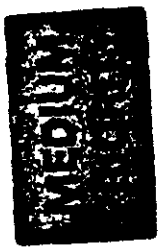
IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY



A.532/85 IN THE MATTER of Part 1 of the Judicature Amendment Act 1972

BETWEEN DAVID ARTHUR RUDDLESDEN of Paraparaumu Beach Physiotherapist

First Applicant

MURRAY CRUICKSHANK GIBB of Paraparaumu Beach, Veterinary Surgeon

Second Applicant

AND THE KAPITI BOROUGH COUNCIL a body corporate pursuant to the Local Government Act 1974 having its offices at Rimu Road, Paraparaumu

First Respondent

AND NORTHSIDE SANDS LIMITED at Auckland

Second Respondent

AND KINGSTON PARTNERS at Auckland

Third Respondent

AND MICHAEL P. NOLAN AND ASSOCIATES of Seaview Road, Paraparaumu Beach

Fourth Respondent

A.535/85 IN THE MATTER of Part 1 of the Judicature Amendment Act 1972

BETWEEN ALEXANDER WILLIAM GUNN Retired and CONSTANCE ETHEL GUNN Married Woman, both of Paraparaumu Beach

First Applicants

MURRAY CRUICKSHANK GIBB of Paraparaumu Beach, Veterinary Surgeon

Second Applicant

AND THE KAPITI BOROUGH COUNCIL

First Respondent

AND WELLINGTON DEVELOPMENT CORPORATION at Wellington

Second Respondent

Hearing 3,4,5,6 March 1986

Counsel C Anastasiou and G J Sanders for Applicants
P D McKenzie for First Respondent
B W F Brown for 2,3,4 Respondents in A.532/85
T J Castle and B A Scott for 2nd Respondent in A.535/85

Judgment 21 March 1986

JUDGMENT OF DAVISON C.J.

BACKGROUND

There are four proceedings before the Court, all brought by local residents against the Local Authority and the respective developers, challenging the validity of alleged approvals for the developers to erect two high rise buildings at Paraparaumu Beach. In respect of each high rise building there is one application for judicial review and one application for a writ of certiorari.

Messrs Gunn and Gibb are the applicants in proceedings against the Kapiti Borough Council ("the Council") and Wellington Development Corporation ("the Development Corporation") in respect of what has been called the "Vista" development.

Messrs Ruddlesden and Gibb are the applicants in proceedings against the Kapiti Borough Council, Northside Sands Limited ("Northside Sands"), Kingston Partners and Michael P Nolan and Associates in respect of what has been called the "Sands" development.

Both sets of proceedings were by agreement of counsel heard together as both raise essentially the same issues.

LOCATION OF PROPERTIES (Vista Development)

The site of the "Vista" development is at 44-48 Marine Parade in an area zoned Commercial Retail 3 in the Council's development scheme. The property owned by the

applicant Gunn is situated in Seaview Road at the rear of the development site and adjoins it on its eastern boundary and is zoned Residential C.

The property owned by the applicant Gibb is situated in Golf Road and is located some half kilometer north east of the Vista site and is zoned Residential A.

(Sands Development)

The site of the Sands development is at 378-382 Kapiti Road in an area zoned Commercial Retail 3. The property owned by the applicant Ruddlesden is also located on Kapiti Road and is situated three sections to the north of the Sands development site. It is zoned Residential A.

THE ZONINGS

Commercial Retail 3 Zones (Ordinance 5.3.2)

The predominant uses specified for the zone are:

i) Shops excluding car sales yards.

ii) Offices - professional, commercial, administrative, bank and insurance.

iii) Commercial services, agencies, depots and auction rooms.

iv) Cafes, coffee bars and restaurants.

v) Places of assembly and places of entertainment.

vi) Institutions and churches.

vii) Permanent residential accommodation.

viii) Light industry and storage.

General Conditions for predominant uses are (Ordinance 5.3.3)

(1) For ii, iii and iv continuity of shop fronts shall not be unduly affected.

(2) For v, vi, vii and viii -

these uses are restricted to above the ground floor level, the basement, or ground floor level to the rear of retail space and steps are taken to the satisfaction of the Council to ensure that the uses will not cause or be liable to cause nuisance by way of noise, smell, smoke, vibration or discharge of trade wastes or effluent.

(3) Plot ratio 1.5:1 (but see 5.3.4 Special Conditions)

(4) Maximum Height - see Appendix D.

(5) All development shall conform with the principles illustrated in the structure plan.

(6) Parking - Parking provision shall be made in accordance with the structure plan Map No 11 of the Map Section.

Special Conditions relating to all uses (Predominant and Conditional) include:

(1) Plot Ratio Bonus

A bonus in the form of additional floor space may be permitted if ground floor open space in the form of arcades, plazas, malls and frontage set-backs is provided. Such provision will only be recognised if it is in accordance with the principles incorporated in the structure plan Map No 11 of the Map Section.

The bonus floor space will be granted at a rate of 4 sq. metres for every 1 sq. metre of ground floor open space provided, provided that the maximum increase in plot ratio will be limited to 1.5:1.

Appendix D of the Code of Ordinances, which regulates the maximum height of buildings in the Commercial Retail 3 zone provides:

" The maximum height shall be 9m except that a structure may exceed this height if the structure is set back from the respective boundary so that no part of the structure above the 9m level projects above an encroachment plane drawn within the site at an angle of 3 vertical to 1 horizontal from each side boundary. "

APPLICATIONS TO COUNCIL

"VISTA" DEVELOPMENT (Action No 535/85)

In May/June 1985 the Development Corporation architects had discussions with Mr Pearson, the Council Planner, and development proposals and planning requirements were discussed. Verbal approval of the proposals was given and on 26 June the architects wrote to the Council seeking confirmation of those verbal approvals.

Mr Pearson replied by letter dated 17 July 1985 and stated inter alia:

> " The proposals for a seven storey building on the above site and detailed in your drawings have been fully considered and I am pleased to advise that the proposal complies with the Kapiti Borough District Scheme. "

That letter also drew attention to three matters that required attention. These were subsequently attended to by the architects. However, the architects on 23 September 1985 and 14 October 1985 submitted new plans to the Council for approval and the former plans have been rendered redundant. The new plans are still being considered by Council officers.

