

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of an appeal under s120, and an application  
for a declaration under s311, of the  
Resource Management Act 1991

BETWEEN HOUSING NEW ZEALAND  
CORPORATION  
ENV-2007-AKL-000356 and  
ENV-2007-AKL-000373  
Appellant/Applicant

AND THE AUCKLAND CITY COUNCIL  
Respondent

Court: Environment Judge C J Thompson, Environment Commissioner W R Howie,  
Environment Commissioner K A Edmonds

Counsel: S J Simons and C E Kirman for Housing New Zealand Corporation  
M Lloyd for the Auckland City Council

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MINUTE - 20 OCTOBER 2008

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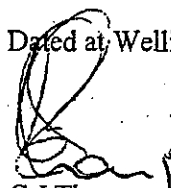
[1] The Court issued a decision on 11 September 2007 (W074/2007), answering preliminary questions of law, and dealing with an application for a declaration made by the Housing Corporation. That decision was the subject of an appeal to the High Court but that appeal has now been discontinued.


[2] In advising this Court of that development the parties have drawn our attention to the judgment of the Court of Appeal in *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 529, a decision which had escaped everyone's attention in dealing with the matter earlier. I am grateful for that assistance but, having now reviewed the judgment, I am not at all sure that it should alter our view about the matters addressed in paras [7] and [8] of the earlier decision. The *Body Corporate* judgment dealt with an application that was indivisible as between those portions which arguably were permitted, and those which arguably required a resource consent. Our views were expressed in the context of two distinct activities: that relating to the trees, which clearly required a consent; and that relating to the house, which equally clearly was a permitted activity. We might, I now realise, have caused a blurring of thought by referring to the concept of a *permitted baseline* when the point might have been better expressed only by reference to a *Hawthorn* existing environment.

[3] If it is thought that, notwithstanding that view, we have unwittingly departed from any any exposition of the law in *Body Corporate*, the point is probably better left to be resolved in litigation that has a live issue, rather than as a footnote to a matter that now has no practical point to be completed. It seems that all we should do, by way of a final decision, is simply to note that the Housing Corporation does not intend to pursue its substantive appeal and that it can be noted as withdrawn, with no issue as to costs.

[4] If however the parties have a different view, I would be grateful if they would advise the Court by 3 November 2008.

Dated at Wellington this 20th day of October 2008

  
C J Thompson  
Environment Judge

The seal of the Environment Court of New Zealand is circular. It features the coat of arms of New Zealand in the center, which includes a shield with a cross, a four-pointed star, and a silver chalice. Above the shield is a crown. The shield is supported by two figures: a Maori warrior on the left and a European sailor on the right. The words "THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND" are inscribed around the perimeter of the seal.