

IN THE COURT OF APPEAL OF NEW ZEALAND

CA

BETWEEN

EQUUS TRUST

Appellant / Applicant

AND

CHRISTCHURCH CITY COUNCIL

Respondent

AND

**CHRISTCHURCH INTERNATIONAL
AIRPORT LIMITED AND THE CROWN**

Associated Respondents

APPLICATION FOR LEAVE TO BRING APPEAL
Dated 20 March 2017

Natural Resources Law Limited

PO Box 6643
Upper Riccarton
Christchurch 8442

Solicitor: M R G Christensen
Telephone: 0274 878 611

Counsel Instructed:

Prudence Steven QC
Canterbury Chambers
PO Box 9344
Christchurch 8149

Telephone: (03) 343 9834
Email: pru@prusteven.co.nz

EQUUS TRUST, the Applicant, gives notice that it is applying for leave to appeal to the Court against the judgment of the High Court dated 21 February 2017 in CIV-2016-409-606 (Christchurch Registry), which was an appeal on points of law from Decision 23 of the Independent Hearings Panel (**the Panel**) on the Proposed Replacement District Plan.

The Applicant is seeking to appeal against the whole decision.

The Applicant is making its application for leave under s308(1) of the Resource Management Act 1991 (**the RMA**), being an application for leave to appeal a decision of the High Court under s299 of the RMA.

The specific grounds of its appeal are:

Questions of Law

1 The questions of law that the Applicant seeks to have determined on appeal to the Court of Appeal are:

Q1 Do the objectives and policies of Chapter 6 of the Canterbury Regional Policy Statement (**RPS**) impose a mandatory direction to rezone land identified on Map A as a Greenfield Priority Area?

Q2 Is it lawful for an RPS to contain provisions (including policies and statements of methods) that are directive to a territorial authority as to the zoning of land to be included within a district plan, including as to timing?

Q3 Was it lawful for the Panel to decide that retaining the existing rural zoning would 'give effect to' the RPS as required by section 75(3)(c) of the RMA?

Q4 Whether, in terms of s23 of the Canterbury Earthquake Recovery Act 2011 (**CERAct**), the Panel's decision is inconsistent with the Land Use Recovery Plan (**Recovery Plan**)?

Grounds

2 In concluding that the Applicant's land should not be rezoned through the Replacement District Plan process, the Panel misdirected itself as to the proper interpretation of relevant provisions of Chapter 6 of the RPS, insofar as it held that:

2.1 The RPS allows for choice, rather than containing a mandatory direction to rezone, including choice in the determination of the nature, timing and

sequencing of new urban development, so as to assist land use and infrastructure integration; and

2.2 It would be "highly unusual and potentially ultra vires" for an RPS to seek to impose a mandatory direction as to the zoning of land.

3 Factors supporting the Panel's decision of relevance to the proposed appeal questions are contained in para [58] of the High Court judgment.

4 In also rejecting the 'mandatory zoning' approach advanced by the Applicant, the High Court upheld the Panel's decision, concluding (relevantly) that it was open to the Panel to come to the conclusion, both on the evidence before it, and, more relevantly, in light of the wording of the relevant planning documents (the Recovery Plan and the RPS) that the land should not be zoned Industrial "at the present time".

5 In so concluding:

5.1 The High Court (wrongly) approached the interpretation exercise on the basis that the RPS provisions pose "imprecise criteria" of a kind discussed by Blanchard J in *Vodafone NZ Limited v Telecom NZ Limited*;¹

5.2 That the interpretation of the Recovery Plan and the RPS provisions favoured by the Panel was a "permissible option" available to it; and

5.3 Identified certain provisions of the Recovery Plan and the RPS that supported the Panel's interpretation.

6 The Applicant's proposed grounds for appeal are that:

6.1 The Recovery Plan and relevant provisions of Chapter 6 RPS are capable of only one correct interpretation;

6.2 Relevant provisions of each of the Recovery Plan and Chapter 6 RPS, read as a coherent whole, provide a clear direction (as opposed to a choice) that the Applicant's land, being identified as within a Greenfield Priority Area on Map A Chapter 6, RPS, ought to have been rezoned through the Replacement District Plan process, this being the only interpretation available to the Panel, had the provisions been properly interpreted;

¹ [2011] NZSC 138

- 6.3 Any perception of ambiguity or imprecision in the RPS directions that might arise from reading provisions in isolation would have been cured had all relevant provisions been read in their entirety.

The Court of Appeal should grant the Applicant's leave to appeal because:

- 1 The questions sought to be answered by the Court of Appeal:
 - 1.1 Are matters of general or public interest and importance, extending beyond the particular circumstances of the Applicant's case; and
 - 1.2 Are seriously arguable.
- 2 Their significance lies in the fact that it is becoming more common for Regional Policy Statements across the country to set "urban limits".
- 3 Some RPS documents, such as Chapter 6 of the RPS (which applies to Greater Christchurch), contain provisions relating to the location and timing of urban development that are directive in their nature.
- 4 Whether such provisions are lawful, and how provisions of this nature should be interpreted (to which a district plan must "give effect to" by s75(3)(c) RMA), are matters of wide public interest.
- 5 In particular:
 - 5.1 Both the Recovery Plan prepared under the Canterbury Earthquake Recovery Act 2011, and provisions of Chapter 6 of the RPS, were inserted by the Minister of Earthquake Recovery pursuant to direction under s23 of the CERAct;
 - 5.2 Each document is intended to provide a clear and certain planning framework as to where and how new development should occur, for the recovery of Greater Christchurch, following the 2010/2011 earthquakes;
 - 5.3 The RPS, in particular, contains prescriptions as to where business development (including industrial) should occur (and as a corollary) where it should not, so as to provide planning certainty throughout the recovery period;

5.4 It is a matter of importance to the recovery of Greater Christchurch, as well as being of wider public importance, that provisions of the RPS and the Recovery Plan are properly interpreted.

The judgment the Applicant seeks from the Court of Appeal, if leave is granted, is to:

- A. Allow the appeal;
- B. Refer the matter back to the Panel, directing it to rezone the land business; and
- C. Direct the Panel to reconsider what provisions should apply to the business rezoning.

The Applicant is not legally aided.

Dated this 20th day of March 2017.



M R G Christensen

Solicitor for the Applicant

This document is filed by **MARK RAYMOND GEORGE CHRISTENSEN**, solicitor for the Appellant/Applicant, of Natural Resources Law Limited, whose address for service is at the office of Natural Resources Law Limited, 20 Chateau Drive, Burnside, Christchurch.

Documents for service on the Appellant/Applicant may be:

- (a) Posted to the solicitor at PO Box 6643, Riccarton, Christchurch 8442; or
 - (b) Emailed to the solicitor at mark@naturalresourceslaw.co.nz;
- and in either case, also copied to counsel at pru@prusteven.co.nz.