From 24 September 1985 to 28 October 1985 the Council received 29 objections to the proposal, including ones from the applicants, Mr Gunn and Mr Gibb. The objections were based substantially on the multi-storey development and the height of the proposed building. The Council advised the objectors that the Vista site is in a Commercial Retail 3 Zone and that multi-storey development is a predominant use in such zone.

On 13 November 1985 Mr Pearson reported to the Planning and Development Committee asking members to consider whether the Vista proposal complied with Ord. 13.4.2 of the District Scheme. Ordinance 13.4.2 provides:

> " No structure, building, sign, excavation or other work shall be sited, erected, made or finished so that it would in the opinion of the Council (notwithstanding that the design and materials may comply with the Council's building bylaws) be visually inappropriate to the neighbourhood or would otherwise detract from the amenities of the neighbourhood or would tend to depreciate public or private values therein. "

Mr Pearson's recommendation was:

> " That Council does not consider that the Wellington Development Corporation proposal for multi-storey development on Marine Parade is visually inappropriate or detracts from the amenities of the neighbourhood or tends to depreciate public or private values therein."

The Committee met on 13 November 1985 and after discussion recommended to the Council:

> " That Council does not consider that the Wellington Development Corporation proposal for multi-storey development on Marine Parade contravenes the District scheme. "

That recommendation came before the full Council on 20 November 1985. The Council adopted the recommendation of the Committee.

On the basis of the new plans lodged by the architects with the Council, Mr Pearson has compiled up-dated calculations of site area, building, plot sites, height and car parking.

On 3 February 1986 the Council Engineer wrote to the developers advising that matters which need be resolved before a building permit can be issued are:

(a) Design of the building as regards fire safety regulations.

(b) Design of the building as regards lighting and ventilation of the inside bedrooms.

(c) Foundations.

(d) Plot ratio bonus.

No building permit has yet been issued. Authority, however, has been given by the Council Engineer for five test piles to be sunk.

That is a resume of the current position.

"SANDS" DEVELOPMENT (Action No 532/85)

In early April 1985, Nolan Associates, the fourth respondent approached the Council regarding sites for apartment development.

On 23 May 1985 Mr Pearson advised that a multi-storey development is a predominant use in the Commercial Retail 3 zone. Between May 1985 and September 1985 Nolan Associates submitted plans with various amendments to Council for approval.

On or about 24 September 1985 objections were received to the proposal, including objections by the applicants Ruddlesden and Gibb.

The Council advised objectors that the properties involved were zoned Commercial Retail 3, in which zone multi-storey development is a predominant use. The Planning Officer being conscious of the need to consider the requirements of Ordinance 13.4.2 (earlier set out) engaged Mr Gabites, Council's planning consultant, to advise on that ordinance in respect of the Sands proposal. Mr Gabites reported that -

> " The design of the proposed building is of a high standard, the appearance is attractive and the impact on the neighbourhood is minimal. "

On 16 October 1985 Mr Pearson reported to the Planning Development Committee. He stated:

> " Over recent weeks Council has received 26 objections to high rise development at Paraparaumu Beach.
>
> Approximately 50% of the objections relate to the proposed high rise development in Kapiti Road.
>
> As previously reported, high rise development is a predominant use in the Commercial Retail 3 Zone subject of course to complying to Council requirements relating to bulk, height, yards, coverage, plot ratio and carparking.
>
> The applicant for the above proposal, Michael P Nolan and Associates, has submitted sketch plans to Council for town planning approval in principle. The plans that have been submitted comply with the requirements of Ordinance 5.3 and Appendix D of the Kapiti Borough District Scheme.
>
> A majority of the objectors acknowledge that the proposal is a predominant use but challenge whether the use complies with Ordinance 13.4 of the District Scheme - "Design & External Apearance of Buildings".
>
> Ordinance 13.4 states:-
>
> 'No structure, building, sign, excavation or other work shall be sited, erected, made or finished so that it would in the opinion of the Council (notwithstanding that the design

and materials may comply with the Council's building bylaws) be visually inappropriate to the neighbourhood or would otherwise detract from the amenities of the neighbourhood or would tend to depreciate public or private values therein. '

I have considered the proposal in terms of the above clause and wish to comment as follows:-

(a) Site In my opinion this is probably the best site zoned for multi storey purposes in the Borough. It is surrounded by commercial and recreation zoning plus a road. The nearest dwelling to the north is approximately 30 metres away and to the south 55 metres.

(b) Visually Inappropriate The building has been architectually designed, has an attractive appearance and would have minimal effect on the neighbourhood, particularly to the south which is zoned for transient accommodation.

(c) Detract from the Amenities The proposal will not, in my opinion, detract from the amenities as the proposal is in harmony with the environment.

(d) Depreciate Public or Private Values As previously stated, the site is surrounded by commercial, recreational and high density residential zoning. Seaviews are not affected. The proposal is a predominant use, therefore property values should not be adversely affected.

RECOMMENDATION

That Council does not consider that the Sands Apartments development in Kapiti Road is visually inappropriate or detracts from the amenities of the neighbourhood or would tend to depreciate public or private values therein. "

The Committee on 16 October 1985 decided that the proposal complied with Ordinance 13.4.2 and recommended:

" That Council does not consider that the Sands Apartments development in Kapiti Road is visually inappropriate or detracts from the amenities of the neighbourhood or tend to depreciate public or private values therein. "

That recommendation went before the full Council on 23 October 1985. Council also had before it a report from Dentice Associates, Public Valuers, discussing the impact of the proposed development on the values of surrounding properties. It resolved to adopt the Committee's recommendation.

The developers on 15 November 1985 applied for and received a Stage 1 building permit issued in anticipation of detailed drawings being received. No work shall be carried out until such detailed drawings have been approved by Council officers.

APPLICANTS CLAIMS

"VISTA" DEVELOPMENT

The grounds of claim as set out in the amended statement of claim are:

1. The first respondent did on or about the 17th day of July 1985 misdirect itself in not acknowledging the applicability of Ordinance 13.4 to the proposal of the second respondent and in determining that the proposal complied with the District Scheme.

2. The first respondent misdirected itself in failing to give consideration to the requirements of Section 3 of the Town and Country Planning Act 1977 in considering the proposal of the second respondent.

3. The first respondent misdirected itself in failing to apply its own policies as evidenced in its own Scheme Statement.

4. The first respondent misdirected itself as to the meaning and effect of Ordinances 13.4.1, 13.4.2, 5.3.3(5) and 5.3.6.

