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THE PROTECTION OF NATURE RESERVES UNDER THE PARKS AND TREES ACT – A DEEP DIVE

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The Protection of Nature Reserves under the Parks and Trees Act – A Deep Dive

In the face of relentless pressure and improving capability to develop our subterranean space to meet Singapore's ever-growing needs and wants, we have left no stone unturned, and now look set to leave no granite undrilled either. Since the 1950s, successive legislatures have sought to protect land designated as nature reserves for specified statutory purposes.[1] It is hoped that this short note will contribute to a clearer understanding of the provisions in the Parks and Trees Act ("PTA")[2] relating to the protection of nature reserves so that they may be given their intended efficacy.

Section 7(2) of the PTA provides that,

> The areas designated in Part II of the Schedule [in the Act] are set aside as nature reserves.

One area designated in Part II of the Schedule is "all those pieces of land" known as the CCNR.

Section 7(3) of the PTA further provides that national parks and nature reserves are set aside for all or any of the following purposes:

> (a) the propagation, protection and conservation of the trees, plants, animals and other organisms of Singapore, whether indigenous or otherwise;
>
> (b) the study, research and preservation of objects and places of aesthetic, historical or scientific interest;
>
> (c) the study, research and dissemination of knowledge in botany, horticulture, biotechnology, or natural and local history; and
>
> (d) recreational and educational use by the public.

In 2016, the Land Transport Authority ("LTA") announced its plan to carry out site investigation works in the Central Catchment Nature Reserve ("CCNR"), a nature reserve, "for planners to better understand ground conditions so mitigation measures can be put in place to reduce safety or environmental risks while constructing [a proposed] underground [Mass Rapid Transit ("MRT")] tunnel" under the reserve.[3]

The National Parks Board ("NParks") also announced it had given its approval for the site investigation works.[4] This announcement raises important questions of law about NParks' legal competence to give such approval.

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[1] In fact, even before 1951, some of these reserves had already received protection as reserved forests under the *Forest Ordinance* (Ordinance 12 of 1908).

[2] Cap 216, 2006 Rev Ed.

[3] Land Transport Authority, "Site Investigations to Study Two Alignment Options for the CRL", (8 June 2016), <https://www.lta.gov.sg/content/ltagov/en/newsroom/2016/6/2/site-investigations-to-study-two-alignment-options-for-the-crl.html>.

[4] National Parks Board, "Site Investigation Works Approved to Proceed" (8 June 2016), <https://www.nparks.gov.sg/news/2016/6/site-investigation-works-approved-to-proceed>.

It is implied in the PTA that the Commissioner for Parks and Trees ("Commissioner") has the power to approve certain activities in national parks and nature reserves. In particular, it is an offence under s 8(3) of the PTA for anyone (including the government, which pursuant to s 3 of the PTA, is bound by the provisions of the Act) to carry out the activities under s 8(1) in a national park or nature reserve *without the approval of the Commissioner*. These activities are:

> (a) cut, collect or displace any tree or plant or any part thereof;
>
> (b) affix, set up or erect any sign, shrine, altar, religious object, shelter, structure or building;
>
> (c) clear, break up, dig or cultivate any land;
>
> (d) use or occupy any building, vehicle, boat or other property of the Board; and
>
> (e) wilfully drop or deposit any dirt, sand, earth, gravel, clay, loam, manure, refuse, sawdust, shavings, stone, straw or any other matter or thing from outside the national park or nature reserve.

Similarly, the contravention of s 9(1) is an offence under s 9(4). Section 9(1) subjects certain activities carried out in a national park or nature reserve to the approval of the Commissioner, namely:

> (a) capture, displace or feed any animal;
>
> (b) disturb or take the nest of any animal;
>
> (c) collect, remove or wilfully displace any other organism;
>
> (d) use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of capturing any animal; or
>
> (e) carry or have in the person's possession any explosive, net, trap or hunting device.

Furthermore, s 12 of the PTA provides that an *application for approval* to carry out or cause the carrying out of any activity referred to in sections 8(1) or 9(1) shall be made to the Commissioner in such form and manner as may be prescribed, further confirming his power to give approval for such activities.

However, while the Commissioner has the power to approve the activities in s 8(1) and 9(1), he has no power to approve the contravention of sections 8(2) and 9(2).

