# forestry and the community

## should forestry planning be democratic?

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## The nature of the planning process.

Planning in Australia is a means of transferring development rights from the public domain to individuals who own or control land. Under the system of Australian land tenure some residual rights over land held in private ownership have been retained by the Crown. The establishment of planning and related approval systems has seen this fact formalised over the past 150 years. Legislation and associated processes have been put in place to allow an orderly transfer of those rights to individuals when they undertake development.

This means that no person has the right to use or develop land unless that right has been granted in legislation or through a planning approval. This is despite assumptions and perceptions to the contrary where landholders often believe that it is their inalienable right to do what they want with their property.

The system exists because the granting of these rights is usually associated with a potential for development to have an effect on adjoining land or on matters of broader public concern, such as traffic, environmental impact, infrastructure provision, community health or safety or similar matters. Thus the granting of rights carries with it the concept of a wider responsibility – not to pollute, not to destroy the environment or to pay for public services required for the development. It is a system of both rights and responsibilities, although the latter is often ignored.

In Tasmania, planning schemes set the rules under which rights are granted and responsibilities allocated. These schemes are part of the Resource Management and Planning System (RMPS) and operate in accordance with the land Use Planning and Approvals Act (LUPAA). The RMPS has as its primary objective the achieving of sustainable development.

Procedures for setting and applying the rules are largely open and transparent and are made through a public process with an independent body ,the Resource Planning and Development Commission (RPDC), having the power to decide what rules shall apply. Planning authorities (usually Councils) then make decisions on the basis of those rules. Where Councils make decisions which require a variation of those rules, third parties have a right of appeal and may seek an independent decision on the matter.

Unlike other States the Tasmanian system is tenure neutral and requires all State agencies to operate in accordance with the requirements of LUPAA. This means that the decisions about the use and development of State owned land is subject to the same rules as those applying to private landowners. The imminent incorporation of all development on land under the Parks and Wildlife Act into the system will leave only Forestry, Mining and Marine Farming outside LUPAA.

## Community Input

The operation of this system allows a significant degree of community input. That input can occur at several points in the process:

Plan preparation by Councils

Plan finalisation by the RPDC

Council decision making on particular developments

Appeals against Council decisions

Despite its many weaknesses, the system does have a level of robustness because of the capacity for community groups and individuals to participate in the process at all levels, (whether these opportunities are taken up is another matter).

There are some good examples of community action effectively managing to change the outcomes of development as a result (Ocean Port, Southwood, Battery Point, to name a few). These outcomes have generally been beneficial, particularly in protecting the public interest. I am firmly of the view that the quality of decision making and of development outcomes is enhanced through these processes.

It is an important component of a liberal democracy that not only should we get to choose between marginally different groups of aspiring leaders every so often, but that the mechanisms set up by Government should operate democratically. Unfortunately, this is something that often does not happen. Governments throughout Australia have established non democratic systems to allow them to transfer public development rights and assets to individual and corporations.

## A protection against corruption

A significant advantage of having a transparent and open process with an explicit and effective community role is that it is a protection against corruption. Development rights are frequently associated with a capacity to make a lot of money. This is very much the case in resource development and exploitation. The rights to cut down a forest, dig up minerals or exploit marine resources bestow enormous economic advantage on the recipient.

The rules under which those benefits are transferred and the conditions that apply to the exploitation of the resource are a critical issue for public policy in Australia. The rights to use and develop those resources are public property and the public should benefit from the giving them away. Any system of transferring community assets to private individuals must be open to public scrutiny and the public should be able to participate effectively in the process. The public should also be made aware of the conditions of transfer (notwithstanding the usual nonsense abut "commercial in confidence") and what benefits will accrue and how the costs (environmental, social and economic) will be allocated.

Of course having such system scares the living daylights out of most governments and resource managers. I am always suspicious of systems that are not open and transparent and do not have the checks and balances the exist under the RMPS. It is always worth asking "why" when there is resistance to having a system that allows public scrutiny and participation.

It is worth noting that the strongest opposition to operating within the RMPS has come from within the Government – Forestry, Fisheries, Primary Industry (most recently dams and land clearing), Parks and Wildlife and Roads. The State has also established specific systems that are not open or transparent to deal with what are perceived to be difficult issues – the best example being the totally unjustifiable and undemocratic shack sites allocation process.

The corruption associated with these systems takes many forms. It can involve "kickbacks" but this is rare in resource development approval systems. Corruption associated with these systems more often involves the giving away of rights at below their real value, or through a transfer of costs to the public domain (in the form of

environmental damage, reductions in opportunity costs or public subsidy of resource extraction operations). The quid pro quo for the resource managers is usually power. Governments gain kudos and credibility, and public resource managers extend their power and influence. It is no accident that the only employment sector in the forest industries that increased employment between 1986 and 1996 was the managerial sector. (Bureau of Census and Statistics – 1986 and 1996 census reports).