5. In making the determinations it did the first respondent was wrong in fact and in law.

"SANDS" DEVELOPMENT

The grounds of claim are:

1. The first respondent did on or about the 23rd day of May 1985 misdirect itself in not acknowledging the applicability of Ordinance 13.4 to the proposal of the second, third and fourth respondents.

2. The first respondent misdirected itself in failing to give consideration to the requirements of Section 3 of the Town and Country Planning Act 1977 in considering the proposal of the second, third and fourth respondents.

3. The first respondent misdirected itself in failing to apply its own policies as evidenced in its own Scheme Statement.

4. The first respondent misdirected itself as to the meaning and effect of Ordinances 13.4.1, 13.4.2, 5.3.3(5) and 5.3.6.

5. In making the determination it did the first respondent was wrong in fact and in law.

RELIEF SOUGHT

"VISTA" DEVELOPMENT

(a) A declaration that the following decisions, determinations, and acts of the first respondent were wrong in fact and law, and otherwise invalid, namely:

(i) The decision or determination of the first respondent made on or before the 17th day of July 1985 that the proposal of the second respondent complied with the requirements of the first respondent's District Scheme.

(ii) The decision or determination of the first respondent made on or before the 26th day of November 1985 that the proposal of the second respondent did not require a notified planning application.

(iii) The decision or determination of the first respondent made on or before the 26th day of November 1985 that the proposal of the second respondent was entitled to plot ratio bonuses.

(iv) The decision or determination of the first respondent made on or about the 20th day of November 1985 that the proposal of the second respondent complied with the first respondent's District Scheme.

(v) The decision or determination of the first respondent to permit test pile driving preparatory to the construction of the proposal of the second respondent.

(b) An order setting aside the aforementioned decisions of the first respondent.

"SANDS" DEVELOPMENT

(a) A declaration that the following decisions, determination and acts of the first respondent were wrong in fact and law and otherwise invalid, namely:

(i) The decision or determination of the first respondent made on or before the

23rd day of May 1985 that the proposal of the second third and fourth respondents was a predominant use in the Commercial Retail 3 Zone of the first respondent's District Scheme subject to compliance with Ordinance 5.3.6 and Appendix D.

(ii) The decision or determination of the first respondent made on or before the 18th day of November 1985 that the proposal of the second third and fourth respondents did not require a planning application.

(iii) The decision or determination of the first respondent made on or before the 18th day of November 1985 that the proposal of the second third and fourth respondents was entitled to plot ratio bonuses.

(iv) The decision or determination of the first respondent made on or about the 23rd day of October 1985 that the proposal of the second third and fourth respondents complied with the first respondent's District Scheme and in particular did not offend the provisio of Ordinance 13.4.2.

(v) The decision or determination of the first respondent to issue a building permit to allow the construction of the proposal of the second third and fourth respondents.

(vi) The issue of a building permit by the first respondent to allow the construction of the proposal of the second third and fourth respondents.

(b) An order setting aside the aforementioned decisions, determination and acts of the first respondent.

THE ISSUES IN BOTH CASES

A. As preliminary matters the question of the standing of the applicants to bring the proceedings in each case was challenged by the respondents. So, too, the respondents raised the question of whether the Council exercised any statutory power of decision.

B. At my request, counsel for the parties after consultation prepared a list of the issues which they claim arise on the pleadings. They are:

"VISTA" ISSUES

1. (a) Is Ordinance 13.4 valid and does Ordinance 13.4 apply to the proposal?

   (b) If Ordinance 13.4 applies to the proposal what is the meaning of Ordinance 13.4 and does it control height?

2. Did the Council have regard to an irrelevant consideration when it considered the possible invalidity of Ordinance 13.4 in assessing the proposal?

3. Did the Council fail to have regard to a relevant consideration in failing to have regard to Section 3(1)(c) of the Town & Country Planning Act 1977?

4. Did the Council misdirect itself and/or fail to have regard to relevant considerations in failing to have regard to its own policies as set out in the Scheme Statement in the following passages:

   Clause 3.2 - page 5
   Clause 4.1 - page 18
   Clause 4.2 - page 19
   Policy (d) - page 20
   Clause 4.6 - page 31 objective (a) and (b)
   Clause 4.9 - pages 40, 41?

5. Does the proposal conform with the principles illustrated in the Structure Plan and is the development therefore entitled to a plot ratio bonus?

6. If the development is entitled to a plot ratio bonus what is the amount of plot ratio to which it is entitled?

7. Did the Council misdirect itself in taking the view that it could approve the development because there would not be a proliferation of other high rise development?

"SANDS" ISSUES

1. (a) Is Ordinance 13.4 valid and does Ordinance 13.4 apply to the proposal?

   (b) If Ordinance 13.4 applies to the proposal what is the meaning of Ordinance 13.4 and does it control height?

2. Did the Council have regard to an irrelevant consideration when it considered the possible invalidity of Ordinance 13.4 in assessing the proposal?

3. Did the Council fail to have regard to a relevant consideration in failing to have regard to Section 3(1)(c) of the Town & Country Planning Act 1977?

4. Did the Council misdirect itself and/or fail to have regard to relevant considerations in failing to have regard to its own policies as set out in the Scheme Statement in the following passages:

   Clause 3.2 - page 5
   Clause 4.1 - page 18
   Clause 4.2 - page 19

Policy (d) - page 20
Clause 4.6 - page 31 objective (a) and (b)
Clause 4.9 - pages 40, 41?

5. Does the proposal conform with the principles illustrated in the Structure Plan and is the development therefore entitled to a plot ratio bonus?

6. If the development is entitled to a plot ratio bonus what is the amount of plot ratio to which it is entitled?

7. Does Ordinance 11.1.1(4) prevent the use of front yard space of the proposal for carparking?

8. Did the Council misdirect itself in law in stating in a letter dated the 24th of October 1985 to C.M. and M.C. Gibb (Exhibit B Ruddlesden affidavit) that if the development complied with encroachment plane requirements, yard requirements and plot ratio requirements, that it was obliged to issue a building permit?

9. Did the Council misdirect itself in taking the view that it could approve the development because there would not be a proliferation of other high rise development?

It will be seen that the issues Nos. 1 - 6 inclusive in each case are identical. Issue 7 of Vista and issue 9 of Sands are also identical. The only two issues remaining in Sands affect Sands only. They are issues 7 and 8.

