

## Reform of Forestry Practices in Tasmania

*When the land below is parched, it is not a bad thing to open the floodgates.*

- Deane J in *Phelps v. Western Mining Corp* (1978) 33 FLR 327 at 334.

On the 23<sup>rd</sup> of August 2002 a landmark conference co-hosted by the Environment Defenders Office (EDO) and the Planning Institute of Australia (PIA) was held in Hobart. The conference was entitled 'Unlocking The Gates - Public Participation in Tasmanian Forest Management' and as the title suggests was a gathering of over 200 concerned community members drawn together in their desire to see reform of forestry and some of its practices. Many of these concerns were recently aired on the *Sunday* program on Channel 9 (WIN), and have been the focus of media scrutiny for many, many years.

### The Tasmanian Planning System

In Tasmania, resource development and land use is controlled through the Resource Management and Planning System (RMPS). The primary objective of the RMPS is sustainable development. According to the interpretation clause:

'sustainable development' means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Forestry is exempt from this legislation. Indeed, according to section 22C of the *Forestry Act 1920*:

a forest management plan may prohibit or restrict the exercise of a[ny] statutory power in respect of the land to which it applies.

Quite simply, forestry can trample over other legislative requirements including the overarching concept of sustainable development.

The principal planning legislation is the *Land Use Planning and Approvals Act 1993* (LUPAA). Under section 64 of LUPAA a person with a 'proper interest' is able to institute civil enforcement proceedings in the Resource Management Planning Appeals Tribunal (RMPAT) to remedy a breach or a non-compliance with the Act, a planning scheme or permit. Forestry operations on State Forest (crown land managed by Forestry Tasmania) are exempt. Furthermore, private landowners can apply to the Forest Practices Board to have their land declared a 'Private Timber Reserve' in order to exempt the

forestry operation from their local planning scheme and thus avoid the requirement for council approval.

There are limited rights of appeal to the declaration of a Private Timber Reserve. Persons owning property within 100 meters of the proposed reserve can object only on the basis that they would be directly and materially disadvantaged by the land being declared a PTR. A local council may object to a PTR on 'public interest grounds'. Quite simply, neither of these concessions are sufficient.

### **Threatened Species Legislation**

The *Threatened Species Protection Act 1995* is the principal State legislation for the protection of threatened species. Under the legislation the responsible minister can protect identified species through the implementation of statewide strategies, threat abatement and recovery plans, interim protection orders and identification of critical habitats. It also makes it an offence to 'take' a threatened species without a permit. 'Take' includes 'kill, injure, catch, damage, destroy or collect'. Landowners affected by these processes have the right to claim compensation. Section 51(3) of the *Threatened Species Protection Act 1995* exempts a person acting in accordance with a certified forest practices plan. In short, forestry is exempt from the *Threatened Species Protection Act 1995*.

### **The Forest Practices System**

The Forestry industry is regulated through the Forest Practices System established by the *Forest Practices Act 1985* and administered by the Forest Practices Board. The Board regulates the industry through the development and enforcement of the Forest Practices Code and a planning process whereby it is illegal to carry out forest practices unless authorised under a forest practices plan approved by the Board.

However the Forest Practices System can be distinguished from the RMPS in two important respects:

1. It is self-regulatory. Employees and executives of commercial forestry companies (including Forestry Tasmania) make up the bulk of Forest Practices Board executive members and forest practices officers – who have the delegated responsibility of monitoring forestry operations and enforcing compliance with the Code. Under this system, policy and regulations governing forest practices are set primarily by the industry, for the industry and enforced by the industry.
2. The absence of public participation. The Forest Practices System has virtually no mechanisms for public involvement in forest management. Members of the public, no matter what their grounds or how they might be affected cannot object to, or appeal any aspect of a forest practices plan. In contrast, a forestry company or proponent who has had an application for approval of a forest practices plan refused by the Board, can appeal that refusal to an independent tribunal (the Forest Practices Tribunal) or appeal against any operational restriction inserted into the plan by the Board.

## **Environmental Issues**

Water and biodiversity are the two areas where forestry practices have the most environmental impact.

### **• Water**

Clearfelling and plantations in water catchments cause water pollution through *inter alia* streambank erosion, sedimentation and chemical contamination. Replanting an area with fast growing plantation trees can reduce water yield. For example according to Rob Vertessey the director of the *Co-operative Research Centre for Catchment Hydrology* a 100ha plantation in a 1000mm rainfall zone would reduce mean annual run-off by about 300 megalitres. In an article published earlier this year Vertessey pointed out that “this reduction is equivalent to the impact of 100 small farms dams” (P Hunt, Tougher rules likely for new plantations, *The Weekly Times*, 3<sup>rd</sup> September).