Section 8(2) provides that,

> No person shall carry out any activity within any national park or nature reserve which he knows or ought reasonably to know causes or may cause alteration, damage or destruction to any property, tree or plant within the national park or nature reserve;

and s 9(2) provides that,

> No person shall carry out any activity within any national park or nature reserve which he knows or ought reasonably to know causes or may cause injury to, or the death of, any animal or any other organism within the national park or nature reserve.

The contravention of these provisions are offences under sections 8(2) and 9(4) respectively.

In any case, before the Commissioner gives his approval under sections 8(1) or 9(1), it is surely implied that in the discharge of his functions in respect of the nature reserves, he must at least take into consideration the statutory purposes for which nature reserves are set aside. It is not clear whether the Commissioner may approve activities that fall outside or even conflict with such purposes. Arguably he does not.

Site investigation works to investigate the suitability of the site for an MRT tunnel falls outside the purposes for which nature reserves are set aside and may even conflict with these purposes. It is therefore arguably beyond the Commissioner's power to approve the carrying out of activities in a nature reserve under sections 8(1) and (9)(1) of the PTA that are incompatible with such statutory purposes; and beyond the Commissioner's power to approve activities that contravene sections 8(2) or 9(2) of the PTA.

What about the Minister for National Development then? Can he exempt the site investigation works from the provisions of the PTA? The Minister has a power under s 58 of the PTA to exempt any person or works from *any* provisions of the Act. He may also pursuant to s 62 of the PTA, redraw the boundaries of nature reserves and revoke the designation of land (wholly or partly) previously designated as nature reserves.

It is submitted that s 58 does not give the Minister the power to exempt any person or works from s 7(3) of the Act, which sets out the purposes for which national parks and nature reserves are set aside. To construe otherwise would be anomalous with the scope of s 62 of the PTA, which empowers the Minister to order the alteration of the boundary of a nature reserve subject to his prior consultation of the NParks, and presenting the order to Parliament for info immediately after making the order. This leads to an anomaly because Parliament could not have intended to require the Minister to present any order to redraw the boundary of a nature reserve to Parliament, and at the same time empower the Minister to exempt any person or works from the protection of nature reserves without any reference to Parliament. Therefore, to read the power in s 58 literally as a power that extends over the nature reserves protection provisions is an unreasonable interpretation.

An examination of the legislative history of the PTA and s 58 in particular suggests that Parliament did not intend the Minister's power to exempt under s 58 to have such a wide application. This power was introduced in 1987 as an amendment to the original *Parks and Trees Act* ("PTA 1975") originally enacted in 1975. The amendment sought to give the Minister and the then Parks and Recreation Department ("PRD") flexibility in managing the public parks including the Singapore Botanic Gardens (which at the time was managed by the PRD) and tree conservation areas.[5]

[5] Singapore Parl Debates; Vol 49, Sitting No 11; Col 1165; [26 March 1987] (Lee Boon Yang, Minister of State for National Development).

At the time, nature reserves were protected under the *Nature Reserves Ordinance* ("NRO")[6] and managed by the Trustees of the Nature Reserves Board. The Ordinance did not give the Board or Minister a power of exemption of any provision in the Ordinance; the power to revoke the designation or redraw the boundary of a nature reserve was vested in Parliament itself. However, in 1988, Parliament's power under the then *Nature Reserves Act* (renamed from the NRO) from to revoke the designation or amend the boundaries of nature reserves was delegated to the Minister, for the administrative convenience of regularising these changes as soon as possible, subject to the safeguard that the Minister must consult the Nature Reserves Board before doing so. The Minister also announced in Parliament at the time of the delegation of this power that Parliament would be kept informed of these changes.[7]

The nature reserves provisions and newly created national parks provisions were subsequently enacted under the then *National Parks Act* ("NPA 1990") in 1990, and the nature reserves and national parks were also put under the management of NParks with the establishment of NParks under NPA 1990. NParks was a merger between the Nature Reserves Board and the Botanic Gardens Division of the Parks and Recreation Department and had responsibility over the nature reserves and the newly established 'national parks'. A further safeguard was added at the time in respect of the Minister's power to revoke the designation or alter the boundaries of national parks or nature reserves. Aside from consulting NParks (the successor of the Nature Reserves Board ("NRB")), the Minister was also formally required to present any order to amend the schedule to Parliament for information as soon as possible.

