

CITATION: *Key v Harrison* [2016] QCAT 91

PARTIES: Brendan Key
Renee Key
(Applicants)
v
Mark Harrison
Mandy Harrison
(Respondents)

APPLICATION NUMBER: NDR178-15

MATTER TYPE: Other civil dispute matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Brown**

DELIVERED ON: 12 April 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application is dismissed.**

CATCHWORDS: TREE DISPUTE – whether trees situated on rural land – whether zoning of land on which trees situated the nearest equivalent of rural land under the Queensland planning provisions - whether zoning of land on which trees situated the nearest equivalent of rural residential land under the Queensland planning provisions

Integrated Planning Act 1997 (Qld) (repealed)
Land Valuation Act 2010 (Qld), s 9, s 10
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld), s 42, s 46, s 48, s 52, s 62, Schedule
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 47
Sustainable Planning Act 2009 (Qld), s 10, s 54, s 778

Easterbrook v Janalan Pty Ltd [2015] QCAT 81

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

REASONS FOR DECISION

- [1] Mr and Mrs Key live next door to Mr and Mrs Harrison. They say that their land is affected by three trees situated on the Harrison's property ('the trees'). Mr and Mrs Key have applied to the Tribunal for orders in relation to the trees.

The Neighbourhood Disputes (Dividing Fences and Trees Act) 2011 (Qld) ('the Act')

- [2] A neighbour, whose land is affected by a tree, may apply to the Tribunal for orders in relation to the tree.¹ The Act sets out the circumstances in which land is affected by a tree.² The Act also sets out who is a tree keeper.³ A tree is keeper has certain responsibilities for trees on their land.⁴
- [3] Trees in relation to which the Act applies are identified.⁵ The Act also identifies trees to which the Act does not apply.⁶ The Act does not apply to trees situated on rural land.⁷ Rural land means rural land under the *Land Valuation Act 2010* ('LVA').⁸
- [4] Under the LVA, land is rural land if: under section 10, it is zoned rural land and it has not, under section 11, ceased to be zoned rural land; or under section 13 or 14, it has been declared to be rural land.⁹
- [5] An area of land is zoned rural land if more than half the land is zoned as rural land under a planning scheme made under the Planning Act (a Planning Act scheme).¹⁰
- [6] An area of land is also zoned rural land if, under a continued IPA planning scheme, more than half the land is: zoned as rural land; or is in a zone (whatever called) that is the nearest equivalent to rural land under the Queensland planning provisions.¹¹
- [7] Land is not rural if it is zoned under a Planning Act scheme as rural-residential.¹² Also, land is not rural land if it is in a zone (whatever called)

1 The Act, s 62.

2 Ibid, s 46.

3 Ibid, s 48.

4 Ibid, s 52.

5 Ibid, s 42(1).

6 Ibid, s 42(3), s 42(4) and s 42(5).

7 Ibid, s 42(3)(a).

8 Ibid, Schedule - Dictionary

9 LVA, s 9.

10 Ibid, s 10(1).

11 Ibid, s 10(2).

12 Ibid, s 10(3).

under a continued IPA planning scheme that is the nearest equivalent to rural–residential land under the Queensland planning provisions.¹³

- [8] A continued IPA planning scheme means a planning scheme under the repealed *Integrated Planning Act 1997* and continued in force under the *Sustainable Planning Act 2009*. Queensland planning provisions means the standard planning scheme provisions under s 54 of the *Sustainable Planning Act 2009* (Qld).

What do the parties say?

- [9] Mr and Mrs Harrison say that the Act does not apply to the trees on their land as their property is zoned rural non-urban area RN1 under the Redlands Planning Scheme. Mr and Mrs Key have not made any submissions to the Tribunal about the zoning of the land on which the trees are situated.

