

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2021] NZEnvC 008**

IN THE MATTER OF the Local Government Act 1974  
AND of road stoppings under Schedule 10 to  
the Local Government Act 1974  
BETWEEN WAIROA DISTRICT COUNCIL  
(ENV-2019-AKL-165)  
Applicant

Court: Environment Judge MJL Dickey sitting alone under s 279 of the Act  
Hearing: On the papers  
Last event: Correspondence filed by Mr Williams dated 16 February 2021  
Submissions: Mr M Williams for the Wairoa District Council  
Date of Decision: 16 February 2021  
Date of Issue: 16 February 2021

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**DECISION OF THE ENVIRONMENT COURT**

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A: The decision to stop a portion of unformed legal road, comprised of 5.61ha (Section 1 SO 521747) and 0.0019ha (Section 2 SO 521747) (5.6119ha in total) at Blue Bay, Ōpoutama is confirmed. A plan of the road to be stopped is annexed to this decision as Annexure A.



Wairoa District Council

B: There is no order as to costs.

## REASONS

### Introduction

[1] This matter involves a proposal by the Wairoa District Council (**the Council**) to stop an unformed and unnamed legal road at Blue Bay, Opoutama (**the unformed road**). The matter was referred to the Environment Court for determination, following which an objection to the proposed road stopping was filed with the Court by Ms Ropiha.<sup>1</sup>

[2] On 26 June 2020 Ms Ropiha filed an affidavit that advised the following:<sup>2</sup>

In a letter to the WDC dated 27 September 2018, I objected to the WDC's proposal to stop part of the road. It wasn't because I oppose the road stopping but because the advertisement said the land was to be vested as a Local Purpose (Recreation) Reserve and continue to be managed by the WDC. I object to the land being vested in the WDC for the purposes of a Local Reserve. ...

I have now been told that the Court is only concerned with the stopping of the road. The use the WDC makes of it is a separate matter. On that basis I withdraw my objection to the road stopping.

[3] Mr Williams, counsel for the Council, filed a memorandum seeking directions regarding the manner in which this proceeding would be determined following the withdrawal of Ms Ropiha's objection.<sup>3</sup>

[4] Following the withdrawal of Ms Ropiha's objection, it is still necessary for the Court to formally consider the road stopping proposal and determine the proposal on its merits.<sup>4</sup>

[5] The relevant provisions of the Local Government Act 1974 (**LGA**) do not include a power for the Court to refer the matter back to a Council for determination,

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<sup>1</sup> In accordance with Clause 5, Schedule 10 to the Local Government Act 1974.

<sup>2</sup> Affidavit of Ms Joan Ropiha, dated 26 June 2020.

<sup>3</sup> Memorandum of Counsel for Wairoa District Council dated 3 July 2020.

<sup>4</sup> *New Plymouth District Council* [2011] NZEnvC 88 at [7].

even if an objection has been withdrawn, as in this instance. The Council is *functus officio* in relation to the matter.<sup>5</sup> The Court becomes the decision authority seized of the matter and must decide it having regard to the provisions of s 342 and Schedule 10 LGA.<sup>6</sup>

[6] On this basis the Court advised that the matter would be determined on the papers.<sup>7</sup> The Council was directed to file a further brief of evidence addressing the relevant District Plan considerations. The further and existing briefs were to be sworn as affidavits.<sup>8</sup>

### **Road stopping considerations**

[7] Section 342 and Schedule 10 LGA are noticeably lacking in direction as to what the determinative factors might be when the Court considers a road stopping proposal.<sup>9</sup>

[8] Clause 6 of the Schedule sets out the matters the Court must consider before confirming, modifying or reversing the Council's decision:

- (a) The District Plan;
- (b) The plan of the road to be stopped;
- (c) The Council's explanation for stopping the road; and
- (d) Any objections made to the proposed stopping.

[9] The Court's decision on the road stopping is deemed to be final and conclusive on all grounds.