The cautiousness of Parliament in fettering the Minister's power to make an order to override Parliament's designation of nature reserves represent Parliament's seriousness of purpose in committing to set aside land for the specified purposes set out in the Act. The safeguards require the Minister to consult NParks before making an order. Presumably (the PTA is silent on this), NParks will then advise the Minister on the significance of such an order, not only on the area concerned, but also on the remaining areas still designated as nature reserve, in terms of the specified statutory purposes. If the Minister decides to go ahead to make his order, Parliament will have the chance to scrutinise it as the Minister must present the order for altering the boundaries of a nature reserve to Parliament as soon as possible after the order is made. Naturally, Members of Parliament would or should want to know why the Minister has made the order, what advice NParks has given the Minister, and the basis on which it gave the advice. Indeed, going by past practice, whenever the Minister sought Parliamentary resolution to modify the boundary of a nature reserve, he would also inform Parliament of his justification as well as the views of the NRB. Section 58 has none of these safeguards and was enacted to facilitate the routine maintenance of public parks by contractors, and should not be interpreted in a way that thwarts the safeguards that Parliament had carefully laid out in s 62 has enacted to protect national parks and nature reserves for specified statutory purposes.

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[6] Ordinance 14 of 1951.

[7] Singapore Parl Debates; Vol 50, Sitting No 21; Col 1760; [30 March 1988] (S Dhanabalan, Minister for National Development).

The NPA 1990 was subsequently repealed and re-enacted as the current *National Parks Act* ("NPA 1996") in 1996 to merge the Parks and Recreation Department with NParks. The nature reserves provisions were re-enacted in the NPA 1996.

When the PTA 1975 was repealed and the current PTA was re-enacted in 2005, the nature reserves provisions were removed from the NPA 1996 and included in the re-enacted PTA. As the then Minister explained, the purpose of that re-enactment was to streamline both Acts so that the regulatory functions of NParks came under the PTA while the corporate functions were retained in the NPA 1996 (subsequently renamed the *National Parks Board Act* ("NPBA")[8]). The Minister did not seek any extension of the power of exemption to cover the nature reserves provisions, and it does not appear to be Parliament's intention to give the Minister such either, not least without similar safeguards to those that apply for revoking the designation or modifying the boundaries of the nature reserves under s 62 of the PTA.

It is therefore submitted that in order for the LTA to proceed with a site investigation in the CCNR, the Minister could have (but did not) redrawn the boundary of the nature reserve to exclude the area of the site investigation using his power under s 62 of the PTA, and could not have granted a s 58 exemption to the LTA to do so.

Three years later, on 4 December 2019, the government announced that the stretch of the Cross Island MRT line in the vicinity of the CCNR would run "70 metres deep under the CCNR".[9] This raises another important legal question – how far under the surface does the designation and protection of a nature reserve extend to?

"Area" or "Land"?

While a nature reserve is an "area" designated in Part II of the Schedule, which arguably connotes that only surface areas are designated as nature reserves, Part II of the Schedule actually describes these areas as made up of "pieces of land". Looking at the legislative history of the statutory foundation of nature reserves, the then NRO designated "land" rather than "areas" as nature reserves; indeed, right up to 1990, s 3(2) of the NPA 1990 continued to provide that,

> The *lands* designated in Part II of the First Schedule are hereby declared as nature reserves.[10]

It was only when the PTA was enacted in 2005, and the nature reserve provision were re-enacted in this Act that the designation took its current form of describing nature reserves as "areas" designated in the Schedule while referring to "pieces of land" in the Schedule itself. No explanation for this change in terminology was given during the Minister's speech to move the enactment of the PTA, so presumably there was no intention to change the law in spite of the change of terminology.

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[8] Cap 198A, 2012 Rev Ed.

[9] Ministry of Transport, "Cross Island Line to Run 70 metres Under Central Catchment Nature Reserve", News Release (4 December 2019), <https://www.mot.gov.sg/news-centre/news/detail/cross-island-line-to-run-70-metres-under-central-catchment-nature-reserve>.

[10] Emphasis added.

What is "land"?

"Land" is not defined in the PTA, so we turn to its ordinary meaning as our legislators and courts would have understood it. At common law, the term "land" is sometimes explained by reference to the legal maxim, *cuius est solum eius est usque ad coelum et ad inferos* – he who owns land owns everything up to the sky and down to the centre of the earth.