Discussion

- [10] The Redlands Planning Scheme is a continued IPA planning scheme, the original scheme having been introduced prior to the enactment of the *Sustainable Planning Act 2009* (Qld).¹⁴
- [11] The land on which the trees are situated is not zoned rural. Rather, it is zoned rural non-urban. Is this zoning the nearest equivalent to rural land?¹⁵
- [12] As this Tribunal has observed, it is not for the tribunal to determine whether the zone has a rural character, rather it is for the tribunal to determine whether it is the nearest equivalent to rural land in the particular planning scheme.¹⁶
- [13] There is no rural zone within the Redlands Planning Scheme. The zones under the scheme which may be classified as ‘*the nearest equivalent*’ to rural land are:
- Rural non-urban zone
 - Environmental protection zone
 - Park residential zone

Rural non-urban zone

- [14] The Redlands Planning Scheme rural non-urban zoning refers to the following outcomes:
- a. promote productive rural activities that rely on the use of the land including traditional and emerging rural activities;

¹³ Ibid, s 10(4).

¹⁴ *Sustainable Planning Act 2009*, s 778.

¹⁵ Ibid, s 10(2)(b).

¹⁶ *Easterbrook v Janalan Pty Ltd* [2015] QCAT 81, at [4]

- b. provide opportunity for aligned uses to co-locate with traditional and emerging rural activities;
- c. encourage enjoyment of the rural environment including recreational and tourism uses that contribute to the public and private landscape network of the planning scheme area;
- d. recognise identified extractive resources;
- e. generate employment and economic activities from tourism opportunities;
- f. are protected from the encroachment of incompatible uses.

[15] The Queensland planning provisions set out the overall outcomes for land in a rural zone:

- The establishment of a wide range of rural activities is facilitated, including cropping, intensive horticulture, intensive animal industries, animal husbandry and animal keeping and other compatible primary production uses.
- Areas for broadscale primary production are conserved and lot fragmentation is avoided where possible.
- Uses that have impacts such as noise or odour, may be appropriate where land use conflicts can be minimised.
- Development is reflective of, and responsive to, the environmental constraints of the land.
- Development embraces sustainable land management practices and Queensland Planning Provisions version 3.1 - Part 6 - 53 - contributes to the amenity and landscape of the area.
- Residential and other development is appropriate only where directly associated with the rural nature of the zone.
- The establishment of outdoor recreation and small-scale tourism facilities in suitable locations is facilitated in a manner that does not significantly compromise the rural productivity of the land.
- Natural features such as creeks, gullies, waterways and wetlands are retained, managed and enhanced where possible.
- The viability of existing and future rural uses and activities is protected from the intrusion of incompatible uses.

Environmental protection zone

[16] Under the Redlands Planning Scheme the identified outcomes for the environmental protection zone include:

- a. provide for a lifestyle choice that protects, maintains and positively contributes to environmental values;
- b. are based on appreciation of the natural environment where for the purpose of education or scientific study;
- c. encourage enjoyment of the natural environment including recreational and tourism uses that contribute to the public and private landscape network;
- d. provide opportunities for working from home in a bushland setting;

- e. are low-key and have a very low impact on environmental values;
- f. cover only a small proportion of the land.

[17] Under the Queensland planning provisions, environmental management and conservations zones should achieve outcomes including low impact, small-scale rural living opportunities and rural activities are facilitated where compatible with maintaining environmental values.

Park residential zone

[18] The park residential zone outcomes identified in the Redlands Planning Scheme include:

- provide for a semi-rural lifestyle in a bushland setting;
- provide a transition between urban, rural and environmental areas of the City;
- are compatible with the maintenance of a high standard of semi-rural bushland amenity;
- The density of uses within the zone maintains a semi-rural, bushland setting characterised by individual lots greater than 6000m².
- contributing to a visual transition between urban and rural or bushland areas;
- being larger lots capable of retaining native plants;
- integrating with the natural landscape and bushland setting;

