IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2012-485-2577
[2015] NZHC 43

UNDER	the Judicature amendment Act 1972 and Part 30 of the High Court Rules
IN THE MATTER OF	an application for judicial review
BETWEEN	M and V WEIR Applicants
AND	KAPITI COAST DISTRICT COUNCIL Respondent
	COASTAL RATEPAYERS UNITED INC. Intervener

On the papers:

Counsel:	M Weir in person T C Stephens for Respondent M Smith for Intervener
Judgment:	30 January 2015

FINAL JUDGMENT OF WILLIAMS J

---

[1] Mr Weir, who now appears to act for himself, filed a memorandum in November 2014 asking that I finalise my interim judgment in this matter issued in December 2013.

[2] In light of certain developments since the judgment, the details of which I will address below, Mr Weir effectively asks that I reverse the result in that decision. The District Council is very much opposed to that suggestion, proposing instead that I simply confirm my interim judgment as final.

[3] The intervener, Coastal Ratepayers United Inc, takes a relatively neutral position, seeking to further engage only if I am inclined to pick up the issues of broader application that Mr Weir now wishes to raise.

[4] In my interim judgment I essentially found for the Council on the question of whether certain coastal hazard prediction lines (in the judgment referred to as the Shand lines, after their author) should be included in Council LIMs pursuant to s 44A(2)(a) of the Local Government Official Information and Meetings Act 1987. I concluded that they should.

[5] I did not however finalise the judgment because I had concerns about the way in which the Shand lines were portrayed and explained on LIMs relating to coastal properties. I adjourned the matter to allow the parties to confer over appropriate amendments to ensure that LIM information in respect of coastal erosion was clear, fair and balanced.

[6] At that point, the parties conferred and advised the Court that the matter could, by consent, be adjourned sine die as the Council had decided to convene an expert panel to review the science behind the Shand lines. This review was to feed into the ongoing District Plan Review process. It was felt that the panel's work could well render unnecessary, further argumentation around the content of LIMs.

[7] The panel has since found, I am advised, that the Shand lines were not sufficiently robust to warrant their inclusion in the District Plan. With that finding in hand, the Council has now resolved to remove the lines from all LIMs because, according to Mr Stephens, they do not now meet the criteria for mandatory disclosure in s 44A(2). There remains on the LIMs some precautionary wording about coastal erosion, the terms of which have been agreed between the parties.

[8] Mr Weir now asks that I address two further matters in a final judgment.

[9] First, he asks that I address whether there is, or was, a duty on the Council to consult with the Weirs before including the Shand lines in the LIM relating to their property. He calls in aid the decision of Whata J in *Bailey v Christchurch City*

Council where his Honour found that there was an obligation on the Council in that case to consult on the location of wastewater treatment infrastructure.[1]

[10] Second, in light of the review panel's conclusions, Mr Weir also asks that I consider further (or perhaps reconsider) the question of an appropriate reliability standard for information that must be included on LIMs in terms of s 44A(2).

[11] I am not prepared to do these things. The battle over the Shand lines appears to be over, the Council having failed to convince the expert panel that the lines were supported by adequate science. That result, though of great importance to coastal property owners in the Kapiti district, cannot change the fact that information about "potential erosion" on or in the subject land, within the knowledge of Council, must be included on LIMs. The Council has simply concluded that the Shand lines cannot now be said to describe the extent of "potential erosion" in 50 and 100 years' time. In other words the work done to support the lines is not sufficiently reliable to establish reasonably possible worst case scenarios at 50 and 100 years from the present. That does not in any way displace the proposition that there is no general duty of consultation in relation to the question of whether information about "potential erosion" should be included in LIMs because there is no discretion in that respect.

[12] The *Bailey* case cited by Mr Weir related to a matter over which the Council in that case had a broad discretion: the placing of a new waste water disposal system, so there is little wonder that the Court required the Council to consult before ratepayers' rights were interfered in.

[13] As I said in my interim judgment, although there was, at that stage, no discretion to exclude the information from LIMs, the Council did retain discretion in the manner of its portrayal and explanation of the Shand lines. I said at [69]:

> [14] It must in my view be relevant in considering how to summarise the Shand material, that the reports and, particularly the lines, have the potential to seriously affect the value and marketability of coastal properties in the district. That consideration ought at least to sharpen the obligations of accuracy and fairness.

---

1 *Bailey v Christchurch City Council* [2013] NZHC 1933, [2013] 3 NZLR 679.

> After all, across 1800 properties there must be many millions of dollars at stake. It would be a callous Council indeed that was unmindful of that potential impact.

[15] I adjourned the matter to allow discussions to proceed between the parties. Agreement was reached on appropriate wording, assisted no doubt by the expert panel's review of Dr Shand's findings, and the Council's decision to remove the Shand lines.

[16] There is therefore no purpose to be served in further considering the issue of consultation. To the extent that the Council has discretion, the parties are in agreement as to how that discretion should be exercised. The point is now moot.

[17] The second question really asks me to revisit my conclusion on the question of the accuracy or reliability standard to be applied to the Shand lines when the Council considered whether they met the description in s 44(2). I expressed my final view on these matters at [49] to [53] of the interim judgment. It would be inappropriate to revisit that view. In truth, the review panel undertook its work in the context of the Council's consideration of the proposed District Plan. That is evidence that the system works as it was designed to work. As I said at [53] of the interim judgment:

> I am satisfied that Mr Shand's science is sufficiently robust to satisfy that relatively low threshold requirement [i.e. a reasonable possibility of erosion]. Of course I say nothing at all about whether the Shand Report and the Shand lines should survive a more rigorous merit-based review through the District Plan Review process under the Resource Management Act 1991. That is not my arena.

[18] The merits of the Shand lines were tested and found wanting. That provides no reason at all to reconsider my in-principle conclusion on the meaning of "potential" in s 44A(2).

[19] It is in order now, as suggested by Mr Stephens, to confirm that the interim judgment dated 19 December 2013 should now be treated as the final judgment of this Court.

[20] I apprehend that no issue as to costs will arise, but in case I am wrong about that, memoranda may be filed.

Williams J

Solicitors:
M Weir, Waikanae
Simpson Grierson, Wellington