CERTIORARI PROCEEDINGS

In addition to the two applications for review filed by the respective applicants under Nos 535/85 and 532/85 respectively, both sets of applicants have filed notices of motion seeking writs of certiorari based on

the same pleas. They are numbered 17/86 and 18/86. I was advised that such proceedings were issued in the event that the Court found that proceedings for review were not available to the applicants. Reliance was placed on Re Royal Commission on Thomas Case [1980] 1 NZLR 603.

DECISION

The approach to standing has of recent years become more liberal: see R v Greater London Council, ex parte Blackburn [1976] 3 All ER 184 at p 192; I.R.C. v Federation of Self-Employed [1981] 2 All ER 93, 105; E.D.S. v South Pacific Aluminium (No 3) [1981] 1 NZLR 216, 220; Van Duyn v Helensville Borough [1985] 5 NZAR 55, 60.

All the applicants are ratepayers and occupiers of properties within the Kapiti Borough. In the case of Mr and Mrs Gunn they occupy a property adjoining the eastern boundary of the proposed Vista site. Mr Ruddlesden is also a ratepayer and occupier of property in Kapiti Road which in his case is but three sections removed from the northern boundary of the Sands site. Mr Gibb is a ratepayer and occupier of property in Golf Road some distance from the Sands site and a greater distance from the Vista site. All applicants, however, are members of a public interest group opposed to high rise development in the Kapiti Borough.

The applicants are not idle busybodies: they are persons who claim that they are "aggrieved" by the Council's decisions under attack and as ratepayers and residents of the area they have each a "sufficient interest" in the subject matter of the proceedings. It was suggested that some applicants may have a sufficient interest in certain issues but not in others. I do not propose to confine "standing" in such a way. The question must be looked at broadly. As Barker J. remarked in Van Duyn v Helensville Borough Council (ante) at p 60:

> " The modern approach looks first at the alleged breach of the law and its seriousness before considering the question of standing. In the present case if the applicant were able to demonstrate a serious breach of the law he ought not to be denied standing. "

The applicants in both cases allege what could be serious breaches of planning law. Whether or not such did occur must be considered later.

The applicants challenge the decisions of the Council in deciding that the developments are predominant uses. They say that its decisions under Ordinance 13.4.2 which deals with buildings visually inappropriate to the neighbourhood or which would otherwise detract from the amenities of the neighbourhood or would tend to depreciate public and private values are wrong in law. They have a sufficient interest in these matters to give them standing.

I was referred by counsel for the respondents to the Court of Appeal decision of Miden Construction Co Ltd v Kale and Tauranga City Council and Ors (CA 44/85, 29 May 1985). I do not find that case of assistance in the present one. In the Miden case the Court was dealing with an application for an interim injunction and held that the applicant for the injunction did not make out an arguable case. It was a claim by the applicant against his neighbour and concerned disputes over the construction of an accessway along the applicant's boundary. The present case concerns applications to the Court to review decisions of the Council affecting the operation of its District Scheme and matters of public interest in the application of various provisions of that District Scheme. The applicants claim that the Town and Country Planning Act 1977 s 62(3) requires the Council to enforce its Operative District Scheme and has not done so. I would not deny the applicants' standing to bring their case to this Court.

EXERCISE OF STATUTORY POWER

On behalf of the applicants it was claimed that the Council has exercised a statutory power in accordance with s 3(b) and (e) of the Judicature Amendment Act 1972 in that it has -

> Exercised a statutory power of decision; or
>
> Made an investigation or inquiry into the rights, powers, privileges, immunities, duties or liabilities of any person.

In the case of the Vista Development, the "decisions" which it is alleged the Council made were these:

(i) The decision or determination of the first respondent made on or before the 17th day of July 1985 that the proposal of the second respondent complied with the requirements of the Kapiti Borough District Scheme.

(ii) The decision or determination of the first respondent made on or before the 26th day of November 1985 that the proposal of the second respondent did not require a notified planning application.

(iii) The decision or determination of the first respondent made on or before the 16th day of November 1985 that the proposal of the second respondent was entitled to plot ratio bonuses.

(iv) The decision or determination of the first respondent made on or about the 20th day of November 1985 that the proposal of the second respondent did not contravene the first respondent's District Scheme.

(v) The decision or determination of the first respondent to permit test pile driving preparatory to construction of the proposal of the second respondent.

In the case of the Sands Development the alleged "decisions" were:

(i) The decision or determination of the first respondent made on or before the 23rd day of May 1985 that the proposal of the second third and fourth respondents was a predominant use in the Commercial Retail 3 Zone of the first respondent's District Scheme subject to compliance with Ordinance 5.3.6. and Appendix X.

(ii) The decision or determination of the first respondent made on or before the 18th day of November 1985 that the proposal of the second third and fourth respondents did not require a notified planning application.

(iii) The decision or determination of the first respondent is made on or before the 18th day of November 1985 that the proposal of the second third and fourth respondents was entitled to plot ratio bonuses.

(iv) The decision or determination of the first respondent made on or about the 23rd day of October 1985 that the proposal of the second third and fourth respondents complied with the first respondent's District Scheme and in particular did not offend the provisions of Ordinance 13.4.2 a copy of which is annexed to the affidavit of the first applicant filed herein.

(v) The decision or determination of the first respondent to issue a building permit to allow construction of the proposal of the second third and fourth respondents.

(vi) The issue of a building permit by the first respondent to allow the construction of the proposal of the second third and fourth respondents.

It was submitted that decisions in these cases were either the exercise of a statutory power of decision or that they affected the rights privileges and liabilities of the applicants in that -

(i) the value of one or more of the applicants' properties will depreciate as a result of the decisions being implemented.

(ii) the views of one or more of the applicants will be obstructed or diminished as a result of the decisions being implemented.

(iii) the amenities, environment, desirability and appeal of the neighbourhood will be adversely affected as a result of the decisions being implemented.

On behalf of the applicants, the following cases were referred to as ones where it had been held that there had been the exercise of a statutory power: Webster v Auckland Harbour Board [1983] NZLR 646; Lamont v Hawkes Bay County Council [1981] 2 NZLR 442; Anderson v Auckland City Council [1978] 1 NZLR 567; and Dunedin v Thames/Coromandel District Council and Ors. (1980) 7 NZTPA 65.

