COVERDALE v WEST COAST COUNCIL (H10/2015)

Court appealed from:	Full Court of the Supreme Court of Tasmania [2015] TASFC 1
Date of judgment:	17 February 2015
Date special leave granted:	11 September 2015

In April 2014, the respondent Council sought a declaration that, on a proper construction of the *Valuation of Land Act* 2001(Tas) ("the Valuation Act"), the *Local Government Act* 1993 (Tas) ("the LG Act") and/or the *Marine Farming Planning Act* 1995 (Tas) ("the Marine Act"), the Valuer-General of the State of Tasmania ("the appellant") was obliged to keep and maintain valuation rolls and to provide to the respondent, as the relevant rating authority, valuation lists which included particulars of the ownership and values of marine farm leases granted in respect of areas in Macquarie Harbour. The leases granted to the lessee a particular area which included all waters and the seabed in that area. Prior to 30 July 2013, the appellant had included the leases in the valuation lists which he prepared. The respondent sought a declaration which would result in the practice prior to 30 July 2013 being re-instated.

The respondent's application was dismissed by the trial judge (Blow CJ). In its appeal to the Full Court (Tennent and Estcourt JJ, Pearce J dissenting), the respondent contended that the areas covered by the marine farming leases amounted to "rateable land" for the purposes of the LG Act. The appellant contended that rates were payable only in respect of land, not water; that the areas in question were not "land" for the purpose of the relevant legislation; and that he was not obliged to value them for rating purposes.

The majority of the Court noted that s 87(1) of the LG Act provided that all land was rateable, subject to certain specified exceptions, none of which applied to the marine farm leases. Their Honours thought it was clear from the statutory provisions that the respondent was obliged by virtue of s 11(1) of the Valuation Act to value Crown lands that are "liable" to be rated in accordance with Pt 9 of the LG Act, and that the areas of the leases met that description. The definition of the word "land" in the *Crown Lands Act* 1976 (Tas) was an inclusive definition. A plain reading of that definition could not be other than a description of the seabed, and the waters above it, of Macquarie Harbour. This interpretation of the definition of "land" in the *Crown Lands Act* must lead to a conclusion that the seabed and the waters of Macquarie Harbour were Crown land. It therefore followed that they must be "Crown lands that are liable to be rated" because they were not exempt under s 87(1) of the LG Act.

Pearce J (dissenting) held that the answer to whether the subject of the marine leases was "land" was not to be determined by the interpretation provisions, as those provisions were concerned with interests in land. The answer was in the ordinary and ordinary legal meaning of the word, in the context in which it appeared in the Valuation Act and the LG Act. In ordinary usage the land was to be distinguished from the sea. There was nothing in the Valuation Act or in the

LG Act which gave any reason to conclude that references to land in either Act included the sea or the seabed below the low water mark.

The respondent has filed a submitting appearance. However the Attorney-General for the State of Tasmania will appear as contradictor.

The grounds of appeal include:

- The Full Court erred in law by determining that Part 9, s87 of the *Local Government Act* 1993 (Tas) applied so as to render the seabed and waters of Macquarie Harbour "land" liable to be rated.

- The Full Court erred in law by construing the word "lands" in s11 of the *Valuation of Land Act* 2001 (Tas) and the word "land" in s87 of the *Local Government Act* 1993 (Tas) so as to include the seabed and waters above the seabed, when on the proper construction of those words, seabed and the waters above it are necessarily excluded.