### **• Biodiversity**

Large-scale land clearing is impacting on threatened fauna species through habitat destruction and habitat fragmentation. Crop protection techniques such as 1080 poisoning indirectly impact on non-target species, for example pets who consume 1080 contaminated carcasses. A case was recently brought before the Magistrates Court by Sandy Tiffin and reported in the *Tasmanian Conservationist* (No 289, August 2003). Flora is affected through destruction of forest communities, loss of genetic integrity via introduction of hybrid and non-local plantation trees, and introduction/disturbance of exotic weeds and diseases.

## **Fairness and Equality**

Occupiers of land next to State Forest logging coupes are denied natural justice in that there is no formal process by which they can participate in the planning or approval process for individual logging operations even though they could be severely impacted. In the case of Private Timber Reserves, only landowners within 100 meters of the coupe boundary can appeal whereas parties outside the 100-meter limit could still be adversely affected through spray drift and impacts on water quality and quantity.

Because planning schemes developed and modified under the RMPS reflect extensive community participation, scheme-zoning aims to protect social and aesthetic values such as scenic amenity. Indeed, it must be noted that many people choose to live in bush areas for its scenic amenity and planning mechanisms under LUPAA allow such values to be taken into account and protected in the development approval process. However, forestry proponents can usually bypass these general planning scheme requirements, resulting in adjoining residents having limited if any rights to protection from the intangible impacts on amenity associated with adjoining clear fell and plantation establishments. For example, residents of Lucaston in the State’s south have been fighting a long-running battle against Gunns. Many of the residents, including Lou Geraghty, Adam Burling and Jenny Weber have all moved to the area for its beauty, a love affair with an area now earmarked to be trashed. As Peg Putt MHA in a *Mercury* article (March 5<sup>th</sup> 2003) pointed out:

It is time there was a level playing field and government rescinded the special laws which give private timber reserves immunity from the concerns of others living in the neighbourhood.

Even if the residents of Lucaston were to win, under the *Forest Practices Act 1985* a landowner who has had a Private Timber Reserve application rejected is entitled to compensation. There is no statutory entitlement to compensation for landowners whose residential amenity and property values have suffered because of neighbouring forestry operations. The Lucaston residents for example believe that there will be a 20% devaluation of homes.

In many municipal planning zones developments that are discretionary, such as tourism developments, subdivisions or land clearing for non-forestry primary production are subject to third party mechanisms that can be avoided in the case of forestry operations. This provides the forest industry with an advantage over alternative forms of land use.

Forestry is also exempt from planning schemes which are more stringent than those in the Forest Practices Code. For example, the Break O Day Planning Scheme requires all land developments in its rural zone to retain 30meter buffer zones around all watercourses, whereas the Forest Practices Code in some instances requires no buffer.

### **Conclusion**

For too long, Tasmanians have been crying out for reforms which ends forestry's ability to ride rough shod over the communities wishes. Indeed, the current self-regulation of the forestry industry would be comical if it were not so tragic. According to Graham Davis, a reporter with the *Sunday* program:

As the clear-felling goes on, it's difficult to separate the wood from the trees in this debate — the truth obscured by a forest of conflicting legislation, bureaucratic double speak and mud-slinging from both sides. What is clear is that the nation has entrusted this precious resource to a state that allows loggers to regulate themselves. And, as we'll see, what passes for regulation here is essentially no regulation at all.

Forestry must be accountable to the community. It can no longer be exempt from the open, transparent and democratic process that other planning is subject to. Indeed, according to an April 2001 Report by consultant economists *Marsden Jacob Associates* for the Australian Conservation Foundation there are potential conflicts of interest and lack of independence associated with forestry self regulation. As Andrew Ricketts of the Reedy Marsh Conservation Group has pointed out, 'If you had self-regulation on the highways and you were driving down the road at 120km/h, would you pull yourself over and stop and write yourself out a ticket?'

Reform which ensures that forestry is subject to the RMPS is to be commended. As Bob Graham, the President of the Tasmanian Conservation Trust has previously pointed out:

If we live in a truly democratic society forestry along with all other forms of development should be able to operate within such a system. To continue to operate outside the system will perpetuate undemocratic and potentially corrupt practices which produce outcomes that serve the short term interests of only a few.

To return to the original quote, Tasmania urgently requires the floodgates to be opened. Law reform which seeks to better protect water catchments and threatened species of flora and fauna; and increases transparency and accountability of the forestry industry through public appeal mechanisms is to be commended. The amendments soon to be introduced by Greens Opposition Leader Peg Putt MHA and supported by her Green colleagues will do this.

**Benedict Bartl** and **Simon Gates** are law students at the University of Tasmania. Following the EDO Conference, they drafted Bills which will be introduced by Greens Opposition Leader Peg Putt MHA in the coming weeks. All of the Bills are based on the recommendations that were agreed to at the Conference.