BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 166

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

BETWEEN RENAISSANCE AOTEAROA FOUNDATION
(ENV-2009-AKL-000399)

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

Court: Environment Judge L J Newhook sitting alone pursuant to Section 279 of the Act

Representation: C Lewenz for appellant
S M McAuley for respondent

DECISION OF THE ENVIRONMENT COURT STRIKING OUT PART OF APPEAL

A. **Paragraphs 9, 10, 13, 14 and 15 of the Notice of Appeal are struck out** (with some reluctance from the substantive point of view).

B. **Costs reserved.**

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

REASONS

[1] The Auckland City Council as respondent has applied to strike out five out of ten prayers for relief in this appeal.

[2] The appeal concerns controls in the Hauraki Gulf Islands Proposed Plan relating to *"significant ridgelines"*.

[3] In essence, the complaint of the Council is that the appellant did not include the five matters in the submission it originally lodged to the review, and that seems substantially correct.

[4] One of the Council's initial allegations however, that the original submission had been confined to just one property on Waiheke Island, proved incorrect, as ultimately acknowledged by counsel for ACC in a reply submission recently filed.

[5] Nevertheless, employing the language of the Environment Court in the regularly cited decision ***Re Vivid Holdings Limited***[1], the appellant did not make a submission about the particular provisions included or omitted from the proposed plan.

[6] I have closely examined the original submission. It confined the relief sought to requesting amendments to the proposed Plan to the effect that pre-existing subdivision consent conditions about buildings should not be overridden by deemed significant ridgelines as mapped on the plan.

[7] The appellant now makes five new requests, being directions from the Court to the Council to accurately map significant ridgelines, delete inaccurate ones, initiate a further Plan Change, and take certain other detailed steps in similar vein.

[8] The answer to the present debate is actually supplied by a sentence in the 7th paragraph in the original submission:

> The easiest way to address this is not to investigate every potential error in ridgelines, but simply to give precedence to the subdivision rules.

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[1] [1999] NZRMA 467

[9] The Council's application on this occasion might have been somewhat simplified if counsel had identified and made reference to that passage in the submission.

[10] The Council has in effect conceded that the request for relief in paragraphs 11, 12, 16, 17 and 18, have the same flavour as the original submission. The Council does not of course concede at this stage that substantive relief should be granted. That is for the future.

[11] In case it assists parties, I am driven to observe that in the course of hearing appeals concerning resource consent proposals on Waiheke Island on recent years, inaccurate mapping of *"significant ridgelines"* has created difficulties; for instance in some cases they have been mapped in entirely the wrong place. It may be that they have been mapped by a desktop exercise rather than accurate survey. The controls surrounding them are quite stringent, and compliance (or in the alternative applications for consent) can create issues of cost and delay not only for landowners, but presumably also for the Council itself. The issue has waxed and waned through various Planning instruments over more than a decade, and one might simply hope that the Council see fit to regularise matters. This *obiter* statement cannot of course be taken as a direction, or even as being definitive. It is simply a statement of recognition of the existence of a district plan mapping problem on Waiheke Island.

[12] Costs are reserved, but I doubt that the Council should be applying for same.

DATED at Auckland this 12th day of May 2010

L J Newhook
Environment Judge