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<sup>5</sup> *Auckland Council* [2011] NZEnvC 386.

<sup>6</sup> *New Plymouth District Council* [2011] NZEnvC 88 at [9].

<sup>7</sup> The Court may hear a road stopping on the papers if all parties agree. See for example: *Re Dunedin City Council* EnvC W 028/97, 2 April 1997, *Re Wellington City Council* EnvC W 068/06, 17 August 2006, *Re Dunedin City Council* EnvC 128/06, 2 October 2006 and *Re Tasman District Council* [2018] NZEnvC 232.

<sup>8</sup> Minute of the Court, dated 24 July 2020.

<sup>9</sup> *New Plymouth District Council* [2011] NZEnvC 88 at [10].

- [10] Several cases have considered the kinds of matters that might need to be considered and summarised them as follows:<sup>10</sup>
- (a) the central issue is the need for the road (or place) for public use; not any need for the stopping;
  - (b) there must be reasonable cause to justify the proposal (however, the Court should not inquire into the best method of achieving the objectives of a road stopping, or weigh alternatives);
  - (c) the Court must consider the merits of the proposal in relation to the road itself, and whether the public benefit to be gained by the proposed stopping is outweighed by the private injury which would follow from the proposal;
  - (d) while it may be necessary to consider the desirability of the purpose to which the stopped road will be put, the Court has no power to make a binding declaration that the stopped road be put to a particular purpose; and
  - (e) adequate access to land in the vicinity of the road (after the stopping) is a relevant consideration.

### **The Council's submissions**

[11] On 31 August 2020 Mr Williams filed written submissions addressing the road stopping.<sup>11</sup> The memorandum was accompanied by affidavits from:

- (a) Mr Luke Knight – Property Manager (Kaiwhakahaere Rawa) at Wairoa District Council. Mr Knight's affidavit addresses why the Council has sought to stop the unformed road, and the processes the Council has undertaken in seeking to do so.

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<sup>10</sup> See for example *Re Hamilton City Council* [2018] NZEnvC 066, *Auckland Architecture Association v Auckland Council* [2016] NZEnvC 205.

<sup>11</sup> Submissions of counsel for the Wairoa District Council in support of proposed road stopping being confirmed, dated 31 August 2020.

- (b) Mr Duane Culshaw – Māori Relationships Manager (Pouahurea Māori) at Wairoa District Council. Mr Culshaw’s evidence addresses cultural viewpoints in relation to stopping the unformed road.
- (c) Mr Michael Hardie – Transport Asset Manager (Kaiwhakahaere Hua Pūmau Huarahi (Taupua)) at Wairoa District Council. Mr Hardie’s evidence addresses the road stopping from a transport asset and network perspective.
- (d) Mr Simon Mutohori – Customer Service Manager – Regulatory at Wairoa District Council. Mr Mutohori’s evidence addresses whether stopping the unformed road is consistent with the Wairoa District Plan.
- (e) Ms Nicole Alexander – Licensed Cadastral Surveyor. Ms Alexander’s evidence is based on her review of the existing cadastral data and the investigation and survey work she undertook in relation to the unformed road.

## **Consideration**

### *The Wairoa District Plan*

[12] Turning first to the Wairoa District Plan, and whether it contains any relevant provisions that should be considered in determining whether to stop the unformed road, I note Mr Mutohori explains that there are no relevant District Plan provisions directly relating to a road stopping proposal.<sup>12</sup>

[13] Mr Mutohori does however consider that the road stopping proposal would be consistent with the relevant amenity, access and parking provisions of the District Plan which require all sites to have practicable and legal vehicle access to a public road.<sup>13</sup>

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<sup>12</sup> Statement of evidence of Mr S Mutohori, dated 7 August 2020 at [6].

<sup>13</sup> Statement of evidence of Mr S Mutohori, dated 7 August 2020 at [7].