However, the respondents drew a distinction between opinions and advice as to the meaning or interpretation of the Council's Code of Ordinances, administrative decisions of a day to day nature, and actions which do not involve the exercise of any official discretion on the one hand and the exercise of a statutory power of decision given to the Council on the other. Reference was made to Rotorua Aero Club Inc. v Air Services Licensing Authority (High Court, Rotorua, M.16/77, June 1977, Barker J.) and Gazley v Wellington District Law Society (High Court, Wellington, A.48/78, 16 June 1978, Davison C.J.) where it was held that the giving of opinions or advice did not qualify as the exercise of a statutory power of decision.

Further reference was made to New Zealand Stock Exchange v Listed Companies Association Inc. [1984] 1 NZLR 699, 706; and Van Duyn v Helensville Borough Council (ante) regarding administrative decisions of a day to day character not directly determinative of the rights or privileges of a person; to Elson White v Auckland Education Board (High Court, Wellington, A765/75, 23 December 1975, Cooke J.) to actions resulting as an automatic statutory consequence;

and to Lemmington Holdings Ltd v C.I.R. [1984] 2 NZLR 214, 219 where the grant or withdrawal of an approval on the basis of a particular view of an applicant's proposal is not the exercise of a statutory power.

I have considered the decisions challenged by the applicants in relation to the Vista Development as set out earlier.

Items 1 (iii) and (v) were alleged decisions of Council officers and were no more than the exercise of statutory functions in -

(a) Interpreting or giving an opinion of the District Scheme;

(b) Forming a view on factual material placed before the officer;

(c) Advising the developer of that interpretation and view.

These decisions are not open to judicial review.

Item (iv) was a decision of the Council in relation to Ordinance 13.4.2 of the Council's Code of Ordinances and amounted to the exercise of a statutory power of decision.

In respect of the Sands Development, items (i) to (iii) were the exercise of statutory functions by Council officers and were in the same category as items 1 (iii) and (v) of the Vista proposal. They are not decisions open to judicial review.

Item (iv) was a decision of the Council relative to Ordinance 13.4.2 and amounted to exercise of a statutory power of decision.

Items (v) and (vi) were decisions to issue a building permit.

It has been doubted whether the issue of a building permit involves the exercise of a statutory power of decision subject to judicial review: Stewart Investments Ltd v. Invercargill City Corporation [1976] 2 NZLR 362, 372;

Dunlop Joinery & Furniture Ltd v Invercargill City Corporation (1984) 4 NZAR 251.

By the time a building permit is issued, the planning decisions if any have already been made by the Council. The function of the Council officer issuing the permit is to ensure that the construction aspects of the building comply with the bylaws and any conditions of approval previously decided upon by the Council. I do not consider that the issue of a building permit by the Council officer in the Sands case was the exercise of a statutory power of decision.

In the case of the Vista Development, no building permit has yet been issued and no decision taken to issue one. All that has happened is that the developer has been given permission to sink five test piles.

THE ISSUES

At the outset I remind myself that in dealing with the application for judicial review I am concerned only with the manner in which the decision making was carried out by the Council. I am not concerned with the merits of such decisions such as to substitute my opinions for those of the Council: Chief Constable of North Wales Police v Evans [1982] 3 All ER 141, per Lord Hailsham p 143:

> " But it is important to remember in every case that the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. "

ISSUE 1 (VISTA): ISSUE 1 (SANDS)

(a) Is Ordinance 13.4 valid and does Ordinance 13.4 apply to the proposal?

(b) If Ordinance 13.4 applies to the proposal, what is the meaning of Ordinance 13.4 and does it control height?

Counsel for the applicants argued that Ordinance 13.4.2 is a valid ordinance and that the Council failed to apply it to both the development proposals by considering the effect of the height of the two buildings as one of the factors said to be relevant under that Ordinance.

For the respondents it was submitted that Ordinance 13.4.2 is invalid as it purports to control the power of the developers to construct the proposed buildings in the Commercial Retail 3 Zone as of right in accordance with their classification as predominant uses in such zone. If such is found to be the case then Council was not required to take it into account. The respondents further claimed that in any event Council took Ord. 13.4.2 into account and decided that neither of the proposed developments should be refused approval under that Ordinance.

I turn first to the question of the validity of the Ordinance. The Ordinance itself states in 13.4.1

> " This Ordinance shall apply notwithstanding compliance otherwise with this Code of Ordinances. "

It is therefore meant to apply (inter alia) to Ordinance 5.3 relating to Commercial Retail 3 Zones in which multi-storey development is a predominant use. The Scheme Statement refers to a predominant use as one -

> " permitted as of right provided that a proposal to use land or buildings complies with <u>all</u> the relevant ordinances. "

The term "predominant use" is not found in the Town and Country Planning Act 1977 but corresponds with the use as of right referred to in that Act. The relevant ordinances in relation to buildings in the Commercial Retail 3 Zones include Ordinances 5.3 and 13.4.

The challenge to the validity of Ord. 13.4.2 is based on the argument that it must be authorised by s 36(4)(a) of the Town and Country Planning Act 1977 which provides:

> " Every district scheme may distinguish between classes of [use or development] in all or any part or parts of the district in any one or more of the following ways or any combination of them:
>
> (a) Those which are permitted as of right provided that they comply in all respects with all controls, restrictions, prohibitions, and conditions specified in the scheme. "

Under that provision, it was said, Ordinance 13.4.2 was not authorised because it did not contain specific criteria from which a would be developer could ascertain whether its development which would otherwise be permitted as of right would comply.

It was not suggested that Council could not include an ordinance in its District Scheme imposing "performance standards" which must be met before a proposed use can be a predominant use. It was acknowledged that such clearly are permissible under s 36(4)(a) of the Act. Such performance standards, however, it was said must be "specified in the scheme". The ordinance does not specify such standards but leaves for "the opinion of the Council" the questions of whether the proposed building would be "visually inappropriate to the neighbourhood or would otherwise detract from the amenities of the neighbourhood or would tend to depreciate public or private values therein. "

It was argued that it is in the very nature of a "predominant use" or one "as of right" that it is permitted as of right provided that it complies in all respects with the controls, restrictions, prohibitions and conditions specified in the scheme. No consent is required from the Council for a predominant use and it is

important that such a use retains its certainty. Such can never be the case if the question of whether a proposal amounts to a predominant use or not depends on the opinion of the Council in relation to the three matters earlier referred to as contained in Ord. 13.4.2.

The approach to a consideration of this issue must be the Act and Regulations. I adopt what Richmond J. said in Chandler & Co Ltd v Onehunga Borough [1966] NZLR 397, 403:

> " The validity of any provision contained in a district scheme must depend on whether or not it is authorised by or validated by some provision of the Act itself or of regulations validly made under the Act. "

The relevant section of the Town and Country Planning Act 1977 is s 36 dealing with the contents of District Schemes together with the provisions of the Second Schedule to the Act.

