

FOREST PRACTICES TRIBUNAL

PRIVATE TIMBER RESERVE - PRIVATE TIMBER RESERVE APPLICATIONS NO. TAY 945a, 945b, 946a AND 946b

BETWEEN

Glenorchy City Council

Appellant

AND

Forest Practices Board

Respondent

This was the hearing of an appeal against the declaration by the Forest Practices Board of Private Timber Reserve Applications No. 945a, 945b, 946a and 946b.

The appeal was heard at Hobart on the 29th of June, 1998.

A Taylor appeared as the applicant.

P Taylor appeared on behalf of Private Forests Tasmania.

G Wilkinson appeared on behalf of the Forest Practices Board.

G Calcagno appeared on behalf of the Glenorchy City Council.

DECISION

The Forest Practices Board declared a Private Timber Reserve in respect of the land identified in Applications TAY 945a, 945b, 946a and 946b. The grounds of the appeal related to perceived adverse effects of timber harvesting.

Evidence was given to the Tribunal, which was accepted by all parties. The Tribunal finds according to that evidence, which was as follows:

The land the subject of each application for a Private Timber Reserve is at Collinsvale. The land lies partly within the area controlled by one planning scheme, and partly with the area controlled by another. Under each of the planning schemes a permit is required for carrying on forestry, which includes the harvesting of trees. No permit has been applied for or granted in respect of forestry, for any of the land.

Under Section 51 of the Land Use Planning and Approvals Act 1993 sub section (1) provides:

- “(1) A person must not commence any use or development which, under the provisions of a planning scheme or special planning order, requires a permit unless the planning authority which administers the scheme or order has granted a permit in respect of that use or development and the permit is in effect.”

Accordingly, as no permit has been issued in respect of forestry or harvesting timber on the land or any of it, those activities are prohibited under the above section.

Section 8 of the Forest Practices Act 1995 relevantly provides:

- “8 ...
- (2) An application for a declaration of land as a private timber reserve shall be refused if the Board is satisfied that -
- ...
- (d) by virtue of the operation of any Act, the owner of the land is prohibited from (PTR) establishing forests, or growing or harvesting timber, on the land; or
- (e) it would not be in the public interest to grant the application.
- ...”

Consistently with the decision of the Supreme Court of Tasmania dated the 16th of March 1998, in proceedings No. M1 of 1998, the Tribunal therefore has no jurisdiction to declare a Private Timber Reserve on the land the subject of the applications.

The appeal is therefore allowed, and the declaration of a Private Timber Reserve appealed against is set aside and replaced with a refusal.

The attention of the parties is drawn to the provisions of Section 16 of the Forest Practices Act 1985, with respect to compensation.

Dated this.....day of 1997

B Kingston
(Member)

KAM Pitt QC
Chairman

B Walker
(Member)