

BEFORE THE ENVIRONMENT COURT

Decision No: [2011] NZEnvC 57

IN THE MATTER of an application for a declaration under
s311 of the Resource Management Act
1991

BETWEEN DONALD RICHARD BRIGGS
(ENV-2010-WLG-000137)
Applicant

AND KAPITI COAST DISTRICT COUNCIL
Respondent

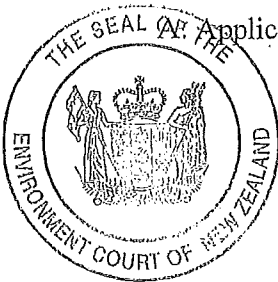
Court: Environment Judge B P Dwyer sitting alone pursuant to s309 RMA

Heard: In Chambers at Wellington

DECISION

Decision Issued: 15 MAR 2011

Application struck out.



[1] On 5 May 2010 I issued a decision¹ (the earlier decision) in relation to various proceedings filed by Mr Briggs. Those proceedings were referred to by Mr Briggs as appeals but did not appear to be appeals against specific decisions. Rather, the proceedings appeared to seek declarations relating to the relationship of the special consultative procedure provided for in the Local Government Act 2002 (LGA 2002) with plan change procedures undertaken by the Kapiti Coast District Council (the Council) pursuant to Resource Management Act 1991 (RMA).

[2] The earlier decision struck out two proceedings filed by Mr Briggs on the basis that the documents filed by him (even if they were accepted as enabling an exercise of the Court's declaratory powers) did not raise any questions which could be determined by the Court.

[3] Mr Briggs has now filed these further proceedings under the title *Application for Declaration*. Attached to the Application for Declaration is a letter from the Council to Mr Briggs, dated 18 June 2009, responding to queries made by him. That letter addresses the relationship between RMA and LGA consultation processes and appears to be the *trigger* for the current application.

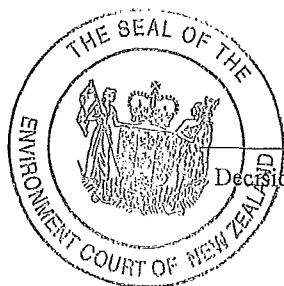
[4] The Application for Declaration sets out the following grounds:

Copies of letters attached show Kapiti Coast District Council maintain a position that S.82, Local Government Act, as required by RMA Schedule 1, (3) must be followed in approving Private Plan Changes. But fail to do so in approving Private Plan Changes.

S.82 (4a) invokes S.78 which in turn invokes (79) which links the Policy of Significance.

(It may be argued that (82)(5) gives discretionary powers to Council but this is only applicable to conflicting "enactments" not to personal expressions of private interests made in a Plan Change application).

This is denied in the fact that all Private Plan Change papers presented to elected members are marked "This does not trigger the Policy on



Significance". This marking is acknowledged to be "standard practice" (see letter attached).

A ruling is sought acknowledging that the Policy on Significance must be followed where plan changes are considered to be significant issues or Strategic Assets.

[5] As it was not clear exactly what relief Mr Briggs sought, he was asked to identify the that with more precision. He responded as follows:

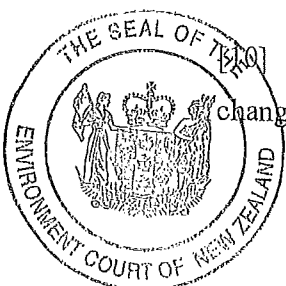
Relief sought: is a legal judgment confirming approvals for private plan changes approved under RMA are subject to consideration of the Policy of Significance, through RMA Schedule 1 (3), hence (78) and hence (79) of Local Government Act.

[6] Regrettably, Mr Briggs' response goes little further towards clarifying the matter previously subject to appeals (so-called) and now these declaration proceedings. It appears, however, that he seeks a declaration that in approving private plan changes the Council is obliged to undertake consultation in accordance with the special consultative procedure contained in s83 LGA.

[7] Mr Briggs refers to *RMA Schedule 1(3)*, which I understand to be a reference to Clause 3 of Schedule 1. Clause 3 sets out the consultation requirements on local authorities during the preparation of proposed policy statements or plans.

[8] Clause 3(a)-(c) identifies those persons who must be consulted. Clause 3(2) then gives local authorities a discretion to consult with *anyone else* during the process, but does not create an obligation to do so. Clause 3(4) provides that if *anyone else* is consulted that consultation must be in accordance with s82 LGA.

[9] Section 82 LGA sets out *Principles of Consultation*. More particularly, s82(1)(a)-(f) identifies six relevant principles of consultation which are to be observed by a local authority... *in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.*



[10] The consultation principles apply to local authorities when preparing a plan change. These principles, which are to be applied in a manner determined to be

appropriate by the local authority at its discretion, do not apply to private plan changes which are processed in accordance with Clauses 21-29 of Schedule 1.

[11] Clauses 21-29 do not impose any consultation obligation on promoters of private plan changes nor do they impose a consultation obligation on local authorities processing such plan changes. Although Clause 29(1) provides that Part 1 of Schedule 1 (which includes Clause 3) applies to private plan changes, that Part in fact does not apply until the private plan change has been accepted under Clause 25(2)(b), at which time it is ready to proceed to notification.

[12] Mr Briggs' application refers to the *Policy on significance*. That is a reference to s90 LGA which provides:

- (1) *Every local authority must adopt a policy setting out –*
- (a) *that local authority's general approach to determining the significance of proposals and decisions in relation to issues, assets, or other matters; and*
 - (b) *any thresholds, criteria, or procedures that are to be used by the local authority in assessing the extent to which issues, proposals, decisions, or other matters are significant.*

[13] It is not apparent from the papers filed by Mr Briggs, how it can be contended that this particular provision of LGA applies to private plan changes processed under RMA and determined in accordance with statutory criteria contained therein.

[14] As with the earlier proceedings filed by Mr Briggs, it is impossible to discern any reasonable or relevant case to be determined by the Court in these proceedings. I accordingly strike out the application for declaration, pursuant to s279(4) RMA.

DAIED at WELLINGTON this 15th day of March 2011

B P Dwyer
Environment Judge

