

FORESTRY AND KARST ON PRIVATE PROPERTY IN TASMANIA

- Kevin Kiernan

Introduction

The report of a study of forestry operations in the Mole Creek karst undertaken in 1983-84 proposed that there should be special provisions for forestry operations on karst in order to safeguard environmental values (Kiernan 1984). A few of the recommended provisions were subsequently included in the first edition of the Tasmanian Forest Practices Code (Forestry Commission 1987) and they have been improved through subsequent editions of the Code.

The 1984 report also proposed the establishment of several new cave reserves in the Mole Creek area. These proposed reserves included the proposed establishment of a Mole Creek National Park over the Mole Creek system proper (Jennings and Sweeting 1959, Kiernan 1980), which contains such caves as Herberts Pot. It also recommended reservation of the Croesus-Lynds caves area, Mersey Hill Cave, re-establishment of some former reserves in the Baldocks-Sassafras caves area, and minor additions to the Kubla Khan and King Solomon caves reserves. However, none of the reserve proposals, some of which had antecedents back to proposals by the Southern Caving Society in the early 1970s (Kiernan and Harris 1973) were ever acted upon by the P&WS, which had other priorities and limited funds. These areas were not included in the Mole Creek Karst National Park that was proclaimed a few years ago, which merely consolidated the nomenclature of several scattered, pre-existing reserves (Middleton 1996).

Forestry operations on karst

In many cases only minor modifications to logging arrangements are needed to protect karst values, but in some cases stronger protection is required. In 1988 proposed logging of a property in the Gunns Plains karst was rejected in order to safeguard an important cave. The Forestry Commission subsequently recommended reservation of the property and sought to assist this process by undertaking and providing assessments of a neighbouring block of unallocated Crown Land that might have potential to be offered in a land-swap as part of a compensation package. The logging company that held rights to all timber in the area also voluntarily waived its rights to the property. However, once again no action was taken to establish the reserve.

It is the policy of the Forest Practices Board (FPB), which administers Tasmania's Forest Practices system, that the protection of soil and water values constitutes part of the normal duty of care of any responsible landowner, together with the protection of special natural or cultural values (eg. caves) where the latter does not require total exclusion of operations from more than 5% of the area covered by a Forest Practices Plan, or partial exclusion strategies affecting more than 10% of

the plan area. In rare cases where greater sacrifice is required of a private land-owner to protect a larger area in the public interest, the *Forest Practices Act* 1985 allows for the possibility of compensation to be payable to the disadvantaged land-owner. A trigger mechanism for a compensation claim is provided under Tasmanian law where a landowner seeks to have their land designated as a Private Timber Reserve (PTR), an ambiguously named tenure that provides a land-owner with security of long term timber production free from some local government planning controls and imposts.

In 1996 an application was lodged for a PTR over a property that included previously recommended extensions to the existing King Solomon Cave reserve. Exclusion from the PTR of the sensitive area adjoining the reserve was recommended by the FPB Senior Geomorphologist. However, the Forest Practices Board approved the PTR. An appeal was then lodged by the local council, which has a Karst Zone in its municipal plan, based on the broad outline of karst drainage in the area reported in the 1984 Mole Creek karst forestry study. Written evidence again opposing granting of the PTR over the sensitive area was submitted to the Forest Practices Tribunal by the FPB Senior Geomorphologist and Senior Zoologist, and also by a geomorphologist from the Parks Service, while verbal testimony was also presented at the hearing by the Acting FPB Senior Geomorphologist. The Tribunal subsequently over-ruled the decision of the FPB and disallowed the PTR as being contrary to the public interest due to the high probability of damage to important karst phenomena. A compensation claim has since been lodged by the land-owner and this is currently being processed.

