

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2023] NZEnvC 179

IN THE MATTER OF

an appeal under s 185 of the Resource
Management Act 1991

BETWEEN

REDHILLS FAMILY LIMITED

(ENV-2023-AKL-076)

Applicant

AND

AUCKLAND TRANSPORT

Respondent

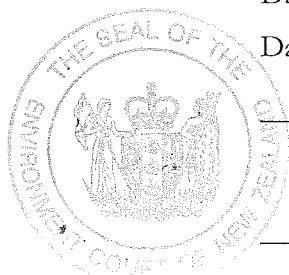
Court: Environment Judge S M Tepania

Hearing: On the papers, in Chambers at Auckland

Last case event: 21 August 2023

Date of Decision: 24 August 2023

Date of Issue: 24 August 2023



DECISION OF THE ENVIRONMENT COURT

A: The application to amend the application under s 185 RMA is granted.

REASONS

Introduction

[1] The Applicant owns a property at 25 Red Hills Road, Massey with the identifier NA26B/1376 and the legal description Lot 7 Deposited Plan 65390 with an area of 4.1986 hectares (**Property**). The Property is subject to a notice of requirement (**NOR**), for the Redhills North South Arterial Transport Corridor, which was issued by the Respondent.

The application

[2] On 7 June 2023, the Court received an application seeking orders obliging the Respondent to acquire parts of the fee simple estate in the Property, that are affected by the NOR, at market value. The application is set out in full below:

1. Redhills Family Limited (**RFL**) applies for an order obliging Auckland Transport, a requiring authority, to acquire part of the fee simple estate in land with the identifier NA26B/1376 and the legal description Lot 7 Deposited Plan 65390 with an area of 4.1986 hectares (**Property**) under the Public Works Act 1981.
2. RFL is the owner of the Property.
3. The land for which the order is sought is those specific parts of the Property which are directly affected by the Notice of Requirement (**NOR**) detailed below.
4. The nature of RFL's estate in the land is as owner of the land as trustee under the Redhills Family Trust. The beneficiaries under the trust are Chenxi (Sally) Zhang, Zihao Aiden Liu and Aimee Liu. Zihao and Aimee are the children of Ms Zhang and Mr Shaohuan (Rex) Liu.
5. The land is subject to the following designation or requirement:
 - (a) The NOR issued by Auckland Transport on or around 19 December 2022 under s 167 of the Resource Management Act 1991 for the construction, operation and maintenance of an arterial transport corridor in Redhills;
 - (b) The total area of the Property subject to the NOR comprises 19,178 square metres (1.9178 ha or 45.7% of the Property); and
 - (c) An excerpt from a letter from AT to RFL dated 9 May 2023, a copy of which is included in full as an attachment to the affidavit of Chenxi Zhang, in which AT mark visually as "Area A" and "Area B" the areas where the NOR directly affects the Property with

reference to the title.

6. The name of the requiring authority is Auckland Transport.
7. The designation or requirement was placed on the land on or around 19 December 2022.
8. The grounds for this application are:
 - (a) RFL was the owner of the estate in the Property at the time the NOR was issued;
 - (b) RFL engaged with Bayleys to market the Property for sale in late December 2022 and marketing began in mid-January 2023;
 - (c) RFL also instructed Barfoot and Thompson to market the Property for sale on or around 31 May 2023;
 - (d) RFL has been unable to sell the Property due to the blighting effect of the NOR on the market value for the Property;
 - (e) To the extent this may be relevant to the exercise of the Court's discretion under s 185 of the RMA, RFL, Ms Zhang, Mr Liu and their family are suffering significant hardship as a result of their inability to sell the Property; and
 - (f) It is in the interests of justice that an order be made.

