

# FOREST PRACTICES TRIBUNAL

## PRIVATE TIMBER RESERVE - APPLICATION No. BAR/527

BETWEEN

Meander Valley Council

Appellants

AND

Forest Practices Board

Respondent

This was an appeal against the grant of application No 527 for a private timber reserve at Bogan Gap Road, Golden Valley.

The appeal was heard at Launceston on the 7th of April 1997.

Mr R Graham and Mr K Booth appeared on behalf of the appellant.

Mr G Wilkinson appeared on behalf of the Forest Practices Board.

Mr G Campbell appeared on behalf of Private Forests Tasmania and KA and RM Barker.

Mr K Ashbarry and Mr R Stagg appeared on behalf of the Forest Protection Society Ltd.

## DECISION

Application No 527 for a private timber reserve on the subject land, was made by KA & RM Barker. The Meander Valley Council objected to the proposed reserve, pursuant to Section 7 of the Forest Practices Act 1985.

The Forest Practices Board granted the application for the private timber reserve. The Council appealed on the basis that the reserve would be contrary to the public interest because it would “undermine” the Meander Valley Planning Scheme 1995. Further, the appeal was on the grounds that erosion and stream siltation may occur, and the access road was not suitable for heavy traffic. The site of the proposed reserve was said to form an important landscape element, being on an exposed ridge.

It was contended for the appellant that pursuant to Section 8(2)(e) of the Forest Practices Act 1985, the declaration of the land for a private timber reserve should be refused because it would not be in the public interest to grant the application.

The evidence was that “forestry” was a discretionary use in the Rural zone under the Meander Valley Planning Scheme 1995, and that the granting of a development approval for any activity, including forestry, required that the above matters of public interest be considered. The matters of potential public interest particularly relevant to the proposed private timber reserve were said to be its relationship to the designated road hierarchy in the area; its effect on significant scenic areas and water catchments; the effect on soil instability and erosion; the possibility of adverse effect on the future use adjoining land; and the effect on the landscape. It was contended that the appropriate sequence of consideration was that a timber harvesting plan addressing the relevant matters should be submitted to Council for approval under the Planning Scheme; and that only after that, should a private timber reserve be granted. It was contended that the public rights of objection and appeal in respect of a discretionary use, under the Planning Scheme, were important aspects of the public interest.

The Forest Practices Act 1985 by Section 8 provides for the grant or refusal of an application for the declaration of land as a private timber reserve. Section 8(2) provides that an application for declaration of land for a private timber reserve shall be refused if the (Forest Practices) Board is satisfied that:

- “(a) The application has not been made in good faith and honesty;
- (b) The land is not suitable for declaration as a private timber reserve;
- (c) A person who has a legal or equitable interest in the land, or in timber on the land, would be disadvantaged if the application was granted;
- (d) By virtue of the operation of any act, the owner of the land is prohibited from establishing forests, or growing or harvesting timber, on the land;
- (e) It would not be in the public interest to grant the application.”

There is no provision in the Forest Practices Act 1985 for application for planning approval under the Land Use Planning and Approvals Act 1993 to necessarily precede an application for a private timber reserve. Nor did the criteria referred to in Section 8(2) above of the Forest

Practices Act 1985 refer specifically to the Land Use Planning and Approvals Act 1993 as a preliminary matter to be satisfied before a private timber reserve is considered.

The Land Use Planning and Approvals Act 1993, which post-dated the Forest Practices Act 1985, provides by Section 20(7) that:

“Nothing in any planning scheme or special planning order affects -

- (a) the management of land declared as a private timber reserve under the Forest Practices Act 1985;”

What is meant by the term “management of land” is not defined in the Land Use Planning and Approvals Act 1993, but it may be noted that it is a different term to the concepts of use and development normally referred to in that Act.

It is not necessary in this appeal to determine whether the provisions of Section 20(7) of the Land Use Planning and Approvals Act 1993 effectively removed any matters relevant to forestry from consideration under that Act. Assuming in favour of Council’s argument that this was the effect, the question then remains whether any of the criteria specified in Section 8(2) of the Forest Practices Act 1985 apply. The only basis contended for by Council was that granting of the application would not be in the public interest, for the above reasons. The suggestions on behalf of the Council that at this stage, prior to the grant of the private timber reserve, matters such as compatibility with the road hierarchy, effects on scenic areas or water catchments, soil instability or erosion, adverse effect on future use of adjoining land, and adverse effect on landscape, were not the subject of any evidence sufficient to persuade the Tribunal they could not be adequately assessed at the time of application for a timber harvesting plan. The Tribunal is therefore not satisfied, in terms of Section 8(2)(e) of the Forest Practices Act 1985, that “it would not be in the public interest to grant the application.”

It was contended for the Council that to grant a private timber reserve would commit the land to forestry activities in perpetuity. The Forest Practices Act 1985 by Sections 13 and 14 applies to revocation of a private timber reserve at the instigation of the Forest Practices Board or of the owner of the reserve, respectively. If the land is not being used for the designated purpose, or if a higher or better use presents itself to the owner, then such an application may be made.

For the above reasons, the Tribunal sees no basis for setting aside the Forest Practices Board’s determination. The appeal is dismissed and the Board’s decision upheld.

Dated this.....day of ..... 1997

**BB Walker**  
(Member)

**KAM Pitt QC**  
Chairman

**GR McCutcheon**  
(Member)