In subs 4 reference is made to three classes of use or development:

(a) Those permitted as of right provided they comply in all respects with controls etc. specified in the Scheme (emphasis mine). These were formerly called "predominant uses" and such is still a useful term to describe them.

(b) Those which require special conditions and which require approval - formerly called "conditional uses"; and

(c) Those permitted subject to powers and discretions specified in the Scheme - formerly called "discretionary uses".

In the present case the Court is concerned only with "predominant uses" and the powers of the Council in relation to them.

Authority to include in a District Scheme controls of the type contained in Ord. 13.4.2 is given Councils - First by s 36(5) of the Act which provides:

" Any district scheme may confer on the Council such specified powers and discretions as are necessary or desirable to achieve the general purposes of the scheme and to give effect to the policies and objectives contained in the scheme relating to -

(a) The preservation or conservation of trees, bush, plants, landscape, and areas of special amenity value;

(b) The design and external appearance of buildings; and

(c) Such other matters as may be specified in that behalf by any regulations in force under this Act. "

And Second by the Second Schedule which sets out "Matters to be dealt with in District Schemes".

Item 5. " The preservation or conservation of -

(iii) The amenities of the district. "

Item 7. " The design and arrangement of land uses and buildings, including -

(b) The size, shape, number, position, design, and external appearance of buildings. "

So that whilst Council has power to include in its District Scheme controls of the types to which I have just referred, the main question under this issue is how far those controls must be "specified" in the parts of the scheme relating to predominant uses.

The word "specify" in its ordinary meaning means:

" To speak of some matter fully or in detail;

To mention, speak of or name something definitely or explicitly;

To set down or state categorically or particularly;

To relate in detail"

Shorter Oxford English Dictionary

In Attorney General v Mt Roskill Borough [1971] NZLR 1030 McMullin J. stated at p 1042 that in order to specify conditions "there must be some measure of certainty about these conditions otherwise it can hardly be said that they are specified." See, too, Bitumix v Mt Wellington Borough Council [1979] 2 NZLR 57, 63 - where "controls" etc are required by s 36(4)(a) of the Act to be "specified in the scheme" then they must set out with reasonable certainty what these controls are so that a developer looking at them will be able to determine whether a proposed use is permitted as of right.

An ordinance which permits a Council to refuse approval on the basis of some value judgment the exercise of a predominant use right, is outside the provisions of s 36 and is therefore ultra vires.

This was also the view of the Tribunal in Eaton v Featherston Borough (1981) 8 NZTPA 198 and flows naturally from a reading of s 36 and the Ordinance 13.4.2. That ordinance requires a value judgment on the part of the Council as to what is visually appropriate to the neighbourhood, or what would otherwise detract from the amenities of the neighbourhood or would tend to depreciate public and private values therein. It requires those matters to be determined "in the opinion of the Council".

Mr Anastasiou for the applicants referred to Palmer, Planning and Development Law in New Zealand p 245 which he cited to support a submission that -

> " It is clear that Palmer is of the view that there is statutory authority for discretionary ordinances within the limits described by s 36 of the Act and so long as they do no more than achieve the matters set out in the Second Schedule to the Act they are valid. "

That may be a correct summary of the passage cited but it can have no application to an ordinance made under s 36(4)(a) of the Act which leaves no room for the incorporation of discretionary powers or the making of value judgments in respect of predominant uses.

Where a Council wishes to reserve to itself discretionary powers and value judgments, it should not attach those to predominant uses. Section 36(5) does not enable that to be done. They should be applied to such other uses as may be defined under s 36(4)(b) or (c) of the Act.

A number of other cases, largely decisions of the Planning Tribunal, were referred to in argument but I have not found it necessary to refer to them in this judgment. Mr Anastasiou endeavoured to distinguish between uses and performance standards and submitted that Ord. 13.4.2 deals only with performance standards and is intra vires. I do not agree. No such standards are specified.

I turn now to Issue 1(b). This requires to be answered only if I find that Ord. 13.4.2 applies to the two developments. It does not. However, without going into detail I am of the view that that ordinance can not of itself be used to control the height of a building. Height must be governed either by the particular provisions in the various ordinances or by plot ratio calculations made in accordance with the relevant provision of the Code of Ordinances.

Issue 2 Irrelevant consideration of possible invalidity of Ord. 13.4.2

It was submitted on behalf of the applicants that the Council had regard to an irrelevant consideration in making its decisions when it took into account the possible invalidity of Ord. 13.4.2. Such a submission can not succeed if that ordinance is as I have held it to be, ultra vires and invalid.

But even if it had been valid then on the facts as presented to the Court the Council did in fact in both cases treat the ordinance as valid, hear the objectors upon it, and consider reports from experts in the form of an architect and public valuer before forming the opinions that neither the Vista nor the Sands proposal contravened the

District Scheme. It did not take into account an irrelevant consideration and its decision was not such that no sensible person applying his mind to the question could have arrived at it. Council of Civil Service Unions v Minister of Civil Service [1984] 3 All ER 935, 952.

Issue 3 Failure to have regard to s 3(1)(c) of the Act

Section 3(1)(c) provides:

> " In the preparation, implementation, and administration of regional, district, and maritime schemes, and in administering the provisions of Part II of this Act, the following matters which are declared to be of national importance shall in particular be recognised and provided for:
>
> (a) ...
>
> (b) ...
>
> (c) The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development. "

Section 3 requires that a District Scheme be so drawn up and administered as to take notice of and make provision for the matters specified - Smith v Waimate County (1980) 7 NZTPA 241, 260.

Mr Anastasiou for the applicants submitted that there was no need shown by either developer for the developments in the form proposed and that therefore both are unnecessary in the context of s 3(1)(c).

On behalf of the respondents it was argued that s 3 had no application to the present developments at the stage where the applications came to be considered.

A reading of the section indicates that there are three stages when the factors set out in the section must be taken into account. Those stages are during the preparation, implementation and administration of the District Scheme. The first two relate to the preparation and implementation of the District Scheme, that is up until the District Scheme becomes operative. At that stage there

should be incorporated into the scheme such provisions and controls as are considered necessary to give effect to such of the requirements of paras (a) to (g) of that section as are appropriate.

