the relevant transmitters, and the receiver aerials on the appellant's land. The consequence is that the growth of the trees could not, on the evidence, affect television or mobile phone reception at the appellant's property.

19. The appellants contended that there was an increased risk of fire by reason of the proposed plantation, in that a fire in the plantation would be far more difficult to stop than one in the open pasture previously covering the plantation site. It was common ground that that latter proposition was probably correct; however extensive evidence was given on behalf of Gunns Limited as to the nature and extent of the measures undertaken by Gunns Limited to prevent, detect and control the outbreak of fires in their plantations. The evidence itemised extensive precautions taken, from construction of firebreaks and their maintenance, and also filling points, access tracks and setbacks from boundaries; the extent of the investment in plantations and the minimal incidence of fire which has occurred in them; the extensive summer rainfall at Moorleah; and the extent of fire lookout towers, ground controls and aerial controls, together with co-operation with other resources. The Tribunal was satisfied by that evidence that the extent of risk from fire in the proposed plantation is relatively low, and in addition,

having regard to the distances between the plantation and the appellant's house, that the consequent risk of fire threat from the plantation affecting the appellant's property is also relatively low.

20. The evidence of behalf of the appellants was that there was extensive death of wildlife in the vicinity of their access road, with its use by logging trucks; with the inference that mortality was likely to increase by reason of the proposed plantation ultimately being harvested. The evidence was that the harvesting of the plantation takes place after approximately twenty years, after which there is relatively infrequent related road use until a further plantation reaches harvesting size. The occurrence is therefore very infrequent. The potential for adverse effect upon native flora and fauna was also the subject of evidence from Gunns Limited, to the effect that the Forest Practices Code and Act require that planned operations address potential damage to flora and fauna. The forest practices plan recommended additional prescriptions due to the possible occurrence such as the giant freshwater crayfish, northwest velvet worm, quoll and eastern barred bandicoot, Australian grayling and hydrobiid snail. The Tribunal is not satisfied on the evidence that there is any unreasonable risk to flora and fauna arising out of the approval of the proposed reserve.

21. The appellants raised suggestions that there would be an adverse impact upon the local community, and on the Wynyard municipality. To the extent that the basis of these suggestions could be determined, it was that the existence of plantations would lead to a reduction in the number of persons residing in and paying rates in the municipality, and generally in the number of persons present and able to actively care for the immediate area. The evidence however was that the proposed reserve is not one which would exclude existing or planned residences, and there is therefore no basis for expecting any reduction in inhabitants in the area.

22. The appellants gave evidence that their property would be devalued. The basis of devaluation was the presence of the plantation, as a uniform artificial appearing tree area, rather than of the existing pasture; the potential for harm from the use of chemicals; the potential for overshading, and increased traffic on the roads. Each of these matters has previously been addressed, and the Tribunal has been satisfied that there would be no significant adverse effect. In the absence of any significant adverse effect upon the amenity or advantages of the appellant's property it is difficult to see the basis of any proposition that it would be devalued by the presence of the proposed plantation. It might be otherwise if some adverse effect could be established. The Tribunal is therefore not satisfied that there is a significant risk of devaluation of the appellant's property by reason of the proposed plantation.

23. Various other issues were raised by the initial representations objecting to the proposed reserves, and by the appellants. They included that the proposed reserve creation procedure was undemocratic, that there would be an adverse effect upon aesthetic matters and views, a likelihood of production of weeds and their spread, the potential for increase of vermin, and an effect on prime agricultural land. None of those matters was made out by the evidence before the Tribunal, and it is not appropriate to refer in detail to them. The Tribunal is not satisfied that any of those matters provide a basis for rejection of the proposed reserves.

24. Having regard to all of the above matters the Tribunal is satisfied that the proposed private timber reserves were appropriately approved. The Decision of the Tribunal is that the appeals are dismissed, and the approvals of the applications for declaration of the above private timber reserves 1363 and 1368 by the Forest Practices Board are upheld.

25. The Tribunal orders that any application for an order that the costs of any party be paid by another party, be made in writing to the Tribunal with a copy to the opposing party,

within fourteen days of the date of publication of this Decision to each party. In the absence of any such application the order of the Tribunal is that each party pay its own costs.

26. In the event of an application for costs it is directed that the application be made in writing as stated above, and that any answering submissions or applications be similarly in writing to the Tribunal with a copy to each opposing party.

Dated this 15 day of August 2002

J Pretty	**K A M Pitt QC**	**L H P Witte**
Member	**Chairman**	**Member**