

FOREST PRACTICES TRIBUNAL

PRIVATE TIMBER RESERVE - APPLICATION No. AND 850

BETWEEN

Meander Valley Council

Appellant

AND

Forest Practices Board

Respondent

This was the hearing of an appeal by Council against the approval by the Forest Practices Board of Private Timber Reserve Application No. AND 850.

The appeal was heard at Deloraine on the 12th of June, 1998.

Mr A Castley of Private Forests Tasmania and AJ Andrews appeared for AJ Andrews.

There was no appearance for the Forest Practices Board.

M Westaway appeared on behalf of the Meander Valley Council.

DECISION

Application AND 850 was made to the Forest Practices Board for approval of a Private Timber Reserve.

On the 18th of August 1997 the Forest Practices Board granted the application. Council appealed, upon the grounds that there would be a land use conflict between forestry activities to be carried on on the proposed reserve, and the surrounding residential uses. Further, that at the time of the appeal, the proposed reserve would be within the Residential Low Density zone under the Meander Valley Section 46 Planning Scheme 1995.

The Tribunal approved the Private Timber Reserve, dismissing the appeal.

Shortly prior to the Tribunal having made its decision, the Meander Valley Planning Scheme 1995 ("the Scheme") had come into effect.

The appellant applied to the Supreme Court of Tasmania and obtained an order quashing the Tribunal's decision, and ordering that the Tribunal rehear the appeal. In the course of the reasons for the decision given by the Supreme Court, Crawford J stated inter alia:

"It is my conclusion that the Forest Practices Tribunal had no jurisdiction to declare the land in question a private timber reserve, because at the time that declaration was made the use of the land for that purpose was prohibited by law. The Forest Practices Act 1995 Section 8(ss)(2)(d), required the Tribunal and also the Board for it, to refuse an application for a declaration of land as a private timber reserve if by virtue of the operation of any act the owner of the land was prohibited from establishing forest or growing or harvesting timber on the land, and in my view that prohibition existed both at the time the Board made its decision and at the time the Tribunal made its decision."

The Tribunal re-heard the appeal, as ordered, on the 12th of June 1998. At that hearing evidence was given on behalf of Council as follows.

1. The Andrews property ("the land"), UPI 0329, subject of Private Timber Reserve AND 850 is covered by the Meander Valley Planning Scheme 1995 ("the Scheme").
2. Zoning of the land is R2 Residential Low Density under the Scheme.
3. Forestry is prohibited in the R2 zone of the Scheme.
4. Forestry is interpreted in the Scheme as "establishing, managing or harvesting of trees".

No evidence was given on behalf of the Forest Practices Board.

Evidence was given on behalf of Mr Andrews that the land was suitable for forestry, that the use of the land for forestry was essential for his financial benefit, and that he had not been notified of the rezoning of his land to a zoning in which forestry was prohibited, when the Scheme was in the course of preparation. He had therefore been deprived of any opportunity to make submissions with respect to the form of the Scheme as it affected his land.

No evidence to the contrary of any of the above was given to the Tribunal, and the Tribunal accordingly finds consistently with that evidence.

The result of the above findings is that, as stated by Crawford J in the Supreme Court, the Tribunal has no jurisdiction to declare a private timber reserve on the land. The consequence is that the appeal must be allowed.

The Tribunal is sympathetic to Mr Andrew's situation with respect to the inability to make informed representations with respect to the zoning of his land; those matters are however beyond the jurisdiction of the Tribunal and can only be addressed in some other venue.

The order of the Tribunal is that the appeal is allowed, and in lieu of the decision of the Forest Practices Board, the declaration of Private Timber Reserve AND 850 is refused.

Dated this.....day of 1998

B Leaver
(Member)

KAM Pitt QC
Chairman

GR McCutchan
(Member)