

BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 158

IN THE MATTER of an appeal pursuant to Clause 14 of the
First Schedule of the Resource
Management Act 1991

BETWEEN ORAPIU LODGE LIMITED
(ENV-2009-AKL-000345)

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

Court: Environment Judge L J Newhook sitting alone pursuant to Section 279 of the
Act (decision made on the papers)

Counsel: Mr S M McAuley for respondent (applicant for strike-out)

**DECISION OF THE ENVIRONMENT COURT STRIKING OUT PART OF
APPEAL**

- A. Ground (g) of the notice of appeal is struck-out.**
- B. Costs reserved.**

REASONS

[1] Orapiu Lodge Limited brought an appeal against certain decisions of the Auckland City Council (ACC) in respect of the proposed Auckland City District Plan – Hauraki Gulf Islands Section.



[2] An application to strike out has been brought against paragraph 6(g) in the notice of appeal, where the appellant seeks, as “alternative relief”, the re-classification of its land from Commercial 4 and Landform 5 to Island Residential 2 (Bush Residential).

[3] The basis for the application to strike-out is that the appellant did not make a submission to the council seeking that relief.

[4] Submissions were lodged by counsel for ACC detailing the legal basis upon which appeal relief may be struck out if it had not been the subject of a submission to the council. Amongst other cases, the decision of the Environment Court in *Re Vivid Holdings Limited* is discussed.¹

[5] The strike-out application is supported by an affidavit of a council planner Ms D H Kissick to the above effect.

[6] On 4 March 2010, at my direction, the registrar advised parties in the case that any party sought to be struck out and any other party involved in the issue, should file and serve material (submissions or affidavits) by 22 March 2010.

[7] No party has responded.

[8] The sworn evidence of the council planner as to lack of jurisdiction for bringing the appeal in paragraph 6(g), is uncontroverted.

[9] I accordingly order that the prayer for relief in paragraph (6g) of the appeal be struck out, along with supporting sub-paragraphs elsewhere in the appeal.

[10] Costs are reserved.

DATED at Auckland this 12th day of May 2010



L J Newhook

Environment Judge