[14] This is due to the road reserve not being required to provide access to surrounding land and communities, that it is unlikely it will be required to provide access in the future and access being provided to the area by an alternative road.<sup>14</sup>

*The plan of the unformed road to be stopped*

[15] The Council proposes to stop a portion of unformed legal road, comprised of 5.61ha (Section 1 SO 521747) and 0.0019ha (Section 2 SO 521747) (5.6119ha in total)<sup>15</sup> at Blue Bay, Ōpoutama.<sup>16</sup> A plan of the road to be stopped is annexed to this decision as Annexure A.

[16] Immediately inland and to the north of the road reserve area to be stopped is a strip of Plantation Reserve Land (Section 23 Block III Mahanga SD). The land is bounded by the mean high water mark to the south.<sup>17</sup>

*The need for the unformed road and access to land in the vicinity*

[17] In *Auckland Architecture Association v Auckland Council*,<sup>18</sup> the Court found that the central issue to be determined is whether there is a need for the road, and not whether there is a need for the road stopping.<sup>19</sup> A further consideration for the Court is whether there will be adequate access to the land in the vicinity of the road once the road in question is stopped.<sup>20</sup>

[18] Mr Hardie has stated that there is no need for a road to be formed. There is now a new road connection to and from the Mahia Peninsula and Mahia township that provides for all road access requirements in the area. It is his view that:<sup>21</sup>

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<sup>14</sup> Statement of evidence of Mr S Mutohori, dated 7 August 2020 at [9].

<sup>15</sup> The plan of the road that accompanied the public notice of the road stopping recorded Section 1 SO 521747 as being 5.6ha and Section 2 SO 521747 as being 0.019ha (5.6019ha in total). Mr Williams has explained that for notification purposes the size of Section 1 (which is actually 5.61ha) was rounded down to 5.6ha. His advice to the Court is that 5.61ha is the accurate size of Section 1, and that no legal issues arise due to the rounded size of 5.6ha being used in the notification documents. I agree that it would have been clear to those viewing the notice what land was affected by the proposed road stopping and that no issue arises.

<sup>16</sup> Statement of evidence of Mr L Knight, dated 29 May 2020 at [8].

<sup>17</sup> Statement of evidence of Ms N Alexander, dated 29 May 2020 at [11].

<sup>18</sup> *Auckland Architecture Association v Auckland Council* [2016] NZEnvC 205.

<sup>19</sup> *Auckland Architecture Association v Auckland Council* [2016] NZEnvC 205 at [29](a).

<sup>20</sup> *Auckland Architecture Association v Auckland Council* [2016] NZEnvC 205 at [29](e).

<sup>21</sup> Statement of evidence of Mr M Hardie, dated 29 May 2020, at [8]-[14].

- (a) there is nothing lost in transportation terms by stopping the unformed road, and
- (b) the road reserve is not needed to provide convenient access to surrounding land and communities, and never will be.

[19] For these reasons I agree that there is no need for the unformed road and that there is, and will be, adequate access to the land in the vicinity of the unformed road after it is stopped.

*The Council's explanation. Is there reasonable cause to stop the unformed road?*

[20] Mr Knight provided the Court with an explanation of why the Council wishes to stop the unformed road.

[21] Essentially the Council's intention is that the road reserve land in question will become a Local Purpose (Recreation) Reserve and this new legal status will enable the Council to better manage freedom camping and other recreational use on the land.

[22] Freedom camping on the road reserve has become a problem for the Council in recent years, particularly in the summer months, when as many as 50 or 60 campervans can be parked up on the land.<sup>22</sup> This intensity of use of the land by freedom campers is currently affecting the enjoyment of the area by the general public. The Council hopes that the new legal status for the land as reserve will enable it to apply powers relating to freedom camping which are not otherwise available. These powers would include:<sup>23</sup>

- (a) Preparing a reserve management plan to protect the scenic, biological and other natural features present on the road reserve land; and
- (b) Prohibiting or restricting access to certain parts of that land if necessary for management purposes.