The amended application

[3] On 4 August 2023, the Applicant filed an amended application seeking orders for the acquisition of the balance area at 25 Red Hills Road, in addition to that part that is subject to the NOR and required for the proposed arterial corridor. The application was accompanied by an affidavit of Ian Colcord and an updated affidavit of Sally Zhang. The amended application is set out below:

1. Redhills Family Limited (**RFL**) applies for an order obliging Auckland Transport, a requiring authority, to acquire the fee simple estate in land with the identifier NA26B/1376 and the legal description Lot 7 Deposited Plan 65390 with an area of 4.1986 hectares (**Property**) under the Public Works Act 1981.
2. RFL is the owner of the Property.
3. The nature of RFL's estate in the land is as owner of the land as trustee under the Redhills Family Trust. The beneficiaries under the trust are Chenxi (Sally) Zhang, Zihao Aiden Liu and Aimee Liu. Zihao and Aimee are the children of Ms Zhang and Mr Shaohuan (Rex) Liu.
4. The land is subject to the following designation or requirement:

- (a) The NOR issued by Auckland Transport on or around 19 December 2022 under s 167 of the Resource Management Act 1991 for the construction, operation and maintenance of an arterial transport corridor in Redhills;
 - (b) The total area of the Property subject to the NOR comprises 19,178 square metres (1.9178 ha or 45.7% of the Property); and
 - (c) An excerpt from a letter from AT to RFL dated 9 May 2023, a copy of which is included in full as an attachment to the affidavit of Chenxi Zhang, in which AT mark visually as "Area A" and "Area B" the areas where the NOR directly affects the Property with reference to the title.
5. The name of the requiring authority is Auckland Transport .
 6. The designation or requirement was placed on the land on or around 19 December 2022.
 7. The grounds for this application are:
 - (a) RFL was the owner of the estate in the Property at the time the NOR was issued;
 - (b) RFL engaged with Bayleys to market the Property for sale in late December 2022 and marketing began in mid-January 2023;
 - (c) RFL also instructed Barfoot and Thompson to market the Property for sale on or around 31 May 2023;
 - (d) RFL has been unable to sell the Property due to the blighting effect of the NOR on the market value for the Property;
 - (e) Once the new transport route is constructed, access to the balance land will be impaired;
 - (f) To the extent this may be relevant to the exercise of the Court's discretion under s 185 of the RMA, RFL, Ms Zhang, Mr Liu and their family are suffering significant hardship as a result of their inability to sell the Property; and
 - (g) It is in the interests of justice that an order be made.

The Respondent's position

[4] The Respondent does not dispute that the Court has jurisdiction to order the acquisition of all of the subject property, despite only part of it being required for the project.

[5] The Respondent also confirmed that it will not be unduly prejudiced by the

amended application. However, it stated that its internal consideration of this matter has begun based on the parameters of the original application. The Respondent's position is that additional time is likely to be required in order for it to reach an informed position on the amended application and to progress the modified application through its internal processes. A number of other issues were also identified by the Respondent, including:

(a) Access to balance area impaired?

The Respondent seeks to better understand the claim that access to the balance area will be impaired by acquisition of the part of the land that is subject to the NOR and assess whether any constraints are caused by the proposed acquisition of part of the subject property or are due to other pre-existing constraints (such as the nature of the existing access to the property).

(b) Attempts to sell property

The Respondent would find it helpful to better understand the selling agent's instructions, sale methodology and basis for pricing indications as well as the feedback provided by prospective purchasers.

(c) Adjustment to area identified for acquisition

The Respondent would also like to discuss an amended area of acquisition around the existing house on the property (noting such discussions may be overtaken by the amended application).

[6] The Respondent suggested that these issues could be the subject of discussion at the mediation scheduled for 29 August 2023.

Decision

[7] Having considered the position of the parties and the supporting affidavits filed,

I grant the Applicant leave to file its amended application.

[8] I accept that the Respondent will not be unduly prejudiced by the filing of the amended application, and that the Respondent does not dispute the Court's jurisdiction to order the acquisition of all of the subject property.

[9] I note that the amended application will create some additional complexity for the Respondent, it having already initiated some of its internal processes based on the Applicant's original application, but I accept that these issues can be discussed at mediation.

[10] If a further mediation is required to allow the parties to discuss particular aspects of the amended application, the Court can make those arrangements.



A handwritten signature in blue ink, appearing to read "S M Tepania", is written over a horizontal line.

S M Tepania
Environment Judge