

Forestry and lifestyle blocks – compatible or not? A legal discussion

Tim Storey/Brian Clayton
Bell Gully

It is an increasing problem and cause of frustration for forest owners: lifestyle block neighbours complaining about their commercial activities.

This can pose particular problems to a forest owner when a resource consent is required for harvesting or for any other forestry operation. The relevant Council may require consent from any neighbours or persons affected by the activity when deciding whether to notify or grant the application. If the Council decides to notify the application, then the forestry operation under scrutiny is thrust into the public eye and the associated processes can become both time consuming and costly. Not the kind of hassle forest owners need!

The frustration factor often stems from the fact that forestry operations existed in the area 'uninterrupted' long before the lifestyle block neighbour turned up.

Forest owners should be wary of lifestyle block developments in the vicinity of their forest. They should realise that options can be available to them to ensure that the viability and efficiency of their forestry operations remain intact.

How does this problem arise?

Rural-residential subdivision in close proximity to forests is often to blame.

These subdivisions typically result from either:

- (a) forest owners themselves subdividing and selling part of their land for residential purposes (while retaining the land with trees on it); or
- (b) a neighbouring property owner doing the same.

From the land owner's point of view, this may be a lucrative return for an otherwise unproductive piece of land. The funds received from the sale may be invested back into the forest or help the forest owner fund the purchase of a more productive piece of land. From the new owner's perspective, the property will supposedly provide him or her with the ideal quiet and rural retreat.

The result is that people - who may be seeking and expecting a quieter existence - are living in close proximity to a commercial operation that can produce noise, dust and disruption throughout a rotation. Although these externalities would seem obvious, some lifestyle block owners are not willing to accept them - or if they do to begin with, their perspective seems to change over time!

How can forest owners stop these complaints affecting their operations?

Forest owners take note. There can be ways to stop lifestyle block owners complaining about your forestry activities, or at least reducing the implications of those complaints.

Essentially this involves placing "complaints cov-

enants" on the lifestyle block owner's land. These covenants are in favour of the forest owner's land.

Complaints covenants can provide, amongst other things, that the lifestyle block owner will allow the forest owner to carry out forestry activities on its land without any objection from the lifestyle block owner or occupier. The covenants can go further and set out that the lifestyle block owner will support the forest owner's operations. Examples of complaints covenants are set out below.

Two scenarios

Scenario 1 – Sale by the forest owner

Where the forest owner is selling part of its land for residential purposes, the forest owner can specify in the agreement for sale and purchase (the **Agreement**) that the purchaser (of the lifestyle block) agrees to be bound by various complaints covenants.

As well as setting out these covenants, the Agreement should provide that before settlement (that is, once all the money for the land has been paid over by the purchaser), the forest owner will ensure that:

- (c) the benefit of the covenants is registered on the certificate of title relating to the forest owner's remaining land; and
- (d) the burden of the covenants is registered on the certificate of title relating to the purchaser's land.

(By way of background, generally each separate piece of land in New Zealand has an individual certificate of title. The certificate of title sets out the boundaries of the land as well as the rights conferred, and obligations imposed, in respect of that piece of land).

Scenario 2 – Sale by a neighbour

When an application for subdivision is made by a forest owner's neighbour (that is by an adjoining land owner), the relevant council will usually seek the consent of the forest owner to the subdivision. If the forest owner is not the 'neighbour' of the developer, the council will still usually seek the consent of the forest owner if, in the council's opinion, the forest owner is affected by the development.

In these circumstances, the forest owner may give its consent to the subdivision (or agree to withdraw its opposition) on the condition that the subdividing neighbour agrees to complaints covenants being placed on his or her land. This could be done by one of two means:

- (1) The two parties could enter into a deed setting out that a complaints covenant is to be imposed on the land to be subdivided before the subdivision, for the benefit of the forest owner's land. When the land is later subdivided, the complaints covenant would then be brought down onto the new certificates of title relating to each property (when

land is subdivided, new certificates of title are issued for the new properties); or

- (2) The subdividing neighbour could contract with the forest owner to include complaints covenants in the documents formally transferring the land (i.e. registering the new owner's name on the relevant certificate of title) to the purchaser after the land has been subdivided. These covenants would then be noted on the certificates of title relating to the lifestyle block land.

Generally speaking, if complaints covenants are not registered on the certificate of title relating to the purchaser's land, then the purchaser, and subsequent owners of the purchaser's land, will not be obliged to comply with the covenants. For this reason, option 1 is the preferred approach from the forest owner's perspective: it should ensure that the purchaser's new certificate of title will be issued with the complaints covenants registered on it. Under option 2, the subdividing neighbour could forget to include the complaints covenants in the transfer documents and still have these documents registered. This would mean that the complaints covenants would not be registered on the purchaser's certificate of title. In these circumstances, usually the forest owner's only remedy would be to sue the land developer for failing to register the complaints covenants – a reasonably ineffectual remedy.

Scenario 1 and 2

From the forest owners point of view, it is best if the purchaser consents to the complaints covenants. This can be done by specifying this in the covenants and getting the purchaser to sign a document acknowledging that the purchaser is aware of and will abide by the covenants.

As long as the covenants are reasonable and for a proper purpose (which would usually include protecting forestry operations), once they appear on the certificates of title, the purchaser, as landowner, will be bound to adhere to the covenants in relation to the forest owner's land. Furthermore, if the complaints covenants are carefully drafted and registered on the relevant certificates of title, they will bind all future owners of the lifestyle block owner's land.

Contents of complaints covenants

These can be tailored to meet the particular needs of the forestry owner. For example, they may provide that:

- (a) the purchaser (including future owners and occupiers of the property) cannot build dwelling houses or other structures on his or her property within a certain distance from the boundary of the forest owner's land or from roads used by the forest owner.
- (b) the purchaser will allow the forest owner to carry out upon its land all forestry activities associated with a normal commercial forest.
- (c) the purchaser shall not make any claim, take any

proceedings or support any action arising out of the forest owner's forestry activities.

- (d) the purchaser shall not make, support or finance any application that has the effect of restricting the forest owner's forestry activities.
- (e) the purchaser shall not further subdivide his or her property.
- (f) the purchaser agrees to any resource consent application required for the forest owner's forestry operations.

What sort of covenants can be imposed on a purchaser will depend on the bargaining power of the forest owner. The last two provisos are likely to prove the most difficult to get a purchaser to agree to. From the purchaser's point of view, these covenants may detrimentally affect the marketability of their lifestyle block. However, for the forest owner, they are an effective tool to stop the lifestyle dweller taking steps which later affect its forestry operations.

Limitations on forest owners to impose complaints covenants

Complaints covenants can usually only be imposed on prospective purchasers. If the land is bought free of complaints covenants, the forest owner's ability to get the purchaser to agree to such restrictions and obligations is minimal as the forest owner has little, if any, leverage to work with.

In relation to scenario 2, if the forest owner was not a neighbouring owner and was not, in the Council's opinion, likely to be directly affected by the application to develop the land, then the forest owner would, again, not usually have the leverage to demand complaints covenants from the land developer.

Conclusion

The benefits to a forest owner of imposing "complaints covenants" on purchasers of lifestyle blocks are both obvious and instrumental in protecting their continuing forestry operations. From the forest owner's perspective, the issue is not only one of compatibility with lifestyle block owners.

It is a matter of protecting and preserving their commercial activities so as not to jeopardise the efficiency and effectiveness of its forestry business. Forest owners must be informed and proactive to ensure they grasp this opportunity before it is too late!