

IN THE HIGH COURT OF NEW ZEALAND

PALMERSTON NORTH REGISTRY

AP

CIV 6 2012 6 454 6 49

Under the Resource Management Act 1991

BETWEEN

PROPERTY RIGHTS IN NEW ZEALAND INC

Appellant

A N D

**MANAWATU-WANGANUI REGIONAL
COUNCIL**

Respondent

SUBMISSIONS ON BEHALF OF THE

APPELLANT

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May it please the Court;

Introduction

These Submissions are presented on behalf of Property Rights in New Zealand. Inc. (PRINZ inc) in respect of the Manawatu-Wanganui Regional Council's combined proposed regional policy statement and proposed regional plan. (POP)

Principles of interpretation.

PRINZ inc agrees with the primary principle of statutory interpretation, in that Words mean what they say- (common meaning.) captured in sec 5 of the Interpretations Act 1999;

And as detailed in the court decision page 3 paragraph [4].

We use the Collins Dictionary and the THESAURUS to determine the common meaning. The terms used are;

Activity = project, scheme, task, undertaking, recreational activities. pg 12.

Function = specific role, independent, variable, business, responsibility, purpose. Page 406

Method = away of proceeding, doing something, orderliness of action, techniques. page 628.

Maintaining = to continue or retain, keep in existence, carry on, continue, finance. Page 604

Maintenance = the act of maintaining, means of support, interference in a legal action by a person having no interest in it, a provision ordered. Page 604

Or = used to join alternatives, or else, or other wise, preceding the 2nd alternative. Page 696

PRINZ inc also identifies the bundle page number in bold thus eg (**see page 55**)

At issue in this appeal is the power of the Respondent to make rules for the control of land use for the maintaining of indigenous biological diversity and significant indigenous biological diversity.

The Environment Court (The Court) held (paragraph 14) that Regional Councils are required to establish, implement and review objectives, policies, and methods (including rules) for maintaining indigenous biological diversity.

PRINZ inc submits that the Environment Court erred in that its decision, for the reasons which follow.

1 Regional council can have a Policy, but not a Rule

- 1.1 In particular the POP links indigenous biological diversity with significant indigenous vegetation and significant habitats of indigenous fauna.
- 1.2 Policy 7-1 purports to allocate responsibilities to the Regional Council to develop rules controlling the use of land to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. And managing indigenous biological diversity.
- 1.3 To the extent that the rules are developed to control land use to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna, then such rules are ultra vires.
- 1.4 To the extent that indigenous biological diversity rules, wholly or partly control the use of land to protect areas of significant indigenous fauna, then such rules are ultra vires.
Any linking of the protection of significant indigenous vegetation and significant indigenous fauna with indigenous biological diversity for (g) and the bio diversity rules and causes them to be ultra vires, and because the bodies empowered to control the effects of use of land on significant indigenous vegetation and or significant habitats indigenous fauna are territorial authorities functions, not regional councils functions.

2 Transfer of Powers

3.1

PRINZ inc states that the court erred in its decision for the following reasons.

3.2 Policy 7.4.1 of the Proposed One Plan (POP). Indigenous Biological Diversity is described as.

In accordance with sec 62(1)(i) RMA, local authority responsibilities for controlling land use activities for the purpose of managing indigenous biological diversity in the region are apportioned as follows.

(a) The Regional Council must be responsible for:

- (i) developing objectives, policies and methods for the purpose of establishing a Region wide approach for maintaining indigenous biological diversity, including enhancement where appropriate.
- (ii) developing rules to control the use of land to protect areas of Significant indigenous vegetation, and significant indigenous fauna, and to maintain indigenous biological diversity.

Where as section 62(1)(i), of the Resource Management Act, (RMA) states.

Sec 62 Contents of a Regional Policy Statements

- (1) A regional policy statement must state-

- (e) the methods excluding rules used, or to be used, to implement the policies; and
- (i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and

3.3

PRINZ inc argument is that the Act itself does not allow Regional Council to Assume the legislative authority to make law. For that is what it has done. PRINZ notes that Minister of Conservation, in her submission dated 20th of December 2011, page 2 paragraph 5, contradicts the Ministers of both Conservation and Environments own determination of the intent of the Resource Management Act amendments in 2003. As recently as 2007. (see evidence page 35). The Minister on page 3 paragraph 5 of her own submission also states that MWRC has assumed the lead role. In paragraph 4 of the same, the Minister states that the Territorial Authorities were consulted with and agree, and including Clare Barton's affidavit dated December 2011, page 2-3, paragraph 7. (b) (i), (see page 4). She states "none have challenged the division of responsibilities within the POP concerning maintaining indigenous biodiversity".

And included on page 10, (see page 4), the submission points for Territorial Authorities. (TA's) This view PRINZ inc concludes is subjective at best, for TA's clearly are asking for clarification of. If they agreed surely they would be submitting clearly in common language for Regional Council to be the lead agency, having already had regard and given effect to the requirements of sec 33 RMA and including section 83 of the Local Govt Act 2002. That is Transfer of Functions and special Consultative Procedure. (see page 9 and 10)

3.4

If as the Minister of Conservation and Ms Barton state, that the Territorial Authorities were consulted with and agree with, then that is a misinterpretation of power and a clear breach of the requirements of the Act. That is the procedure required by sec 33 of the RMA, Transfer of powers and the consequential requirements of sec 83 of the Local Government Act 2002. Special consultative procedure. Again, thus ultra vires.

4. Resource Management Act. Legal Definitions

4.1

PRINZ inc recognises that Regional Council has also rewritten the act by removing the term maintaining and replacing with term managing. (policy 7-4 One Plan) (see page 1)

These terms have no legal definition as per the RMA and are ultra vires, and including the legal restriction on a policy statement to make rules.

4.2

See sec 61(1). A Regional Council shall prepare and change its Regional Policy statement in accordance with its functions under section 30. (see page 5). And 62 (1) (e)(page 2). The methods (excluding rules) used or to be used to implement the policies.

