

# **FOREST PRACTICES TRIBUNAL**

## **FOREST PRACTICES PLAN – NJF0017**

BETWEEN

Donald Roger Hay

Appellant

AND

Forest Practices Board

Respondent

This was the hearing of an appeal against the refusal of the Forest Practices Board to approve Forest Practices Plan No. NJF0014 in respect of the appellant' s land at UPI 5210, at Redpa.

The appeal was heard at Devonport on the 6th November 2003.

G Wilkinson appeared on behalf of the Forest Practices Board.

N Foss appeared on behalf of Private Forests Tasmania.

The Appellant appeared in person.

## DECISION

1. The appellant applied for approval of Forest Practices Plan No NJF 0014. The Forest Practices Board refused to grant approval of the plan, upon the grounds that the plan has presented with written a rare and endangered species of fauna, the Grey Goshawk. The appellant appealed to the Tribunal.
2. The plan sought was in respect of the whole of the appellant's 22 hectare parcel of land located at UPI 5210 at Bass Highway Redpa. The proposal was to clearfell 20 hectares of blackwood swamp forest for agricultural (grazing) purposes. Approximately 2 hectares of the property had previously been cleared and were covered by rough pasture. The remainder of the property was swamp forest, consisting of a blackwood over-storey, and an under-storey of ti-tree, cutting grass, and cathead fern.
3. Upon inspection of the land for the purposes of identifying any relevant fauna, a Grey Goshawk nest was found in a large blackwood tree on the northern half the land. The Grey Goshawk is a medium-sized bird of prey, currently listed as Endangered under the *Threatened Species Protection Act 1995* due to low population densities and limited breeding distribution. A high proportion of core habitat for the species is in unprotected areas. Current information suggests that there are less than 1 hundred and 10 breeding pairs in Tasmania, and currently only 55 recorded nest sites. Breeding densities of this species are greatest in the blackwood swamp areas and the riparian blackwood/myrtle forests in the north-west.
4. Management objectives for the Grey Goshawk include the identification and protection of nesting sites; identification, protection and management of priority breeding habitat; and identification and maintenance of networks of foraging habitat.
5. S18(3) of the Forest Practices Act 1995 requires that any specifications in a Forest Practices Plan be in accordance with the Forest Practices Code. That Code, by section D3.2, requires Forest Practices Officers to obtain an endorsed management prescription for any threatened species that occur or potentially occur within areas proposed for forest operations.
6. Forest Practices Board Zoologist, S Weeding, gave evidence that Threatened Species Unit Zoologist Dr N Doran recommended, as an endorsed management prescription, protection of the nest site by provision of a reserve of approximately 9 hectares in area, surrounding the nest site. It was also recommended that any operations be timed to avoid the breeding season for the species. The evidence on behalf of the Forest Practices Board was further that Dr Doran noted that Recommendation 1 from the Threatened Fauna Advisor was that such nest should be protected from disturbance by inclusion in some form a reserve. Where that was not possible, it stated, ". . . a permit will need to be issued for the removal of the nest site ". Since the Threatened Fauna Advisor had been written, the status of the Grey Goshawk had been upgraded from "Rare" to "Endangered" under the *Threatened Species Protection Act*

1995. The evidence was that it was most unlikely that a permit would be issued for the disturbance of the nest site.

7. The evidence was, and it was common ground between the parties, that the value of the timber on the whole property was approximately \$65,000, and on the 9 hectares proposed for the reserve, approximately \$30,000. Further, the most valuable timber was on the proposed reserve rather than in the balance which could be harvested.
8. The above evidence was not challenged, and the Tribunal finds according to it.
9. The Forest Practices Act requires that the Tribunal, in determining an appeal, have regard to the financial consequences upon the parties. In the present context, that means the loss which the appellant would suffer from an inability to harvest the timber on the land. It is also, however, relevant that Part 5 of the Nature Conservation Act 2002 provides that an "affected landowner" who has had an application for a Forest Practices Plan refused by the Board for the purposes of protecting a threatened species, may apply to the Minister for compensation to be paid.
10. Having regard to all of the above matters, the Tribunal considers that the decision of the Forest Practices Board appealed against, was correct.
11. The order of the Tribunal is that the appeal is dismissed.

Dated the eighth day of December 2003.

I Chalk  
Member

K A M PITT QC  
Chairman

L Gilfedder  
Member