[19] Under the Queensland planning provisions, the purpose of the rural residential zone code is to provide for residential development on large lots where local government infrastructure and services may not be provided on the basis that the intensity of development is generally dispersed. The overall outcomes sought for the zone are as follows:

- The development of large residential lots with limited provision of infrastructure and services is facilitated.
- Areas with limited infrastructure and services may not be expanded.
- Development preserves the environmental and topographical features of the land by integrating an appropriate scale of residential activities with these features.
- Low impact activities such as hobby farms, small-scale eco-tourism and outdoor recreation are encouraged where the impacts of such uses can be minimised.
- Development is designed to maximise energy efficiency, effluent disposal and water conservation.
- Natural features such as creeks, gullies, waterways, wetlands and vegetation and bushland are retained and enhanced. Any unavoidable impacts are minimised through locational, design, operational and management approaches.

- Non-residential uses may be appropriate where such uses provide for the day-to-day needs of the area or have a direct relationship to the land.

Which zone in the Redlands Planning scheme is the nearest equivalent to rural land under the Queensland planning provisions?

- [20] The Redlands Planning Scheme rural non-urban zoning refers to rural activities that rely on the use of the land including traditional and emerging rural activities; that provide the opportunity for aligned uses to co-locate with traditional and emerging rural activities; and encourage enjoyment of the rural environment including recreational and tourism uses that contribute to the public and private landscape network of the planning scheme area. This is consistent with the purpose of, and outcomes for, rural land under the Queensland planning provisions which refers to land on which the establishment of a wide range of rural activities is facilitated, including cropping, intensive horticulture, intensive animal industries, animal husbandry and animal keeping and other compatible primary production uses.
- [21] The nearest equivalent in the Redlands Planning Scheme to rural land under the Queensland planning provisions is therefore land in the rural non-urban zone.

Which zone in the Redlands Planning scheme is the nearest equivalent to rural-residential land under the Queensland planning provisions?

- [22] Having determined that the land on which the trees are situated is rural land for the purposes of s 10(2) LVA, it is necessary to consider s 10(3) LVA. Rural residential land, or the nearest equivalent under the Queensland planning provisions, is not zoned as rural land.
- [23] Is land in the Redlands Planning Scheme rural non-urban zone the nearest equivalent to rural-residential land under the Queensland planning provisions? If it is, then the land on which the trees are situated is not rural land.¹⁷
- [24] The park residential zone in the Redlands planning scheme is the nearest equivalent of rural-residential land under the Queensland planning provisions. The outcomes under the planning provisions emphasise the development of large residential lots, limited provision of infrastructure and services, the preservation of the environmental and topographical features of the land by integrating an appropriate scale of residential activities with these features and the encouragement of low impact activities such as hobby farms, small-scale eco-tourism and outdoor recreation. This is the nearest equivalent to the park residential zone in the Redlands Planning Scheme where the outcomes include the provision of a semi-rural lifestyle in a bushland setting, and a semi-rural, bushland setting characterised by individual lots greater than 6000m².

¹⁷ LVA, s 10(3)

- [25] Accordingly, the land on which the trees are situated is not land in a zone under the Redlands Planning Scheme that is the nearest equivalent to rural-residential land under the Queensland planning provisions and s 10(3) LVA does not apply.

Conclusion

- [26] The land on which the trees are situated is rural land.¹⁸ The Act does not apply to the trees.¹⁹
- [27] In circumstances where the Tribunal considers a proceeding is misconceived²⁰ or lacking in substance²¹ the Tribunal may order the proceeding to be dismissed.²²
- [28] The Act does not apply to the trees on Mr and Mrs Harrison's land. The application by Mr and Mrs Key is therefore misconceived and without substance. The application for a tree dispute is dismissed.

¹⁸ LVA, s 10.

¹⁹ Act, s 42(3)(a).

²⁰ QCAT Act, s 47(1)(a).

²¹ QCAT Act, s 47(1)(b).

²² QCAT Act, s47(2)(a).