BUDDLEFINDLAY

Legal update - Development contributions: Beaumont Trading Company versus a council caught in time

David Allen, David Randal, Jennifer Caldwell, Mark Odlin, Patrick Mulligan, Paul Beverley, Cedric Carranceja, Vanessa Evitt, Mathew Gribben, Thaddeus Ryan

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The recent Court of Appeal case *Beaumont Trading Company Ltd v Auckland Council* [2016] NZCA 223 (25 May 2016) set aside the decision of Auckland Council (the Council) to levy a developer with a development contribution for reserves. The case concerned an appeal by the developer, Beaumont Trading Company Ltd, after the Council's position was accepted by the High Court.

At the heart of the case was whether there was a *development* triggering the requirement for development contributions prior to the 2014 changes to the Local Government Act 2002 (LGA) reflecting that accommodation units, as well as household units, create demand for reserves.

The Council levied Beaumont Trading Company with a development contribution of NZ$148,132.80 for reserves in relation to its subdivision of an existing hotel development into unit titles. The Council calculated the reserves development contribution on a per unit basis.

One year earlier, when issuing land use and building consents for the original hotel development, the Council did not levy any development contributions for reserves. This was because the Council took the view that, in terms of section 203(1)(b) of the LGA, there had not been the creation of any *additional household units* for the purposes of calculating reserves development contributions (it was only under the Local Government Act 2002 Amendment Act 2014 that section 203(1)(b) was amended to include the creation of *accommodation units* as well as *household units*). The Council therefore considered that it had no power to require a development contribution for reserves when granting a resource consent or building consent for the physical development, as without a subdivision there were no new allotments. It could only require a reserve development contribution at the time of granting a subdivision consent for the creation of additional allotments.

The principal issue on appeal was whether, in making its assessment, the Council was limited to considering the effects of the unit title subdivision or whether it could consider the demand for reserves generated by the whole of the hotel project (including the physical construction of the hotel building in the previous year).

The Court of Appeal found that the definition of *development* in the LGA meant that, in order for the Council to levy a reserve development contribution, the unit title subdivision had to generate a demand for reserves by itself (ie in isolation from any previous consented activity):

"*[24] The Council's power to require a development contribution is relevantly triggered when a resource consent is granted "for a development". As we have noted, "development" means a subdivision "that generates a demand for reserves". We agree with the appellant that this means the unit title subdivision must generate a demand for reserves. That is the plain meaning of development as defined in the Act. In this case, it is accepted that the subdivision itself did not generate an additional demand for reserves. On this approach, the appeal must be allowed.*"

On this approach, the unit title subdivision did not, by itself, create a demand for reserves. The High Court's wider reading of *development* was found to be in error.

Although the Court of Appeal took a rather narrow interpretation of *development*, the precedential value of its decision is limited. The Council found itself caught in a time before the amendments to the LGA which now provides that both accommodation units and household units may create a demand for reserves. The inclusion of *accommodation units* in section 203 reflects the fact that there are some types of commercial activity, particularly those associated with providing accommodation, that create a demand for local reserves of a very similar nature to residential developments. With the benefit of the 2014 amendments, councils can now make sure that they charge development contributions for demand for reserves created by new accommodation units.

See the Court of Appeal decision here.

Auckland

PwC Tower
188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659