

FOREST PRACTICES TRIBUNAL

PRIVATE TIMBER RESERVE - ARN 1493

BETWEEN

G J Louden and T D Tanner

Appellants

AND

The Forest Practices Board and
S D & L A Arnold

Respondents

This was an appeal against the approval by the Forest Practices Board of an application by SD and LA Arnold for a Private Timber Reserve at UPI 0651 and UPI 0654 at Irish Town Road, near St Marys.

The appeal was heard at St Helens on the 1st October 2003.

G. Campbell appeared on behalf of Private Forests Tasmania.

The appellants appeared in person.

The Forest Practices Board apologised for its non-appearance.

There was no appearance on behalf of the respondents SD and LA Arnold.

DECISION

1. Application was made by the respondents Arnold to the Forest Practices Board for the approval of a Private Timber Reserve at Irish Town Road, near St Mary's. The reserve would occupy the whole of two 10 hectare blocks, one at UPI 0651 and one at UPI 0654. The two blocks are situated towards the end of Irish Town Road at St Marys, and separated by some 650 metres of native forest, which is classified as State Forest. The appellants property is approximately 85 metres south of the southernmost block UPI 0654, and the appellants are therefore both "prescribed persons" under the provisions of the Forest Practices Act 1985 and were entitled to object to the proposed reserve and to appeal against the approval. Objections to the proposed reserve were lodged by the Break O' Day Council, the appellants and two others who were not prescribed persons. The grounds of the objections were subsequently raised as issues in the appeal. The Forest Practices Board approved the reserve, and an appeal was brought raising the issues subsequently considered in this decision.
2. All of the land lies within the area controlled by the Break O' Day planning scheme, under which it is zoned Coastal and Resource Management. Forestry is a discretionary use in that zone.
3. The evidence on behalf of Private Forests Tasmania, given by Mr G. Campbell, was of the above facts, and further as follows.
4. The timber on the northernmost block is, as to approximately one-third of its area, natural or artificially seeded regeneration resulting from logging in the early 1980s; this regeneration is only small in size and not suitable for logging for many years. A further third of the area has mature regrowth timber, and is suitable for logging now. A further third of the area is mature forest, which has not been previously logged. The eucalypt species on this block are *Eucalyptus obliqua* and *E. viminalis*.
5. The southernmost block is of mixed age, but mostly of mature eucalypt forest; it is suitable for logging at present. A tributary of Margison's Creek runs through the block, and the required streamside reserves would limit the area available for any future logging. The type of forest and the rockiness of the ground indicate that selective logging would be the best method of harvesting. *Eucalyptus brookeriana* occurs in a cline with *E. viminalis* and *E. ovata* south of the stream. However, this forest is not considered to comprise a defined *E. brookeriana* community. Whilst the Private Timber Reserve does not prescribe what portions of the block may and may not be logged, the provisions of any necessary Forest Practices Plan would normally protect any *E. brookeriana* found to be in any regionally significant community.
6. Neither block is considered to be suitable for plantation establishment.
7. The Giant Velvet Worm and the Blind Velvet Worm have been recorded to the north and south of each of these blocks. It is considered likely that the Blind

Velvet Worm would occur on the southern block. The Forest Practices Board's Threatened Fauna Manual specifies management regimes for this species. It records that the main danger to the species would be the conversion of the habitat to plantation and/or frequent hot fires. Selective logging and the retention of rotting logs on the ground are considered, in the Manual, adequate protection for this species. The species has been found to survive logging followed by a cool regeneration burn.

8. The two blocks each adjoin or are in close proximity to a number of environmental reserves. They are also surrounded by native forest. Some State Forest between the two blocks is planned to be logged in the near future.
9. If the land is registered as a Private Timber Reserve, then pursuant to section 12 of the Forest Practices Act 1985, the land can only be used for, in substance, forestry and such other activities as the Forest Practices Board may approve.
10. Margison's Creek, at a distance of approximately 3 kilometres downstream from the proposed reserves, is the site and source of a water supply take-off for emergency purposes. As the site is over two kilometres away from the proposed reserves, it would, be safeguarded by the streamside reserves which would be applied under the provisions of the Forest Practices Code.
11. The appellants' grounds of appeal, as amplified at the hearing, are considered in the following passages.
12. The first ground of appeal was that if a Private Timber Reserve was approved the appellants would have limited rights of appeal with respect to future operations in an area zoned "Coastal and Resource Management". That consequence follows from the provisions of subsection 20(7)(a) of the Land Use Planning and Approvals Act 1993, which provides that nothing in any planning scheme affects forestry operations conducted on land declared as a Private Timber Reserve under the Forest Practices Act 1985. It is part of a legislative scheme intended to afford security for persons who wish to carry out forestry activities on land in the future, by isolating those activities from the potential restriction of the planning laws. Forest operations are controlled by a Forest Practices Plan prepared under the Forest Practices Code and approved by the Forest Practices Board. Under this legislative scheme the Forest Practices Act limits the right of appeal pertaining to a Forest Practices Plan issued for land covered by Private Timber Reserve. The extent of protection, which that legislative scheme accords to persons in the position of the appellants, is that the land can only be used for forestry or other such compatible activities as approved by the Forest Practices Board. Thus, this ground of appeal has no force.
13. The next ground of appeal was that the application was inconsistent with the values of the Coastal and Resource Management zone under the provisions of the planning scheme, and inadequate to protect the values identified in the planning scheme for that zone. The evidence put to the Tribunal by the appellants was the provision in Table 8.1 Issue 5.3 of the Break O' Day Planning Scheme which states that "Any development is to maintain the

