

Matakana Coast Trail Trust v Auckland Council [2017] NZENVC 149, [2018] NZRMA 179

INTRODUCTION

Auckland Council granted consent to subdivide a large block of forestry land at Moir Hill, near Warkworth.

At the Council hearing, Matakana Coast Trail Trust (MCTT) presented on the opportunity to provide for walking and cycling linkages through the site. The Commissioners could see no legal grounds to require the provision of such linkages, and found it was beyond their ability to impose such a condition.

MCTT appealed, and sought the imposition of a condition requiring a connecting cycle trail between public roads to the north and the south of the subdivision, thereby enabling cyclists and pedestrians to travel through the area safely.

Two key questions for the Court were:

- Did the Court have jurisdiction to impose conditions requiring the consent holder to establish a walkway/cycleway?; and
- If so, did the conditions sought have merit?

JURISDICTION

The applicant argued that:

- conditions of consent could only be imposed to address adverse effects, and could not be imposed to achieve objectives, policies, methods or rules of a plan, or enhance an environment in isolation of adverse effects; and
- the Court did not have jurisdiction to impose a condition requiring the provision of public access across private land in the absence of the landowner's agreement.

The Court disagreed with both propositions.

While conditions need to be "logically connected" to the proposal, with a causal link between the effects of a proposal and the conditions imposed, they are not restricted to ameliorating the effects of a proposal. Effects are just one component of the RMA s 104 consideration. Conditions can also be imposed to achieve the objectives and policies of the relevant plans, or the purpose of the Act.

The conditions sought by MCTT related only to the provision of the cycleway and for its use and maintenance. If it had been a request to vest the land in Council or MCTT problems could have arisen, so too if MCTT had been seeking an easement. But that was not the case. The



principle advocated for was not the ratio in either of the Environment Court decisions relied upon, and in any event the cases were not binding.

After confirming it had the jurisdiction to impose the conditions sought by MCTT, the Court moved to consider the reasonableness, proportionality and appropriateness of the conditions.

MERIT

A connection or linkage between the north and the south was seen to represent a significant benefit, not only to the residents of the subdivision but to other cyclists or pedestrians travelling through the area.

The planning provisions supported a strong preference for connectivity, including off-road pedestrian and cycling facilities as part of a transport network. An Integrated Transport Plan had been prepared by the applicant, but did not include off-road cycling trails. This was seen by the Court as a significant failure, especially in light of the lack of any roading connectivity between the north and the south. The planning provisions required, at a minimum, a reasoned explanation for the omission of cycling connectivity. Because roading connectivity had not been provided, the Court expected an analysis as to how the Plan-anticipated connectivity could be provided by other means. There was no such analysis.

The requested condition could be justified on the planning provisions alone, given they clearly require connectivity to be provided.

However, cross-examination led to concessions which, on the face of it, supported the evidence of MCTT that:

- There was an adverse effect from the failure to provide connectivity; and
- A cycling/walking track would provide a form of mitigation or compensation for the loss of other, wider connectivity issues.

The Court concluded there was an adverse effect warranting a cycling connection being provided in part to overcome the lack of a practical roading connection.

COMMENT

The Court was able to justify the condition as both mitigating the effects of the proposal and achieving the clear objectives and policies of the relevant plan.

The planning provisions have a clear and strong preference for connectivity. Had a roading connection been provided, opportunities would have also existed for walking and cycling. But without it, there was no connectivity. The absence of a roading connection could be mitigated, in part, by the provision of a walking/cycling connection. By reference to the objectives and policies, the condition was justifiable.

In light of the applicant's witnesses' concessions in cross-examination, the Court was able to conclude that the condition could also be justified as mitigating effects. It is clear that planning documents continue to guide identification of relevant effects of interest to decision makers. It is questionable whether the lack of connectivity would be an adverse effect in the absence of such strong policy direction supporting connectivity.

It is also important to note that this case was decided under the provisions of the RMA prior to its amendment on 18 October 2017. The Court relied on the legal test set down by the Supreme Court in *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112, [2007] 2 NZLR 149, requiring a condition be "logically connected" to the proposed development. The new s 108AA RMA now requires a condition to be "directly connected" to either an adverse effect or a district or regional rule, or a national environmental standard. Conditions can no longer be imposed to achieve the objectives and policies of the relevant plans, or the purpose of the Act, in the absence of an adverse effect or such a rule.

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