

Atkins v Napier City Council

CaseBase | Linxplus | (2008) 15 ELRNZ 84 | [2009] NZRMA 429 | [2009] BCL 150 | BC200895825

Atkins v Napier City Council — [2009] BCL 150

Butterworths Current Law (Archive)

CASE NAME : Atkins v Napier City Council

COURT : High Court, Napier

DATES : 18 December 2008

MEMBERS : Wild J

CITATION : [2009] BCL 150

MATT NO : CIV 2008-441-564

PAGES : 18 pages

CATCHLINE : *Resource Management — Noise — Land use consent for day care facility — Whether the appeal should have been treated as a nullity — Whether the correct test was applied — Noise level a benchmark to guide exercise of discretion of council*

The appellant appealed against a decision of the Environment Court. The decision concerned the granting of a land use consent for a child care facility. The appellant claimed that the noise levels relating to the application were so significant that the Environment Court should have treated the application as a nullity and set aside the resource consent. Having decided to entertain the appeal, the appellant claimed that the Environment Court erred in dealing with the application on the basis of the correct predicted noise levels. The Court considered that the test, as developed by the Environment Court and the Court of Appeal through a series of cases, was whether the activity for which resource consent was sought was significantly different in its scope or ambit from that originally applied for and notified (if notification was required) in terms of: (a) the scale or intensity of the proposed activity; or (b) the altered character or effects/impacts of the proposal. The Court was satisfied that in the present case the Environment Court correctly identified the test which it needed to apply in deciding whether the application was a nullity which the first respondent should not have entertained, or whether it was one which was properly heard by the council and thus that the Court should proceed to hear the appeal on its merits. Although it went beyond the scope of the appeal, the Court agreed with the decision of the Environment Court upon the application of that test. Having decided to entertain the appeal, as to whether the Environment Court erred in dealing with the application on the basis of the correct predicted noise levels, the Court considered that the same test applied (which the Environment Court applied). The Court considered that arguments made by the appellant proceeded from the misconception that a resource consent was required for each contravention of the rules of a District Plan. It was not a simple matter of compliance or non-compliance with the daytime noise limit, but involved an exercise by the council of its discretion in respect of the predicted noise effects of the proposed restricted discretionary activity. The noise level was not a limit, but a benchmark which might provide a guide to the council in the exercise of its discretion. The appeal was dismissed.

REPORTED: *Atkins v Napier City Council* (2008) 15 ELRNZ 84