

BEFORE THE ENVIRONMENT COURT

Decision [2013] NZEnvC 38
ENV-2010-WLG-000068

IN THE MATTER

of an appeal under Cl 14 of Schedule 1
to the Resource Management Act 1991

BETWEEN

NEW ZEALAND ASSOCIATION OF
RADIO TRANSMITTERS INC,
WELLINGTON AMATEUR RADIO CLUB,
WELLINGTON VHF GROUP INC
Appellants

AND

THE WELLINGTON CITY COUNCIL
Respondent

Court: Environment Judge C J Thompson
Environment Commissioner W R Howie
Environment Commissioner J R Mills

Counsel/Representatives:

M D Newman for NZ Association of Radio Transmitters Inc
J Andrews for Wellington Amateur Radio Club & Wellington VHF Group Inc
A M White for the Wellington City Council

FINAL DECISION ON APPEAL

Decision issued: 18 March 2013

Costs are reserved

18 MAR 2013



Introduction and background

[1] An interim decision on this appeal was issued as long ago as January 2012 ([2012] NZEnvC 8). As that decision records, we asked for further submissions from the Council and the appellants, which were provided. At a later point, we asked the Council to consider a possible compromise by way of concessionary costs for processing resource consent applications. For the reason supplied by Ms White, the Council was not attracted to that possibility, and it is not a requirement we could impose in finally deciding the outcome of the appeal.

[2] We record that despite a number of messages that they were to be forthcoming, most recently that they would be lodged in week beginning 4 March 2013, no further submissions on that last point have been received from the appellants, and it is not appropriate to wait longer before finally resolving the appeal.

The Plan provisions in question

[3] As recorded in the interim decision, at the core of the appeal are the decisions version provisions of Rule 23.1.18, specifically aimed at amateur radio structures:

23.1.18 Amateur radio configurations are a Permitted Activity provided they comply with the following conditions:

23.1.18.1 No limit to the number of supporting structures less than 100mm in diameter. Where guy wires are used, these must not exceed 10mm in diameter.

23.1.18.2 A maximum of one supporting structure greater than 100mm. The maximum height of the supporting structure shall be the relevant Building Height. The maximum horizontal diameter of the pole or supporting structure is 800mm. The minimum setback from any boundary is 1.5m. Any guys used to support the pole must not exceed 10mm in diameter.

23.1.18.3 Antennas located less than 5m above ground have a maximum horizontal diameter of 4m and a minimum boundary setback of 1m. Antennas situated more than 5m above ground have a maximum diameter of 1.2m.

23.1.18.4 The maximum height of antennas mounted on buildings using a supporting structure less than 100mm diameter shall be 18m in the Residential Area, and 18m or the relevant permitted or actual Building Height plus 5m (which ever is greatest) in all other Areas.

23.1.18.5 All antennas must be designed and operated in compliance with New Zealand Standard NZS 2772: Part 1: 1999 Radiofrequency Fields Part 1 – Maximum Exposure Levels – 3 kHz to 300 GHz (or subsequent amendments) at all times and in all places to which the public

has access.



23.1.18.6 No amateur radio configuration may be located on a site that is, or contains, a listed heritage item. In respect of listed heritage areas, no amateur radio configuration shall be located on a site with a heritage area or any area of legal road within that heritage area.

Licensed amateur radio operators have an important role in civil defence activities in the city. The rules recognise this by permitting certain amateur radio configurations for use by licensed amateur radio operators. Antennas and supporting structures that cannot meet the permitted standards are assessed as discretionary activities.

[4] As discussed in the interim decision, it must be accepted that radio masts and antennas of the kind in question could well have not insignificant adverse effects on the city and suburban environment, by way of interference with views and general amenity. That could particularly be so in the hilly topography of Wellington City. While, as we noted, there was no evidence of a history of complaints about existing structures, the possibility is self-evident. That is the nexus of the Council's position, and it argues that a *restricted discretionary* activity status, aimed at minimising any such adverse effect, is the least intrusive regulatory measure it could adopt.

Result

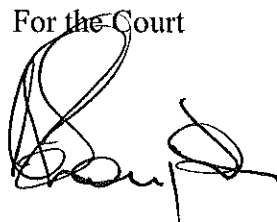
[5] It is, in the end, difficult to disagree with the Council's position, conscious as we are that the costs of seeking a resource consent may be significant for a would-be operator. We see no effective alternative to declining the appeal, with the exceptions of the wording amendments mentioned in para [5] of the interim decision.

Costs

[6] As is usual in Plan appeals, we do not encourage any application for costs but, as a matter of formality, costs are reserved. Any application should be made within 15 working days of the issuing of this decision, and any response lodged within a further 10 working days.

Dated at Wellington the 18th day of March 2013.

For the Court



C J Thompson
Environment Judge