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<sup>22</sup> Statement of evidence of Mr L Knight, dated 29 May 2020 at [13].

<sup>23</sup> Statement of evidence of Mr L Knight, dated 29 May 2020 at [29].

[23] As the land is not going to be needed as a road for access purposes, the Council claims that converting the land to a Local Purpose (Recreation Reserve) will provide an opportunity to better respond to the management issues it faces in the area and is a reasonable outcome in the circumstances.

[24] Mr Williams submitted that the public benefits that will be achieved through better management of this location will outweigh any private injury associated with the road stopping proposal.<sup>24</sup>

[25] Having considered the Council's submissions and evidence, I accept its explanation regarding why it seeks to stop the unformed road, and that its intention is to better manage the location for the enjoyment of all users.

[26] I am also satisfied that the unformed road is not needed for access, as a new road has been formed and vested in the Council which provides adequate access to Mahia Township and the Mahia peninsula.<sup>25</sup>

[27] In this context I consider that there is reasonable cause to justify the road stopping proposal.

#### *Objections made to the road stopping*

[28] By way of background the Council received, three objections from local Māori raising concerns about their connection as mana whenua with the land subject of the road stopping.<sup>26</sup> The objectors' issues with the proposed road stopping can be summarised as a concern that the land would be taken by or vested in the Council as part of the road stopping process. Mr Williams submitted that in light of these concerns the Council wrote to the objectors explaining that the land was already vested in Council, and was simply being reclassified from Road to Local Purpose (Recreation) Reserve.<sup>27</sup>

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<sup>24</sup> Submissions of counsel for the Wairoa District Council in support of proposed road stopping being confirmed, dated 31 August 2020 at [41].

<sup>25</sup> Statement of evidence of Mr L Knight, dated 29 May 2020 at [19].

<sup>26</sup> Objections were received from J Ropiha dated 27 September 2018, L Whaanga-Spark dated 27 September 2018 and M Whaanga dated 23 September 2018.

<sup>27</sup> Submissions of counsel for the Wairoa District Council in support of proposed road stopping being confirmed, dated 31 August 2020 at [23].

[29] One of the objectors, Ms Ropiha, pursued her objection by filing a notice of her wish to be heard in relation to this matter with the Court. Her primary concern was that the unformed road be recognised as Māori customary land.<sup>28</sup> She later withdrew her objection on the grounds that this Court is only concerned with the stopping of the unformed road. She advised that she intended to pursue the status of the land before the Maori Land Court.<sup>29</sup>

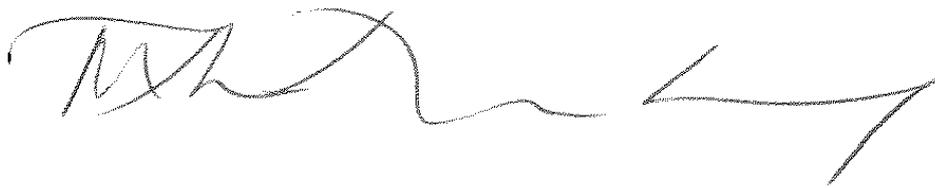
[30] As all of the objections were withdrawn, I am not obliged to consider them.

**Should the Council's decision to stop the unformed road be confirmed, modified or reversed?**

[31] Having considered the Council's submissions and evidence I am satisfied that it is appropriate to confirm the Council's decision to stop the unformed road.

[32] There is no need for the unformed road to provide access to the land in the area and stopping the unformed road will allow the Council to manage the land for the enjoyment of all future users.

[33] Accordingly, the unformed road is stopped.