vegetation cover". The legislative scheme referred to above envisages, however, that the necessary extent of protection is to be provided not by provisions of a planning scheme, but by the provisions of any Forest Practices Plan and the application of the Forest Practices Code. On the evidence the Tribunal finds that the forestry operation requirements that would be applied on both blocks will maintain the vegetation cover.

14. The next issue raised by the appeal was that it was not economically viable for forest operations due to the requirement for protection of the *Eucalyptus brookeriana*, and such protection as would be necessary for the Blind Velvet Worm. The evidence which was provided on behalf of the appellants with respect to the latter aspect consisted of a reference to a previous decision of another Tribunal, relating to a block in the area, where the specific evidence had been that selective logging proposed for that block would be incompatible with the survival of the Blind Velvet Worm shown to exist on that block. The evidence on the present case does not establish that kind of inadequacy; the only substantial evidence was that of Mr Campbell, to the effect that the provisions of the Forest Practices Code provided adequate potential protection for threatened species, including the worm. There was no evidence tending to establish that such protection would be inadequate in the present case, and the Tribunal accordingly is not satisfied that the presence of the species would make timber harvesting operations not viable. With respect to the *Eucalyptus brookeriana*, the previously referred to evidence of its limited distribution and scope for any necessary protection under the Forest Practices Code satisfies the Tribunal that the viability of forestry should not be adversely affected.
15. The next issue raised by the appeal was that the southernmost block of the proposed reserve had a tributary of Margison's Creek running through it, and therefore that it would potentially have an adverse effect upon water quality through the combined effect of logging on this block and the adjoining State forest. The evidence of Mr Campbell was that streamside reserves which would be applied under the provisions of the Forest Practices Code are intended and expected to adequately protect water quality. The Break O'Day Council objected to Private Forests Tasmania about the possible effect on water quality at the emergency water supply intake, but did not tender evidence to the Tribunal. Written advice provided by the Forest Practices Board indicated that the Forest Practices Code is supplemented by the Three Year Plan process under the Forest Practices Act. In the absence of any other evidence the Tribunal is not satisfied that the approval of the reserve would adversely affect water quality in the relevant stream.
16. The appellants contended that sections of the proposed cartage route were unsafe for heavy, long vehicles. Their evidence was that sections of Irish Town Road were narrow, with steep drops at the sides and sharp corners. The road was used by schoolchildren, as well as by other members of the area. It would be necessary for vehicles to stop and pull over to enable a laden log truck to pass; and in the opinion of the appellants they would be reluctant to do that because of the narrow road and the sharp drops at the sides. They did not consider, based on past experience of a particular transport operation, that it was likely that any restrictions placed on the vehicle operations would be

effective. The evidence was however that the road is the responsibility of the local Council, and there was no evidence provided by Council to suggest that the road would be inadequate. The evidence of Mr Campbell was that to the extent that the road might be inadequate, he would envisage the inclusion in the Forest Practices Plan of restrictions as to the times at which logging vehicles could use the road, and the use of warning signs and escort vehicles if necessary. The Tribunal considers that it would be inappropriate to assume that the provisions of the plan will not be properly enforced. It is not satisfied that the condition of the road should preclude the approval of the reserve.

17. The appellants contended that the grounds of objection to the proposed reserve had not been satisfied, and that it was not in the public interest to grant the application. The known grounds of objection have been considered above; and there is no other matter brought to the attention of the Tribunal, which might be relevant to the public interest.
18. Having regard to all of the above matters, the Tribunal considers that the proposed reserve was properly approved.
19. The order of the Tribunal is that the approval appealed against is upheld, and the appeal is dismissed.

Dated the tenth day of October 2003.

M HIGGS
Member

K A M PITT QC
Chairman

J PRETTY
Member