Law
KG
342
N5

Decision No. A 145 /2004

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references under clause 14 of the First Schedule to the Act

BETWEEN **WHANGAMATA GOLF CLUB**
(RMA 46/97)

AND **WHANGAMATA MAORI COMMITTEE**
(RMA 60/97)

AND **THE HAURAKI MAORI TRUST BOARD**
(RMA 62/97)

AND **WHANGAMATA MARINA SOCIETY INC**
(RMA 68/97)

AND **TE KUPENGA O NGATI HAKO INC**
(RMA 74/97)

AND **MINISTER OF CONSERVATION**
(RMA 93/97)

Appellants

AND **THE WAIKATO REGIONAL COUNCIL**

Respondent

AND

IN THE MATTER of three further appeals under section 120 of the Act

BETWEEN **THE HAURAKI MAORI TRUST BOARD**
(RMA 981/98)

AND **WHANGAMATA MARINA SOCIETY INC**
(RMA 982/98)



UNIVERSITY OF OTAGO
LAW LIBRARY

AND **WHANGAMATA MAORI COMMITTEE**

(RMA 1001/98)

Appellants

AND **THE THAMES-COROMANDEL DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge R J Bollard (presiding)
Environment Commissioner A H Hackett
Environment Commissioner I G McIntyre

HEARING at Whangamata on 19, 22, 23, 24, 25, 26 November 2004

APPEARANCES

Mr A S Menzies and Ms J Forret for Whangamata Marina Society Inc
Ms P Kapua and Ms K Taurau for Whangamata Maori Committee, Te Kupenga O Ngati Hako Inc, Ngati Puu and Hauraki Maori Trust Board
Mr S Berry and Ms J Vella for Thames Coromandel District Council
Mr K Parker for Waikato Regional Council

INTERLOCUTORY RULING ON FURTHER CONSENT ISSUE DELIVERED ORALLY ON 26 NOVEMBER 2004

[1] Our ruling on the question whether a further consent is required in respect of intended truck movements to remove excess material from the proposed marina site is as follows:

[2] The applicant society, in order to construct the proposed marina, wishes to excavate 167,000 m^3, of which 115,500 m^3 would be retained on the landward portion of the proposal, the balance of 51,500 m^3 to be removed off-site. In the original application, the proposal was to excavate 167,000 m^3 plus another 5000 m^3, the difference being by way of a contingency. The applicant has now indicated it limits itself to 167,000 m^3, and will accommodate any contingency factor within that limit.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

[3] Ms Kapua for the appellants contends that because the original application spoke of 19,000 m^3 only to be removed off-site, (the intention originally being for that material to be accommodated at the Whangamata Golf Club), the applicant now needs to apply for a consent because of the need to remove 51,500 m^3 under the proposal as refined before this Court.

[4] The original 19,000 m^3 aspect was withdrawn, but the applicant has since, in association with a firm called Watts Quarry, arranged for a consent for 20,000 m^3 to be removed off-site. The public notification of that application spoke specifically of the material being from the marina project.

[5] Mr Menzies for the Society contends that because the original application, as notified, spoke of 19,000 m^3 going to the golf club land in the Whangamata area, and because the Watts Quarry application again spoke of the marina proposal for the disposal of the 20,000 m^3, the public has effectively had notified to it the fact that 39,000 m^3 will be trucked or otherwise taken by vehicles from the marina site to other destinations in the Whangamata area.

[6] As noted, the 19,000 m^3 disposal option was abandoned, but the Society has since, in negotiation with various private owners in the surrounding district, arranged for the balance of the material that it needs to be disposed of to be received by the various people concerned within limits allowable under the district council's planning provisions - that is to say, to the allowable limit of 2500 m^3 per recipient.

[7] Ms Kapua contends that, be that as it may, the persons in the vicinity of the marina site have not had notice that as much as 51,500 m^3 is to be disposed of. Mr Menzies contends that, effectively, the public has had notice about 39,000 m^3 to be disposed of, and that the 12,500 m^3 extra will not involve traffic effects of any significance, bearing in mind that the movements to dispose of that volume will be spread over the construction period of 18 months or so

[8] Counsel on each side have referred the Court to relevant authorities where the principles to be distilled are plain enough. Basically, the question is whether somebody

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

might have lodged a submission had they known that the amount to be disposed of is as now intended, as opposed to what has been notified to the public in fact. Or to put it another way, is it plausible that any person who did not lodge a submission would have done so had the volume to be disposed of been notified as 51,500 m^3?

[9] It seems at first sight that the argument by Mr Menzies for the Society is persuasive. But that assumes that the public would not have realised that the original 19,000 m^3 proposal for disposal to the golf club had been abandoned. For a community like Whangamata we do not think we would be justified in drawing that conclusion. To the contrary, we think it is likely to be quite well known that the 19,000 m^3 proposal to dispose of that amount on the golf club land is no longer being pursued at this stage.

[10] With the Council having seen fit to publicly notify the Watt's Quarry matter involving 20,000 m^3, we consider that a further consent is required for the disposal of the difference between that figure and the 51,500 m^3. We therefore have no option but to adjourn these proceedings to enable that consent to be applied for, and in the event of any appeal from the Council's decision for the appeal to be heard in conjunction with remaining matters to be dealt with in the current proceedings.

Note: The foregoing record of decision has been corrected in minor respects in relation to the transcript of proceedings.

DATED at **AUCKLAND** this 30th day of November 2004.

For the Court:

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

R J Bollard
Environment Judge