IN THE COURT OF APPEAL OF NEW ZEALAND

CA57/05

BETWEEN	SHELL NEW ZEALAND LIMITED Applicant
AND	PORIRUA CITY COUNCIL First Respondent
AND	BP OIL NEW ZEALAND LIMITED Second Respondent
AND	PAREMATA RESIDENTS' ASSOCIATION INCORPORATED Section 301 Party

Hearing:	16 May 2005
Court:	Anderson P, O'Regan and Robertson JJ
Counsel:	C M Stevens for Applicant J G A Winchester for First Respondent J S Kos and R J S Munro for Second Respondent
Judgment:	19 May 2005

JUDGMENT OF THE COURT

A The application is dismissed.

B Costs of $1,500 plus usual disbursements payable by Shell severally to each of the first and second respondents.

REASONS

(Given by Anderson P)

[1] On 24 June 2003 the Environment Court upheld a decision of the Porirua City Council to grant resource consent to BP Oil New Zealand Limited to establish a service station at Paremata. Shell New Zealand appealed to the High Court against the Environment Court decision. At issue was whether the Environment Court had power to consider amendment by BP to the proposal which it had presented and obtained resource consent for from Porirua City Council. Goddard J dismissed Shell's appeal to the High Court and subsequently declined an application by Shell for leave to appeal to this Court. Now Shell seeks from this Court special leave to appeal.

[2] BP wishes to construct a service station on an area of about 4,000 square metres which constitutes approximately half of a certain parcel of land. In terms of the District Scheme the parcel has a permitted use of landscaping. Before the Porirua City Council, BP had not proposed landscaping the residue of the land to which the consent in respect of 4,000 square metres was sought. But plainly in order to mitigate any arguments that it might meet on the appeal to the Environment Court, BP offered to landscape the residual land. This found favour with the Environment Court which approved resource consent for the service station subject to a condition that BP landscape that residue.

[3] Shell questions the power of the Environment Court to impose that condition. It argues, in effect, that the imposing of the condition expanded the scope of the application for resource consent to land which was not the subject of that application. Shell contends that the amendment to the application amounted to a new application because it was beyond the scope or the four corners of the original application. Further, that allowing the amendment was unfair in that persons who might not have been minded to object to the original application could well have wished to object to the amended application; that they had in a sense been weeded out unfairly because the application they would have considered in deciding not to object was not the one ultimately dealt with by the Environment Court.

[4] In order to obtain leave or special leave to appeal to this Court an applicant must show that there is a question of law and that it is one which by reason of its general or public importance or for any other reason, ought to be submitted to this Court for decision. See s 144(2) Summary Proceedings Act 1957.

[5] Where a question of law is settled and the matter at issue is essentially its application on the facts of the case, the question of law is not one which would impress this Court as being apt for further consideration. And any event, should it plainly appear to this Court that a proposed appeal is lacking in merit, similarly leave would not be granted. A question of law ought not be submitted to this Court for decision where the answer would not be privately beneficial nor publicly important.

[6] Mr Stevens submitted that there is uncertainty as a matter of law what the amending powers are of an authority considering applications for consent under the Resource Management Act. He described as "rather delphic" a dictum of this Court in *Sutton v Moule* (1992) 2 NZRMA 41,46 that:

> A council has no jurisdiction to grant a consent which extends beyond the ambit of the application.

[7] We think it plain that jurisdiction to consider an amendment to an application is reasonably constrained by the ambit of an application in the sense that there will be permissible amendments to detail which are reasonably and fairly contemplatable as being within the ambit, but there may be proposed amendments which go beyond such scope. Whether details of an amendment fall within the ambit or outside it will depend on the facts of any particular case, including such environmental impacts as may be rationally perceived by an authority.

[8] In our opinion, this application is determinable on a more direct basis. Resource consent was not needed for the landscaping of the residual land. We cannot accept, therefore, that there came about an amendment which went beyond the ambit of the application by extending a consent to use of the residual land. All that occurred was that the Environment Court translated into a condition BP's offer to do what it had every right to do without a resource consent. Notwithstanding the

significance or otherwise of any question of law an appeal could not succeed on the merits.

[9] In the result, Shell fails to satisfy us that there is any question of law of sufficient general or public importance to warrant further consideration on appeal to this Court. The application is dismissed with costs of $1,500 plus usual disbursements payable by Shell severally to each of the first and second respondents.

Solicitors:
Phillips Fox, Wellington for Applicant
Simpson Grierson, Wellington for First Respondent
Morrison Kent, Wellington for Second Respondent