Further proposals for PTRs, this time over parts of the Mole Creek system proper, were lodged in 1996 and 1997. This time both proposals were rejected by the FPB as being contrary to the public interest and appeals were lodged by the landowners. The preliminary Panel hearings, Forest Practices Tribunal hearings and Appeal hearings for each of these properties have all been completed and establishment of the PTRs prohibited. The compensation process has been completed in relation to one property, and an application for compensation has been lodged by the owners of the second property. A PTR application in relation to the earlier Gunns Plains logging proposal was also lodged in 1998. The Panel, Tribunal and Appeal stages have all now been completed, again with decisions against granting of the PTR in each case, and a compensation claim has been initiated by the land-owner.

Resolving the compensation issue

While the hearings have been won the compensation process has proven complicated for

several reasons. First, these are the first compensation claims lodged under the forest practices system, hence there have been no precedents to follow and great care has been required. Second, the existing Forest Practices legislation is deficient in that it allows for compensation only for the timber resource foregone, without providing long term security against other land-uses besides forestry that may cause equally or more serious environmental harm. There is no complementary legislation with respect to other potential land-uses such as farming. A landowner could in theory still clear all forest from the property for another purpose, provided only that the timber was not sold commercially, in which case the payment of any taxpayers money in compensation would represent a futile and irresponsible investment by any government. Hence, any compensation for income from timber sales foregone really needs to be complemented by land purchase or a covenant agreement. A third impediment to speedy resolution of the compensation issues has been the fact that the contingent liability faced by the Tasmanian government in connection with potential compensation claims has never been budgeted for.

There have also been significant political problems to be worked through. Geoconservation generally, and karst in particular, were deliberately and vigorously excluded from the Tasmanian Regional Forest Agreement (RFA) process by the state government of the day which did not appear to take geoconservation seriously as an environmental concern. Hence, moneys subsequently made available for conservation purposes through the RFA process, and which might potentially have been directed towards compensation for karst sites, could not be used for this purpose. Faced with increasing concerns by a major Tasmanian farming organisation in relation to the blocked PTR proposals, former Tasmanian Premier Tony Rundle gave a commitment that "the karst problem will be fixed". However, Rundle's party lost office shortly afterwards, and a new and inexperienced government was left to grapple anew with this difficult political, administrative and economic legacy left by its predecessor.

The risk also exists in an evolving situation of this kind of opening a Pandora's Box of opportunistic proposals by other property owners who might harbour a misguided expectation that a windfall of compensation might be available for some of their marginal land if they were simply to propose

it as a PTR and have it found unsuitable for that purpose. The latter concern has been addressed through a study initiated by the FPB which has identified properties considered to contain Priority 1 karst conservation features – but that too took time to achieve. This confidential document will guide the FPB in its responses to future proposals. It confirms a significant, unfunded contingent financial liability for the state.

The path ahead

Some challenges remain to be worked through, but these are no more complicated and difficult than the process that has already been successfully tackled. The most important outcome so far is that workable provisions to reduce adverse impacts of forestry operations on karst are in place. While there is room for improvement and problems still sometimes occur, these provisions coupled with a positive and progressive attitude by some planners have allowed some major advances in the quality of forestry operations on karst (Graham 2000) and created ripples in other jurisdictions both in Tasmania and elsewhere (eg. Moore 2000). In addition, four important karst sites on private land have now been subject to PTR applications. This has included the first action on some areas that had been the subject of stalled reserve proposals dating back many years. The multiple hearings entailed for each of those four PTR proposals have all resulted in decisions in favour of conservation, and have triggered the compensation process that could finally see them properly reserved.

Under a potentially one-off cost-sharing arrangement with the Commonwealth Government, the first compensation payment has now been made. Two months ago, and nearly thirty years after its reservation was first proposed, the property that contains the upstream part of Herberts Pot was finally purchased by the state government for future management as a formal reserve. This is the first compensation payment to be made under the Tasmanian forest practices system (once again karst leads the way in Tasmania!) Other funding strategies are currently being explored with respect to other existing compensation claims and likely future claims.

The challenge that then awaits will be to develop and implement visitor-management protocols that will ensure effective long-term protection for new karst reserves for which protection has been initiated through the forest practices system.

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