That all levels of government continue to establish and operate such systems has to be a matter of serious concern. It demonstrates that they have not heard the lessons from the Fitzgerald inquiry into corruption in Queensland during the 1980s. This inquiry established that the most serious area of corruption in that State was associated with the transfer of development rights (particularly to allow subdivision and development of coastal land in the South East of the State). These findings were reiterated by Fitzgerald in the Fraser Island Inquiry which boiled down to an issue of the conditions under which rights to exploit the Island's beautiful forests were being transferred to sawmillers and forest companies. These transfers were accompanied by significant public subsidy and environmental degradation.

## What are the features of undemocratic systems?

It is common practice in Australia for Governments and industry to collude to put undemocratic planning processes in place. These processes are meant to give the appearance of being fair, reasonable and open when they are anything but. In Tasmania we have an undemocratic system for the allocation of rights to exploit publicly owned forests.

Throughout Australia such systems have a number of common characteristics. These are:

> They have all the trappings of more democratic systems – application procedures, public notification, formalised approval procedures, issue of permits.
>
> They do not allow effective public input.
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> They are not open to scrutiny or judicial review by independent bodies.
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> They are frequently justified on spurious grounds ("science", lack of public knowledge or expertise, not in the public interest or "commercial in confidence").
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> They allow decisions about development to be made in isolation from the rest of the economy and society.
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> The wider consequences (environmental impact, social disruption, increased infrastructure costs) are usually treated as consequences to be managed rather than as matters of central concern. However, other consequences (improved economic outcomes, jobs, good forest management etc.) are used as justification for decisions.
>
> There is usually an efficient and effective public relations operation in place to calm public fears and concerns.

Justification for the operation of these systems usually comes in the form of the need to protect industry from unreasonable delays or interference, the lack of expertise that exists in the wider community to participate in the process and the need to protect jobs and promote economic growth.

A sham planning and approval process is established which can operate without outside interference and which can provide "certainty" or "security" to industry. This process gives away publicly owned assets and resources under conditions that do not allow the owners of those resources a say in where, how and under what conditions the transfer of rights is to occur.

The main public input is usually by means of campaigns by specific groups with a focus on particular forms of development or specific localities. It is highly adversary and is characterised by the trading of claims and counter claims by both sides. It is worth noting that such campaigns can be highly effective in particular cases (the preservation of forests of high environmental value in Tasmania, the preservation of rainforests in Northern NSW, the Fraser Island Inquiry, and the Wet Tropics Rainforests in North Queensland).

However, such forms of participation often have adverse consequences – communities are divided, the underlying issues of resource allocation and development are not addressed and the bulk of the public is left out in the cold. The operation of these adversarial systems also intimidate the majority of the population and work against effective public involvement.

## Creating a democratic system for resource allocation

There is widespread evidence that undemocratic systems produce bad outcomes. For example:

> In 1999-2002 the Auditor General valued the total equity of Forestry Tasmania at $758.7 million with a return for that year of less than $8million[1]. This, (a 1% on equity for our public forests), is socially unacceptable and economically irresponsible.
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> Many local communities throughout the State feel threatened by forestry practices - clear felling, effects on habitats, loss of water quality, visual impact, loss of alternative economic opportunities, poisoning of wildlife, regeneration burning, wildfire escapes, etc. Whatever the truth of these issues – public unease and disquiet is an issue in itself.
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> Loss of alternative economic opportunities. The small community of Bruny Island is playing host to what must be the most ridiculous forestry operation imaginable. It involves clear felling, movement of log trucks on inadequate roads (Kingborough Council and DIER is constantly trying to keep these roads in trafficable condition – at ratepayers and taxpayer expense), regeneration burning and the permanent

[1] Report of the Auditor General, Government Departments and Public Bodies 1999-2000, November 2000

> employment of 4 people. Meanwhile, the tourism industry which employs over 100 individuals on the Island is placed at risk.
>
> A rate of land clearance that is second only to Queensland's and which contributes to Australia's pariah status among developed nations as an environmentally irresponsible.

If forestry were subject to an open and democratic approval process it is highly likely that these outcomes would be different. This is, of course a great fear to the forest industry as evidenced by the many mechanisms that exist to deny the public a right to have a say – separate legislation that specifically excludes the public, codes of practice that is drawn up by internal "experts", monitoring and enforcement of the code by resource developers, Private Timber reserves that allow private landowners to clear land without scrutiny under planning schemes, and a well oiled PR machine that is used to quiet public unease.

To change this situation there is only one answer. All resource exploitation activities, including forestry, must be subject to an open, transparent and democratic process. This must be a process which;

> allows the public to have a say in defining the operational rules,
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> requires the resource exploiters to justify their case for transfer of development rights,
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> requires a demonstration that operations are in accordance with publicly acceptable rules
>
> clearly identifies the costs and benefits of any particular proposal,
>
> allows a serious consideration of alternative resource uses, and
>
> provides for independent judicial dispute resolution.

Such a system exists. It is the Resource Management and Planning System. 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.