

Court Ruling Clarifies Farmers' Rights

IAN MOTT

A landmark Queensland Planning and Environment Court ruling has provided the first clarification of existing use rights for native forest owners. Most state planning legislation has specific provisions to ensure that existing lawful uses may continue without the need for consent. But the case has sent a loud signal to farmers that they can continue with practices that cause degradation, but God help them if they try to fix the problem. It will be a strong guide for any subsequent rulings in other States, but it has come at considerable cost to the farmer involved.

Mr Jim Barns does not fit the common profile of a farm forester or, indeed, a farmer, for Jim is one of Queensland's most successful farmers with interests in sugar cane, a 'Paul Keating' scale piggery, coastal property and native forestry.

A government that was serious about promoting the integration of forestry and other agriculture could find no better role model. Jim has owned a fully forested property of 158ha at Coolum in Queensland, since 1975. The property has seen regular selective harvesting of commercial species, while many of his neighbours were sub-dividing their properties, and it is now the largest non-corporate forest left in the shire.

And it is well worth noting that over this time he has made better returns per hectare from this native forest than he did from renting out his cane farms. But, like so many cases, this selective harvesting has produced the classic symptoms of 'high grading', where continual removal of the faster growing

commercial species has allowed less productive, shade-tolerant species such as Bloodwood and Brush Box to dominate.

In late 2000, and on the best advice of a number of very experienced and qualified foresters, Jim commenced a harvesting operation to correct this silvicultural imbalance. Like all good forestry operations, Jim's plan was to make it

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pay for itself while addressing long-term management issues.

All the professional advice called for significant site disturbance to maximize regeneration of the original, more desirable, species. These species need disturbance for successful regeneration. And, given that future harvests would be entirely performed by machine, he realized that this might be hindered by leaving a large number of stumps in the ground. Any regeneration failures would also need site preparation

and planting by machine, and the agreed-upon solution to all three issues was for the stumps to be removed while the machinery was on site.

Trees were also felled in an apparently haphazard manner, but this was to ensure that the seed-laden heads landed in existing gaps. The logs were to be carefully extracted by an excavator with a special 'log grabber' to minimize damage to remaining trees.

A harvest plan was drawn up, based on a full flora and fauna study and in consultation with the contractor. Heavy intervention was planned for the 40 per cent Blackbutt forest, light intervention for the 40 per cent Wallum (scribbly gum and paperbark) forest with no intervention in the remaining heathland. The EPA was only concerned about the heath, an endangered regional ecosystem, not the Blackbutt forest which was classified 'not of concern'.

Maroochy Shire had already indicated a desire to acquire the property for inclusion into the adjoining Noosa National Park, but they balked at the independent valuation. The Council then brought action in the Planning and Environment Court claiming that Jim's forestry practices amounted to 'clearing'. Yet, under the Queensland *Vegetation Management Act*, 'forest practices' are not clearing.

The court ruled that Jim's existing use for forestry could continue without the need for Government consent but then ruled that his attempts to fix his silvicultural imbalances amounted to a material change in scale and intensity that

did require consent. So he lost his case—at a personal cost in excess of \$150,000 in legal fees. The Judge then gave the parties twelve months to agree on conditions for continuing his forestry purpose.

The Shire, in what appears to be an extraordinary attempt at an improper exercise of power, refused to accept the State Forest Code of Practice for Timber Production as an appropriate framework for Mr Barns' on-going operations. They persisted with conditions that would effectively destroy the economic viability of his farm.

When this inability to come to an agreement was reported to the Judge at the final hearing in April this year, a visibly irritated Judge advised the Court that he had no power to impose conditions on Mr Barns' existing use. His authority extended only to the small portion of the forest that had been harvested prior to the granting of the original injunction.

Jim Barns has given private forestry in Australia the all-important first test case that confirms that a forestry use is intermittent and not abandoned between harvests. He has also confirmed that this existing use may continue without need for consent under new planning instruments provided there is no material change in scale or intensity.

It has clarified the extent of forest owners' protection at law but has also exposed certain political and administrative assurances as worthless. Understandably, Jim's perspective on the future of private forestry is now somewhat at variance with the usual saccharine extension pap. And it is for this valuable but costly removal of ambiguity that he has won the lasting respect of real farmers with real forests.

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IPA

■ STRANGE TIMES ■

Compiled by IPA staff, columnists and consultants ...

PROTECTING KANGAROOS' RIGHT TO STARVE

In July 2002, the Australian Army base at Puckapunyal was invaded by over 200,000 kangaroos. Somehow, the herd got through the electric fence, consumed all the fodder and were facing mass starvation. With drought ravaging the land, there was no food outside the fence either (which is why the 'roos invaded the army base in the first place).

The Army decided to do the humane thing and cull some of the animals to ease suffering, avert mass deaths and avoid destruction of habitat.

Enter the animal rights activists, who put their bodies on the line to stop the cull. Their reasoning: 'since we would not destroy humans who are starving, we should not do so to 'roos. It is preferable to let the 'roos starve to death'. In short, they want to protect the animals' rights to starve to death.

UNITED NATIONS COMMISSION ON DICTATOR'S RIGHTS

In August of this year, the United Nations Commission on Human Rights accepted the recommendation of its African members (it was their turn to choose) that a representative of Colonel Qaddafi become the Commission's new chairman. Now, what is Libya's record on human rights? Summary executions? Yes! Execution of political prisoners? Check. Torture? Certainly, including 'applying corkscrews to the back', 'pouring lemon juice in open wounds', 'suffocating with plastic bags', and 'attacking with dogs'. There is also the small matter of the regime's bombing of the Pan Am jet over Lockerbie, Scotland. By the way, this is the very same Commission which last year voted the

United States out and Sudan in, and frequently sends an envoy down under to lecture Australia about its racist and evil policies.

BEAM THEM UP SCOTTY!

WWF—a multinational, public relations firm specializing in scaring the hell and money out of people—came up with a novel spin last month. It predicted that interstellar migration to no fewer than two planets was on the cards by 2050 unless we changed our modern ways.

Less uniquely, WWF also put the boot into the rich US, claiming that it had the biggest 'footprint' of precisely 12.2 hectares per person.

But does this imagery work? The ageing baby-boomers who are the main supporters of WWF were raised on Star Trek and Dr Who. Indeed, in the last Australian Census, more than 70,000 Australians declared their religious faith to be 'Jedi'. Moreover, many spent their youth looking for the elusive big foot or yetis, and taking drugs. They may actually think that space travel and big foot prints are good.

ECO-FRIENDLY EXPLODING CARS

Veronica Webb's eco-friendly electric car turned into a fire-spewing death machine, burning down her Florida home and killing her beloved dog, Hercules.

Despite her long devotion to various green causes, the six-month pregnant supermodel says that she's through with electric cars after her Chrysler Gem overloaded while charging late last Monday night, sending flames through her air conditioning system and consuming everything in its wake.

'We got the car because it was supposed to be great for the environ-

REVIEW