

FOREST PRACTICES TRIBUNAL

PRIVATE TIMBER RESERVE APPLICATION NO. 1206

BETWEEN

Meander Valley Council

Appellants

AND

Forest Practices Board

Respondent

This was an appeal against the grant of an application for declaration of land as a private timber reserve.

The appeal was heard at Launceston on the 21st December 1999.

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

D. Huett appeared on behalf of K.W. Huett Corporation Pty Ltd.

A.Lyons appeared on behalf of Private Forests Tasmania.

S. McElwaine of Council appeared on behalf of Meander Valley Council with leave of the Tribunal.

DECISION

1. The Forest Practices Board approved the declaration of a private timber reserve upon 3.85 hectares of land at Deloraine. The land is bounded by Church Street on the north east, Pultney Street on the north west, Goderich Street on the south west, and Gay Street on the south east.
2. The object of the reserve is to grow a final tree crop of 250 *Eucalyptus nitens* per hectare over thirty years principally for the production of veneer quality timber. Pruning and thinning treatments would be applied. The initial crop would be approximately 1200 trees per hectare. In years three to four the best 300 trees per hectare would be pruned to 2.7 metres above the ground. The plantation would be thinned to leave 750 trees per hectare, including the 300 pruned trees. In years four to five the remaining trees would be high pruned to 4.5 metres, and in years five to six they would be pruned to 6.4 metres. In years six to ten they would be thinned to 250 trees per hectare. The thinnings may be used for treated posts, firewood or other products. In years twenty five to thirty the site would be clearfelled, and subsequently revegetated.
3. By letter of the 8th October 1999 the appellant lodged an appeal upon the grounds that the proposed forestry operation would be contrary to the Rural Zone objective which sought to facilitate forestry in “appropriate locations”; that the location was not appropriate because on two of four sides of the property it was adjacent to the Residential Zone; that there was potential for an adverse impact on the amenity of nearby properties from loss of view, shading, noise and other impacts during establishment and management of the plantation, and traffic impacts from future harvesting operations; also an increase in native animals with impacts on local gardens; also that the function of the Rural Zone as a “land bank” would be degraded; and that the controls under the Forest Practices Code would not ensure residential amenity in the same way as conditions imposed by Council under the Planning Scheme could.
4. The Forest Practices Act 1985 by section 8, controls the grant or refusal of an application for declaration of land as a private timber reserve. The criteria set out in that section are appropriately considered by the Tribunal. They are as follows:
 - “(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 application; or
 - (f) an owner of land referred in paragraph (d) of the definition of “**prescribed person**” in section 7(4) would be directly and materially disadvantaged if the application was granted.
5. Only the criteria set out in section 8(2)(b)(e) and (f) are relevant to the present appeal, the parties not disputing that the other criteria had been satisfied.
 6. The subject land is on a south west facing slope of approximately 11 degrees. The whole area is controlled by the Meander Valley Planning Scheme 1995. Under that scheme the subject land and all land to the south east and south west is zoned Rural. The land to the north east is zoned Residential. The north eastern quarter approximately, of the land of the north west of the subject site is also zoned Residential. To the immediate west the zoning is Industrial. There are residences in Church Street opposite the subject land, between 30 and 50 metres away; and one in Pultney Street in Rural zoned land, to the north west of the site. There is a high school, the school building being over 100 metres away, to the north of the land.
 7. Under the planning scheme Forestry, “establishing, managing or harvesting of trees”, is classified as a permitted use within the rural zone. Council may therefore only grant a permit for forestry on the site, but may impose conditions upon such a permit.
 8. In the residential zone the planning scheme provides that forestry is a prohibited use.
 9. One of the goals of the scheme, clause 1.8.3, *inter alia* includes that “council seeks to further the use of appropriate land for forest purposes.”
 10. Clause 3.6.1, containing the intent of the rural zone, includes to conserve “land which may be required for urban expansion”.
 11. Clause 3.6.2 containing the rural zone policies includes facilitating forestry “in appropriate locations”, and the protection of rural land from use and development that may “limit ... continuation of forestry”, and “adversely affect the development corridors for urban expansion”.
 12. Expert planning evidence was given for Council and the Tribunal finds that the planning scheme may be amended in the future, and that the recommendation of Council’s planning expert giving evidence was that the subject site would be rezoned to residential. Because of the effect of section 20(7) of the Land Use Planning and Approvals Act 1993:

“(7) Nothing in any planning scheme or special planning order affects –

- (a) forestry operations conducted on land declared as a private timber reserve under the Forest Practices Act 1985; or”,

even though the planning scheme may be amended, if a private timber reserve were declared in respect of the subject site, Council would not have the opportunity to refuse or to impose conditions upon any use of the site for forestry, for so long as the private timber reserve subsisted.

13. Council has already granted a permit for use of the land for forestry, upon conditions including that all trees be located a sufficient distance from the property boundaries to afford adequate sight distances for traffic; and that there be an application for the issue of a separate permit at the time of harvesting any timber from the property. It also included a condition: “4. The applicant should be aware of potential problems associated with the harvesting of the plantation, including regulations governing the use of chainsaws within proximity to residential dwellings and the logistical issues of harvesting timber in steep areas.”
14. The plantation was established in September 1999. The plantation is set back at least 10 metres from each of the property boundaries.
15. It should be observed that as a consequence of the grant of the existing planning approval, all activities connected with the management of the plantation, short of harvesting, may occur within the minimal controls of the existing permit. Harvesting of the timber will in any event require a forest practices plan (with respect to timber harvesting). No planning permit will be required if a private timber reserve is granted, for any further forestry activities on the property, during the subsistence of the reserve.
16. Substantially similar factors arise for consideration, with respect to each of the relevant criteria under section 8(2) above; that is, whether the land is suitable for declaration as a private timber reserve, whether it would be in the public interest to grant the application, and whether an owner of residential land within 100 metres of the boundary of the private timber reserve would be directly and materially disadvantaged if the application was granted.
17. It was contended for Council and evidence was given that the trees as they grew would cause a potential loss of view and overshadowing, that they would cause an increase in native animals adversely affecting local gardens, and that the noises of pruning and the attendant traffic and machinery movements, and the effects of spraying, would all adversely affect residential amenity. Even however assuming in favour of Council that all of these adverse effects would occur from the establishment and management of the plantation, they are all able to occur irrespective of the declaration of a private timber reserve; that is, they are all enabled by the existing planning permit. Even if a private timber reserve were

