IN THE COURT OF APPEAL OF NEW ZEALAND

CA137/2017
[2017] NZCA 200

BETWEEN	EQUUS TRUST Applicant
AND	CHRISTCHURCH CITY COUNCIL Respondent
AND	CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED Associated Respondent

Hearing:	15 May 2017
Court:	Kós P, Asher and Brown JJ
Counsel:	P A Steven QC for Applicant J G A Winchester for Respondent J M Appleyard for Christchurch International Airport Limited
Judgment:	23 May 2017 at 3.30 pm

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondents costs for a standard application on a Band A basis together with usual disbursements.

REASONS OF THE COURT

(Given by Kós P)

[1] Following the Canterbury earthquakes, the Minister for Canterbury Earthquake Recovery promulgated a Land Use Recovery Plan. Among other things the Plan identified Greenfield Priority Areas to ensure there was sufficient land for

industrial use. Fourteen hectares of land owned by the applicant, the Equus Trust, near the Christchurch International Airport was included in a map identifying Greenfield Priority Areas. Policy 6.3.1 of the Regional Policy Statement required effect be given to the urban form identified in the map. Another policy enabled the development of existing urban areas and Greenfield Priority Areas where it supported the recovery of greater Christchurch.

[2] The Christchurch City Council gave notification of a Christchurch Replacement District Plan. The land owned by the applicant was zoned as rural urban fringe zoning, which does not allow for industrial use. A hearing on the replacement District Plan was convened by a Hearings Panel chaired by Judge Hassan. The applicant made submissions to have its land rezoned industrial on the basis that was required by the Recovery Plan and the Regional Policy Statement (RPS).

[3] The Panel rejected the applicant's submission holding that the land identified in the area need not be zoned as industrial. In particular, it held that the Regional Policy Statement did not direct all such land be zoned industrial, but rather allowed choice in determining timing and sequencing of new developments.

[4] The decision of the Panel was upheld in the High Court by Cull J.[1]

[5] Equus Trust now applies for leave to appeal to this Court under ss 308(1) and 299 of the Resource Management Act 1991 on the following proposed questions of law:

(a) Do the objectives and policies of Chapter 6 of the Canterbury RPS impose a mandatory direction to rezone land identified on map A as a Greenfield Priority Area?

(b) Is it lawful for an RPS to contain provisions (including policies and statements of methods) that are directive to a territorial authority as to

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1 *Equus Trust v Christchurch City Council* [2017] NZHC 224.

the zoning of land to be included within a district plan, including as to timing?

(c) Was it lawful for the Panel to decide that retaining the existing rural zoning would "give effect to" the Canterbury RPS as required by s 75(3)(c) of the Resource Management Act?

(d) Whether, in terms of s 23 of the Canterbury Earthquake Recovery Act 2011, the Panel's decision is inconsistent with the Land Use Recovery Plan?

[6] These questions all derived from the first question of law put to the High Court which was subtly different to question (a) above:[2]

> Whether in giving effect to the [Canterbury RPS] under s 75(3)(c) of the RMA, did the Panel wrongly interpret the objectives and policies of Chapter 6 of the [RPS] as providing a discretion whether or not to rezone [Equus Trust's] land as industrial?

It may be noted also that questions (b) to (d) are all subsidiary to question (a).

[7] Where an appeal is limited to a question of law which concerns the interpretation of legislation, it is not sufficient for an applicant simply to point to one interpretation being perhaps preferable to another. The Supreme Court made this abundantly clear in *Vodafone New Zealand Ltd v Telecom New Zealand* when endorsing the observation of Lord Mustill in *R v Monopolies and Mergers Commission ex parte South Yorkshire Transport Ltd*.[3] Where a legislative instrument genuinely makes available a range of meanings, the Court is entitled to substitute its own opinion for that of the original decision maker "only if the decision is so aberrant that it cannot be classed as rational".[4] These principles apply with particular force when the decision maker is a specialist tribunal. And they apply accordingly in the present case.

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2 At [29].

3 *Vodafone New Zealand Ltd v Telecom New Zealand Ltd* [2011] NZSC 138, [2012] 3 NZLR 153; and *R v Monopolies and Mergers Commission, Ex parte South Yorkshire Transport Ltd* [1993] 1 WLR 23 (HL).

4 *Vodafone New Zealand Ltd v Telecom New Zealand Ltd*, above n 3, at [54]–[55] per Blanchard, McGrath and Gault JJ; and *R v Monopolies and Mergers Commission, Ex parte South Yorkshire Transport Ltd*, above n 3, at 32.

[8] Having considered the decision of the Panel and the High Court, and heard submissions presented by Ms Steven QC, Mr Winchester and Ms Appleyard, we are satisfied that the interpretation adopted by the panel was plainly available to it and not irrational.

[9] Secondly, we are not satisfied that question (a) is one of general or public importance deserving further hearing. The question concerns the particular application of the RPS in a context of very limited importance to persons other than the applicant.

[10] Thirdly, questions (b)–(d) are subsidiary to the principal question, and raise no independent justification for leave.

Result

[11] The application for leave to appeal is dismissed.

[12] The applicants must pay the respondents costs for a standard application on a Band A basis together with usual disbursements.

Solicitors:
Buddle Findlay, Christchurch for Applicant
Simpson Grierson, Christchurch for Respondent
Chapman Tripp, Christchurch for Christchurch International Airport Ltd