The administration of the scheme is concerned with specific proposals made under the provisions of the District Scheme. The evidence establishes that the Council has sufficiently considered and taken into account the provisions of s 3(1)(c) in the course of the preparation and implementation of the District Scheme. Persons who wish to object to the District Scheme have the right to do so and to pursue rights of appeal during those stages. Once the District Scheme becomes operative then the Council in the administration of that scheme is obliged by s 62(3) of the Act to observe and enforce it.

In the cases of Vista and Sands Developments, which are based on predominant uses, the Council has no discretion to prevent the developments proceeding on some basis or ground allied to s 3(1)(c) of the Act. Different considerations may well apply in the cases of conditional or discretionary uses. I am satisfied that at the stage when Council made any decisions relating to the two developments of types which may be the subject of judicial review, it did not fail to take into account a relevant consideration in the form of s 3(1)(c).

The answer to Issue 3 is No.

Issue 4 Failing to have regard to Scheme Statement

In considering this issue one must first of all look at the relationship between the Scheme Statement and the Code of Ordinances. The nature of the Scheme Statement in the Council's District Scheme is set out in the introduction to that statement in section 1 which states:

> " This scheme statement consists of three parts.
>
> The first is a general statement providing some explanation of the purpose, scope and structure of the proposed district scheme

> review, together with some brief comments on the planning provisions which it contains in terms of current statutory requirements.
>
> The second part of the scheme statement is of a more factual nature, providing some of the latest available background information on existing conditions within the district. This includes some observations on the wider regional setting of the Borough, as well as comments on various specific factors affecting the nature and scale of development within the district itself.
>
> In the final part of this scheme statement, planning proposals are given which include sets of objectives and policies directly related to the zoning structure which is detailed in the accompanying code of ordinances and illustrated on the district planning maps which form a separate part of this planning scheme. "

The policies and proposals contained in the scheme statement are carried forward and given expression to in the Code of Ordinances.

The scheme statement does not have the force of an ordinance nor is it to have final influence on the language of a particular ordinance but it is, for example, intended to have greater significance than the explanatory note to be associated with certain regulations because it is an essenetial part of the whole District Scheme. Assistance should be sought from the planning documents as a whole whenever obscurities or ambiguities might seem to arise: J. Rattray & Son Ltd v Christchurch City [1984] 10 NZTPA 59, 61. The provisions of the Code of Ordinances have the effect of regulations and must be applied as such: see s 62(1).

In the present cases there is no call to refer to the scheme statement. The Council has applied the provisions of the Code of Ordinances to the two developments and no occasion has arisen to refer to the scheme statement to resolve any obscurities or ambiguities. The Council did not misdirect itself or fail to have regard to relevant

considerations in the form of the policies set out in the scheme statement.

The answer to this issue is No.

Issue 5 Conformity with Structure Plan (Vista and Sands)

It was contended on behalf of the applicants that the Council had failed to apply the structure plan in two respects:

1. It failed to recognise the principle of consolidation in the Paraparaumu shopping area.

2. It granted a plot ratio bonus to a site which is not the subject of any feature on the structure plan.

It is necessary at the outset to ask what is the nature and effect of a structure plan? "Structure plan" is defined in Council's District Scheme Ordinance 1 as:

> " A plan setting out in general form major development components such as building, car park and pedestrian areas which may be altered in detail but not in principle. "

The Council's planning maps include Map 11 which contains structure plans for four areas of the Borough, one of which relates to the area of Paraparaumu Beach. It covers the site of the Vista development but not that of the Sands development. However, in the vicinity of the Vista site, although existing shops are marked in black, no areas are designated for new shops, pedestrian ways or car parking in accordance with the notation on the plan so that useful guidance can be obtained from it.

One of the ways in which the applicants claimed that the Council had failed to apply the structure plan was in granting a plot ratio bonus to a site which is not the

subject of any feature on the structure plan. I fail to see how it can be suggested that the Council failed to comply with the principles illustrated in the structure plan when the site of the Vista development is not the subject of any feature on such plan.

Plot ratio bonus in relation to Commercial Retail 3 Zones is referred to in Ordinance 5.3.6(1):

> " A bonus in the form of additional floor space may be permitted if ground floor open space in the form of arcades, plazas, malls and frontage set-backs is provided. Such provision will only be recognised if it is in accordance with the principles incorporated in the structure plan Map No. 11 of the Map Section. "

However, Map No 11 does not cover the Vista site. In any event it is only the principles incorporated in Map 11 which are to be applied. A principle of consolidation is not disclosed.

The principles incorporated in the structure plan Map No 11 were stated by Mr Pearson, the Borough Planner, as follows:

(a) A high degree of segregation between vehicles and pedestrians.

(b) Provision for off-street parking.

(c) Provision for on-site servicing for commercial uses so as to ensure minimum conflict with pedestrian movement.

(d) Landscaping.

(e) Set back from road boundary.

(f) Use of set-backs for parking, access, landscaping etc.

Those were the principles which, if incorporated in the development proposals, were said to justify the Council officers in granting a plot ratio bonus to the developers of both the Vista and Sands sites. The fact that there is nothing shown on Map No 11 covering either the Vista site or the Sands site does not mean to say that

the principles incorporated in the structure plan are not to be applied to other sites within the Commercial Retail 3 Zones such as the Vista site and Sands site.

Whether the proposals advanced by the developers of both sites do or do not comply with the principles incorporated in the structure plan Map No 11 is a matter of fact to be decided by Council officers. The officers have decided in the cases of both the Vista and Sands development proposals that they do so comply and that they are entitled to plot ratio bonuses. I am not required on review to decide whether the Council officers were right or wrong in so deciding once I have found as a matter of law that they were entitled to make the decisions that they did: R v Registrar of Companies ex parte Central Bank of India [1986] 1 All ER 105; General Electric Co Ltd v Price Commission [1975] 1 C.R.1.

Issue 6 Calculation of Plot ratio bonus (Vista and Sands)

The calculation of plot ratio bonus involves decisions on matters of fact. The Borough officers were not exercising any statutory power or any statutory power of decision in making such calculations. They were merely carrying out an administrative action or a statutory function. In any event I am not going to embark upon calculation of plot ratio bonus when in respect of the Vista development plot ratio bonus is still an issue to be resolved between the developers and the Council.

In relation to the Sands development, Mr Pearson, the Council planning officer, has calculated the plot ratio bonus to which the development is entitled and that is not a matter which can properly be the subject of this review.