refused, that would have no effect upon the potential for those adverse effects to occur.

18. The only direct consequences which may arise from the granting of a private timber reserve would be those attendant upon harvesting and in a more general sense, the inability of Council to control forestry activities upon the land.
19. In assessing the likely impact of an absence of Council power to impose conditions upon the harvesting activities, it is relevant to consider the extent to which Council imposed conditions which would protect residential amenity, upon the permit which it has already granted for the establishment and management of the plantation. Those conditions do not include any specific controls upon the hours upon which activities may take place; the nature of the machinery or equipment which might be used upon the site; the access routes for traffic including heavy vehicles associated with the thinning activities; the use of sprays; the suppression of vermin; or indeed any matter which is currently the subject of concern expressed by Council. Condition 4 was the nearest to addressing those matters, and simply stated that the applicant "... should be aware of potential problems associated with the harvesting of the plantation including regulations governing the use of chainsaws within proximity to residential dwellings". The evidence was and the Tribunal finds that the applicant has voluntarily restricted the hours within which management activities will take place, having regard to the proximity of residences. Similarly, the evidence was and the Tribunal finds that a forest practices plan (harvesting plan) is likely to be settled by the relevant Forest Practices Officer in consultation with the appellant Council. That will give the opportunity for the settling of appropriate routes for any logging vehicles, and the making of any necessary arrangements for pedestrian and other safety. Matters of timing would ordinarily be also addressed at that time. Any potential noise problem arising from chainsaws can, on the evidence, be alleviated by the use of hydraulic cutting equipment. The applicant stated a preparedness to use such equipment.
20. While the Forest Practices Code and the guidelines for timber harvesting currently in use do not specifically have regard to matters of residential amenity, the evidence was and the Tribunal finds that the landowner and the relevant personnel from Private Forests Tasmania and the Forest Practices administration are well aware of residential amenity, and prepared to address those issues. Having regard to all of the above matters, the Tribunal does not consider that the residential amenity of the nearby residential land is more likely to be adequately protected by leaving the potential for control by the planning authority, than it is if a private timber reserve is declared.
21. As noted in considering the relevant statute provisions, the potential for Council to rezone the area including the subject site will not be affected, save that no planning controls will apply to forestry use for such time as the land remains subject to a private timber reserve. Further, the Tribunal does not consider that the land will remain sterilised from residential use indefinitely in the event that a reserve is declared. The revocation of the reserve may occur at the instance either of the Forest Practices Board or of the owner of the reserve. If residential use of the

subject land has become more appropriate, it would ordinarily be expected that the value of the land would have increased substantially beyond that applicable to forest use, and there would be strong economic reasons for the owner of the land to apply for revocation of the reserve. If and when the reserve is revoked then Council's planning controls will apply in full.

22. The evidence was further that the guidelines applied by the Forest Practices Board normally envisage a minimum of 5 hectares for a private timber reserve. The specific evidence however on behalf of the applicant landowner and of Private Forests Tasmania was that notwithstanding that the land in question was less than 5 hectares, it was still adequate for an economic and properly managed plantation. No good reason appeared from the portions of the guidelines put in evidence, for precluding a smaller area of land if otherwise appropriate.
23. It was also contended for Council that there was a specific risk with respect to pedestrian safety, because the subject land was near residential properties and the school mentioned above. Any factors relating to the routes and timing of vehicular access, and other arrangements with respect to any special signs required or the like, would however on the evidence be properly addressed by the consultation of the Forest Practices Officer with the Council at the time that the harvesting plan is settled.
24. Having regard to all of the above matters, the Tribunal is not satisfied that the land is not suitable for declaration as a private timber reserve; or that it would not be in the public interest to grant the application; or that an owner of residential land within 100 metres of the subject site, would be materially and directly disadvantaged if the application was granted.
25. The Tribunal is also required, by section 36(12) of the Forest Practices Act 1985, to have regard to the financial effect of its determination on the parties to the appeal. In that respect the evidence on behalf of the applicant landowner was that a sum of over \$4000.00 had already been spent upon the establishment of the plantation, and that the final yield of the plantation was likely to be well in excess of \$33,000.00; and that there would be a potential for conditions imposed by Council to adversely affect the economic advantage of any harvesting operations. The Tribunal finds accordingly.
26. Having regard to all of the above matters the Tribunal considers that the decision of the Forest Practices Board to grant the declaration of the private timber reserve, was correct.
27. The decision of the Tribunal is that the appeal is dismissed.
28. Any application for the costs of this appeal is to be made to the Tribunal within 14 days of the date of this decision. In the absence of any such application the order of the Tribunal is that each party bear its own costs of the appeal.

Dated this day of2000

K.M.Pitt QC
Chairman

Dr. R.C. Ellis
Member

R.G. Bowden
Member