The maxim was recently partly endorsed by the UK Supreme Court in *Bocardo SA v Star Energy UK Onshore Ltd & anor (Secretary of State for Energy and Climate Change intervening)*.[11] In that case, the first defendant had acquired a petroleum production licence, issued by the Secretary of State for Energy, to bore, search for and get oil in a naturally occurring reservoir of petroleum and natural gas beneath land in Surrey. The oil reservoir extended beneath the claimant's land, and the first defendant's predecessors had bored three pipelines between 800 and 2,800 feet (24 and 853 metres) beneath the claimant's land from neighbouring land to extract the oil and collect it from wellheads on neighbouring land. Property in the petroleum existing in its natural condition in strata in Great Britain was vested by legislation in the Crown. The trial judge also found that the drilling and installation caused no harm to the claimant's land and the claimant did not suffer any interference with its use or enjoyment of its land. Nevertheless, the Justices of the Supreme Court agreed with the High Court and Court of Appeal, and unanimously held that the first defendant was liable to the claimant for trespass to land. On the legal maxim, the Supreme Court held that it encapsulated a proposition of English law which had commanded general acceptance. Although it had ceased to apply to the use of airspace above a height which might interfere with the ordinary use of the land, the owner of the surface is still the owner of the strata beneath it unless there has been an alienation of it by a conveyance at common law or by statute to someone else. That said, the court also accepted that obviously, there would be some stopping point beyond which physical features such as pressure and temperature rendered the concept of ownership of the strata meaningless to argue about. The wells in the case involved depths that were far from being so deep as to reach this point, and the fact that the strata could be worked at those depths pointed to the opposite conclusion.[12]

As noted by the UK Supreme Court, the common law position on the subterranean ownership of land is subject to qualification by legislation. In this regard, a key statutory that bears closer examination is s 3B of the *State Lands Act* ("**SLA**").[13] The section provides that:

> 3B(1) To avoid doubt, it is declared that for all purposes, any land includes only so much of the subterranean space as is reasonably necessary for the use and enjoyment of the land, being —
>
> (a) such depth of subterranean space as is specified in the State title for that land; or
>
> (b) if no such depth is specified, subterranean space to -30.000 metres from the Singapore Height Datum.
>
> (2) To avoid doubt, nothing in this section derogates from —

[11] [2011] 1 AC 380.
[12] [2011] 1 AC 380, [26]-[27].
[13] Cap 314, 1996 Revised Edition.

(a) any reservation, by or under this Act or other written law, in favour of the State —

(i) to all mines and minerals, mineral oil, natural gas, stone, clay, sand, gravel, and other natural deposits; or

(ii) to enter upon any land and to search for and take any minerals, mineral oil, natural gas, stone, clay, sand, gravel, and other natural deposits which may be found in or below the land;

(b) any condition implied (by or under this Act or other written law) in any State title for any land with respect to opening of or working any mines or quarries, or digging for minerals, mineral oil, natural gas, stone, laterite, clay, sand, gravel, and other natural deposits; or

(c) any rule of law or written law relating to ownership of any column of space above any defined parcel of the surface of the earth.

(3) Any reference in any written law other than this Act to so much of the subterranean space below any land as is reasonably necessary for the use and enjoyment of the land is a reference to —

(a) such depth of subterranean space as is specified in the State title for that land; or

(b) if no such depth is specified, subterranean space to -30.000 metres from the Singapore Height Datum.

Section 3B(1) thus clarifies (for the avoidance of doubt) that for all purposes, any land includes only so much of the subterranean space as is reasonably necessary for the use and enjoyment of the land. It also implies that the subterranean space that is deeper than what is reasonably necessary for the use and enjoyment of the land continues to belong to the State.

On the face of it, this clarification is intended to apply to all purposes. However, a closer reading reveals that s 3B is only intended to apply to land which has been alienated or disposed of by State title. “State title” is defined in the Act as “any grant, any grant in fee simple or estate in perpetuity, or any State lease (of whatever tenure) whenever issued or granted by or on behalf of the Crown, the State or the East India Company”.

To read s 3B in its proper context, the long title of the SLA is “[a]n Act to “regulate the alienation and occupation of State lands”. Section 3 of the Act empowers the President to make rules for the disposal and temporary occupation of State lands; and s 3A deals with the modes of how State lands may be alienated or disposed of:

(a) as a parcel of the surface earth, so much of the subterranean space below and so much of the column of airspace above the surface as is reasonably necessary for the use and enjoyment thereof;

(b) as a parcel of airspace or subterranean space, whether or not held apart from the surface of the earth; or

(c) only down to such depth below the surface earth as the President may by order direct.