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MJL Dickey  
Environment Judge



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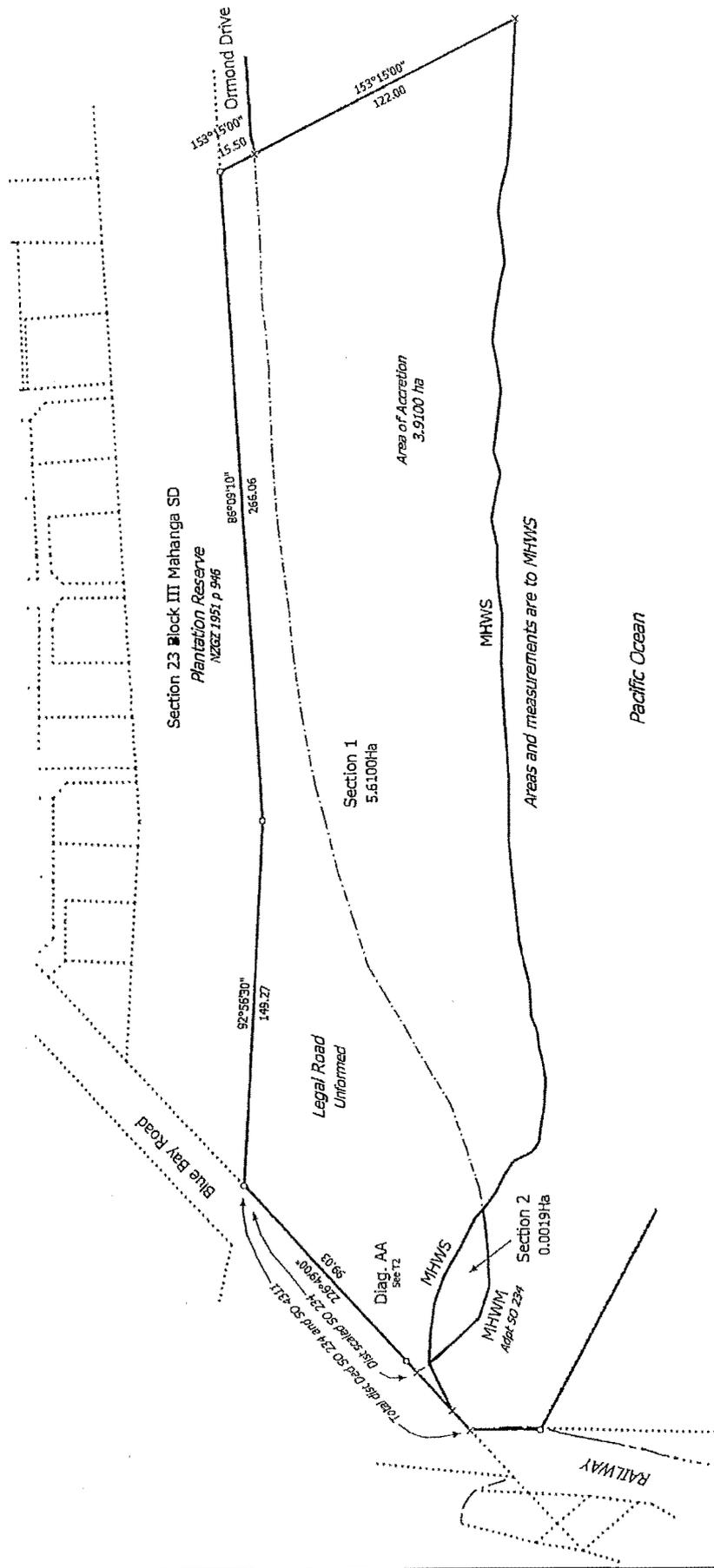
<sup>28</sup> Notice of person's wish to be party to a proceedings, filed by Ms J Ropiha, dated 11 October 2019 at [15].

<sup>29</sup> Affidavit of Ms Joan Ropiha, dated 26 June 2020.

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Land District: Hawkes Bay

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Section 1

Surveyor: Nicole Katherine Francis  
Firm: Opus International Consultants Ltd

Title Plan  
SO 521747  
Approved on: 30/07/2018