

## Action for Environment Inc v Wellington City Council — [2012] BCL 553

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CASE NAME : Action for Environment Inc v Wellington City Council

COURT : High Court, Wellington

DATES : 13 July 2012

MEMBERS : Clifford J

CITATION : [2012] BCL 553

MATT NO : CIV-2011-485-2486 [2012] NZHC 1687

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**CATCHLINE** : *Resource Management — Resource consent — Badminton hall — Extension of facilities located in town belt land — Whether area to be used for outdoor recreation — Reserves Act 1977, s 53(g)*

The second respondent, the Wellington Badminton Association Incorporated was, on appeal to the Environment Court, granted a resource consent to extend its facilities (a hall) located on town belt land in Wellington. The appellant appealed against that decision. The hall had occupied the town belt land since 1957, when built by the Council. Wellington Badminton held the site on lease from the Council. Other sports facilities also occupied the town belt land. The appellant's principal argument was that all use of the town belt was subject to the core trust of a Trust Deed, that it be used as a "public recreation ground". By the appellant's interpretation, that was an area open to the public to be used for outdoor recreation. It was argued that buildings associated with outdoor uses, such as gymnasiums, grandstands and pavilions, were permitted, but that the class of permitted buildings did not extend to buildings of the type of the badminton hall. The High Court considered that a review of the District Plan, and in turn the Trust Deed and the Management Plan as referred to in the District Plan, made it clear that that was not the case. The District Plan rules did not express a prohibition on the erection of buildings on town belt land in the terms argued for by the appellant. Rather, they reflected the fact that the use of town belt land had, over time, involved the erection of buildings. A feature of the District Plan was that the town belt Management Plan and the Trust Deed were both matters to be considered when consents were considered, but were also considerations which would, outside the District Plan processes themselves, govern the use of the Town Belt. There was no express restriction in the Trust Deed on the erection of buildings on the public recreation grounds. Nor did the phrase "public recreation ground" import such a restriction or, more accurately in terms of the restriction that was argued for by the appellant. The extent to which provisions of the Reserves Act 1977 reflected restrictions on the Council's ability to erect or authorise the erection of buildings on the town belt was an issue that would need to be confronted if and when Wellington Badminton proceeded to action their resource consent, and the Council must decide as landowner whether it would give Wellington Badminton the necessary permission as lessee to do so. But, the Court considered, and as reflected throughout the District Plan, that was not a matter under the District Plan itself, but for the Council to consider as trustee landowner. The appeal was dismissed.