Thus, a contextual interpretation of s 3B also confirms it is intended to apply to clarify for State land that is alienated or disposed of by State title under s 3A, and not to State-owned land generally.

Support for this construction can further be found in the speech of the Senior Minister of State for Law who introduced the amendment of the SLA by inserting s 3B in 2015 when introducing the Second Reading of the *State Lands (Amendment) Bill*[14] that,

> To enable Singapore to put underground space to more productive use, it is necessary to update the legislative framework to clarify the ownership of underground space. Presently, the boundaries of land ownership are clearly marked out for surface land, but not so for underground space. This is unsurprising, because our existing laws were developed at a time when extensive underground development was not contemplated.
>
> For this reason, Mr Deputy Speaker, the State Lands (Amendment) Bill 2015 amends the State Lands Act to clarify the ownership of underground space. I will now cover the key provisions in the Bill.
>
> Under our current laws, a landowner owns the underground space to a depth that is reasonably necessary for the use and enjoyment of surface land. However, there is no clarity as to what such depth is. Clause 4 of the Bill clarifies that the amount of underground space which is reasonably necessary for the use and enjoyment of one's property, and which the landowner correspondingly owns, is to 30 metres under the Singapore Height Datum (SHD), unless otherwise specified in the terms of the State lease.
>
> Landowners will continue to have ample and sufficient underground space to build the basements for their developments. To provide a point of comparison, the Orchard ION building has four basement levels, which extend to only about 10 metres below the SHD. The deepest basement in Singapore, at Fusionopolis, is 15 metres below the SHD. The amendments clarify that reasonable use extends to 30 metres below the SHD.
>
> Landowners' existing use of their land will not be affected. Other than being able to continue building their basements to the necessary depths, the amendments ensure that the surface landowner will continue to have a right to sink his piles to the depths necessary to provide support for his surface development, including depths within the State-owned stratum. This is provided for in clause 4 of the Bill. A consequential amendment to the State Lands Encroachments Act will be made to clarify that a person who exercises such rights under the easement of support will not be considered to be encroaching on State land.[15]

The amendment of the SLA was thus aimed at clarifying the bottom limit of the underground space of land alienated or disposed by the State to other persons. As far as the State is concerned, its own ownership of land was not intended to be affected by this amendment.

What then does this mean for the land known as the CCNR that is designated as nature reserve and set aside for specified statutory purposes under the PTA? The land has not been alienated or disposed of and is not comprised in any State title, and although managed by NParks pursuant to the NPBA and subject to the trust-like provisions of the PTA,[16] is still State-owned land. There is nothing to suggest that when the Legislative Council dedicated, set aside, and reserved land as nature reserves in the NRO in 1951; or when Parliament set aside land as nature reserves in the PTA in 2005, they intended to protect anything short of the full extent of the land as owned by the State within the designated boundaries of these nature reserves. Thus, for the purpose of the PTA, "land" continues to refer to its common law

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[14] Bill 6 of 2015.

[15] Singapore Parl Debates; Vol 93, State Lands (Amendment) Bill; [13 March 2015] (Indranee Rajah, Senior Minister of State for Law).

[16] See Joseph Chun, "Reclaiming the Public Trust in Singapore", (2005) *Singapore Academy of Law Journal* 17: 717, at 740-743.

conception as this has not been modified by statutory provision. This means that the protection conferred on nature reserves under the PTA extends for the entire infinite depth of the State-owned land below the surface of the reserve, or at least up to the point where physical features such as pressure and temperature renders the concept of protection of nature reserves meaningless to argue about. The tunnels involve depths that are far from being so deep as to reach this point.

Properly understood and applied, the provisions in the PTA relating to the protection of our nature reserves are more formidable than they may appear on a cursory reading. But in the end, these provisions, while potent, merely represent the legislative resolve of past generations to safeguard the reserves from developmental pressures, be they granite quarries, golf courses, or highways. The government has decided to pass an MRT tunnel *through* (albeit below the surface of) the CCNR. It is now up to Parliament to decide whether the safeguards in the PTA should make way for the tunnel. The stewardship of our generation hangs in the balance.