Issue 7 Use of Front yard space (Sands development only)

The question asked is whether Ordinance 11.1.1(4) prevents the use of front yard space of the proposal for car parking. Ordinance 11.1.1(4) provides:

> " The provision for parking in respect of any site may be made as part of the side and/or rear yard space but not required front yard space of that site except where expressly permitted or as part of any outdoor open space requirements. "

It will be noted that that ordinace is headed in 11.1.1 "Provision of Private Parking". "Front yard" is defined in Ordinance 1.1.3 to mean:

> " A yard between the street line and a line parallel thereto and extending across the full width of the site. "

"Rear yard" and "side yard" are also defined in that ordinance.

Counsel for the applicants sought to use Ordinance 11.1.1(4) as a provision which required car parking to be provided for on side or rear yard space only. That Ordinance, however, applies to private parking. The car parks provided for in the front yard are for public and not private car parking.

One of the principles of the structure plan is to use set-backs (i.e. front yards) for car parking access, landscaping etc. There is nothing in the Code to prevent front yards from being used for public car parking. Certainly Ordinance 11.1.1(4) does not have that effect.

Issue 8 (Sands only)

" Was Council obliged to issue a permit?"

On 24 October 1985 the Mayor of the Borough wrote to Mr Gibb stating, inter alia:

> " Provided the development complies with the requirements relating to encroachment planes, yards, and plot ratio then Council is obliged to issue a building permit. "

That reference was to the Sands development. However, the passage quoted from the letter does not mean that

the Council ignored any other requirements which first had to be satisfied before a building permit could be issued. The development obviously had to comply with building by-laws and Ordinance 5.3 relating to Commercial Retail 3 Zones. Further, the letter went on to say that Council had resolved on 23 November 1985 that the development was not visually inappropriate etc. in terms of Ordinance 13.4.2. It also stated that the building permit would be issued on receipt of working drawings provided that the proposal complies with the requirements of Ordinance 5.3 of the Borough by-laws.

Having regard to the fact that the development was a predominant use in the zone, I can find no way in which the Council misdirected itself as claimed.

Issue 9 (Sands, also Vista No 7)

" No proliferation of high rise development"

It was contended on behalf of the applicants that the Council made its decision to allow the developments on a wrong basis by coming to the view that there are only three potential sites for high rise development at Paraparaumu Beach. There was no jurisdictional error there and such matter was not an irrelevant consideration. The whole issue was one of opinion. The Council officers were of the opinion that there were only three potential sites. Messrs Boffa and Sellars, who made affidavits on behalf of the applicants, were of a different view but that does not mean that the Council officers were in error.

There is no substance in the applicants' arguments under this issue. The answer must be No.

GENERAL

Whilst I have dealt with the nine issues as posed by the applicants and accepted by the respondents it is now appropriate that I should refer again to the pleadings.

"VISTA"

In the amended statement of claim para 11 are set out the grounds of claim. They related to:

(a) The applicability of Ordinance 13.4.

(b) The requirements of s 3 of the Town and Country Planning Act 1977.

(c) The policies in the scheme statement.

(d) Alleged misdirection as to the meaning of Ordinances 13.4.1, 13.4.2, 5.3.3(5) and 5.3.6.

"SANDS"

The same grounds of claim were set out in the amended statement of claim para 11.

It will be noted that the pleadings have no reference to the following issues:

Vista No 7 and Sands No 9 relating to proliferation of other high rise developments.

Sands No 7 relating to front yard use for parking.

Sands No 8 misdirection in letter of 24 October 1985.

Although I have dealt with those issues, no amendments were sought to the pleadings to raise them and the applicants are therefore not able to rely upon them even if they had been answered in the applicants' favour.

It seems to me that the applicants have attacked the two developments by endeavouring to show breaches of particular parts of the Council's District Scheme - allowing high rise development in Commercial Retail 3 Zones - whereas what they really want is to have no such high rise development at all permitted in the Borough. The time to have attacked provisions for such development and opposed it was when the District Scheme came up for objection before it was approved by Council on 25 February 1981. At such time objections could have been made under s 45 of the Act and appeals taken to the Tribunal under s 49.

I have found no grounds for review of the exercise of any alleged statutory power or of any statutory power of decision. It is a fact that high rise development is presently permitted in the Commercial Retail 3 Zones in the Borough and I have found no errors by the Council of sufficient gravity to justify my exercising my discretion to review any of its decisions.

CERTIORARI

The applicants have also issued in each case proceedings for writs of certiorari. Rule 626 of the Code applies. It states:

> " (1) Where application is made to the Court to review any judgment or decision given or order made in any action or proceeding in any inferior Court or by any tribunal constituted by or under any Act which, or by any person who, has a duty to act judicially, on the ground -
>
> (a) That the inferior Court or tribunal or person has exceeded its or his jurisdiction, or has in any respect committed a jurisdictional error; or
>
> (b) That there is some error of law, defect, or informality on the face of its or his record, -
>
> by reason of which the Court is entitled to quash or set aside the judgment or decision or order, the Court may make an order for certiorari or such other order as the Court thinks just or both an order for certiorari and such other order as the Court thinks just.
>
> (2) Without limiting the powers of the Court, it may quash or set aside the judgment, decision, or order, or may correct the error of law, defect, or informality. "

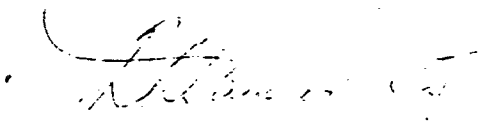
The rule applies to a body or person "who has a duty to act judicially". The Council in the present case had no duty to act judicially in respect of any determination or advice given to the developers in respect of matters arising in the course of consideration of approvals for developments. The developers simply

sought approvals for developments which were claimed to be in accordance with Council's District Scheme and by-laws. All the Council or its officers was required to do was to act administratively and decide whether such was the case. To the extent that it might be suggested that Council made a decision and acted judicially by hearing the applicants or some of them on the consideration of Ordinance 13.4.2 then I have already found that the Council has committed no jurisdictional error nor has it made any error of law, defect or informality on the face of its record.

I find no grounds for the issue of writs of certiorari as sought by the applicants.

In the result, having considered all grounds advanced by the applicants for both judicial review and for the issue of writs of certiorari in respect of both the Vista development and the Sands development, I find against the applicants and dismiss all their applications.

Questions of costs are reserved. Counsel can file appropriate memoranda as to costs if so advised.



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