

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2023] NZEnvC 181**

IN THE MATTER OF      an appeal under section 120 the Resource  
Management Act 1991

BETWEEN                      SANDRA ELLMERS FAMILY  
TRUSTEE LTD

(ENV-2023-AKL-000167)

Appellant

AND                              CENTRAL HAWKE'S BAY  
DISTRICT COUNCIL

Respondent

Court:                      Environment Judge MJL Dickey sitting alone under s 279 of the  
Act

Last case event:      26 July 2023

Date of Order:          28 August 2023

Date of Issue:          28 August 2023

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**CONSENT ORDER**

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A:      Under section 279(1)(b) of the Resource Management Act 1991, the  
Environment Court, by consent, orders that:

- (1)      the appeal is allowed to the extent that certain conditions attaching to  
the consent granted to subdivide the property at 1080, 1152 and 1200



State Highway 50, and 604 and 612 Wakarara Road, Ongaonga are amended, as set out in Appendix A;

(2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] Sandra Ellmers Trustee Ltd (trading as Springhill Farm Holdings) appealed part of a decision of Central Hawke's Bay District Council granting consent to subdivide the property at 1080, 1152 and 1200 State Highway 50, and 604 and 612 Wakarara Road, Ongaonga subject to conditions. The resource consent authorised subdivision of the property into 312 lifestyle lots.

[2] The appeal sought that:

- (a) condition 48, which limits the provision of potable drinking water supply to rainwater collection, be amended so as not to preclude water supply by way of tanker or an application for a take of groundwater; and
- (b) the aspect of condition 49 which requires that any on-site domestic wastewater system be of an OSET rating of A or better, or equivalent (being discharge quality of median nitrogen of <15mg/L and median total phosphorus of <2mg/L) be deleted.

[3] No person has given notice of an intention to become a party under s 274 of the Act.

### **Agreement reached**

[4] Since the appeal was filed, the parties have reached agreement in respect of both issues.

[5] As originally drafted, condition 48 stated that potable water could only be provided from rainwater collection (i.e., it precluded the provision of potable water from alternative sources such as ground water, even if the appropriate consents were obtained). This was an unintended consequence and the parties have agreed that alternative sources of potable water should not be precluded. It is therefore agreed that condition 48 should be amended as follows (additions shown in underline and deletions shown in ~~striketrough~~):

(48) The consent holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for lots of 1 – 312 (All Stages), as specified below:

~~a) Potable drinking water supply for this lot is proposed to be from rainwater collection and any application for building consents shall include provision of a rainwater collection and storage system for this purpose. The system must be installed in accordance with the relevant manufacturers specifications and any other such requirements and maintained in good working order thereafter.~~

a) Any application for building consent for a habitable building must include provision of roof water collection tanks for the supply of potable water. The rainwater tank storage system must be installed and maintained in good working order thereafter. For clarity, this requirement does not preclude the installation of an alternative bore water supply.

[6] For condition 49, the Appellant's concern in its notice of appeal is that part of the condition purported to regulate the quality of domestic wastewater discharges from the development, which is within the purview of the Hawke's Bay Regional Council. There were also practical constraints which meant that compliance with the testing requirements and standards in that part of the condition would not be possible. In particular, the parties advise that there are no on-site wastewater systems that are capable of achieving the total phosphorous limit imposed by the condition; this aspect of the condition is therefore unable to be complied with.

[7] The parties agree that the domestic wastewater discharges should be regulated in the ordinary way pursuant to the Hawke's Bay Regional Resource Management Plan, and accordingly, that the relevant part of the condition should be amended as follows (additions shown in underline and deletions shown in ~~striketrough~~):

(49) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:

Any domestic wastewater system installed and utilised on this lot must be in compliance with the requirements of the Hawke's Bay Regional Council's Resource Management Plan or any successor of that Plan and must:

- Utilise drip-line irrigation for the discharge of treated effluent;  
and
- Include UV Treatment for the purpose of disinfection;
- ~~be of an OSET rating of A or better, or equivalent (being discharge quality of median total nitrogen of <15mg/L and media total phosphorus of <2mg/L.~~

The land owner must install, operate and maintain the system, and keep records in accordance with the manufacturer's specifications and for the purpose of compliance with Section 15 of the Resource Management Act 1991.

[8] The parties are satisfied, with this amendment, any effects associated with wastewater disposal on the consented lots will continue to be suitably managed.

### **Consideration**

[9] The Court has now read and considered the consent memoranda of the parties dated 26 July 2023 and 25 August 2023.

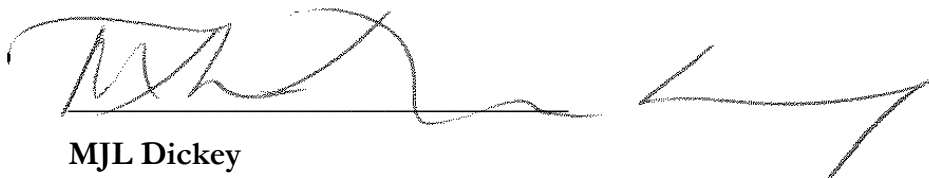
[10] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements of the Act including, in particular, Part 2.

### Order

[11] The Court orders, by consent, that:

- (a) conditions 48 and 49 of the consent granted to subdivide the property at 1080, 1152 and 1200 State Highway 50, and 604 and 612 Wakarara Road, Ongaonga are amended, as set out in **Appendix A**;
- (b) the appeal is otherwise dismissed; and
- (c) there is no order as to costs.

  
MJL Dickey  
Environment Judge



## Appendix A

(48) The consent holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for lots of 1 – 312 (All Stages), as specified below:

~~a) Potable drinking water supply for this lot is proposed to be from rainwater collection and any application for building consents shall include provision of a rainwater collection and storage system for this purpose. The system must be installed in accordance with the relevant manufacturers specifications and any other such requirements and maintained in good working order thereafter.~~

a) Any application for building consent for a habitable building must include provision of roof water collection tanks for the supply of potable water. The rainwater tank storage system must be installed and maintained in good working order thereafter. For clarity, this requirement does not preclude the installation of an alternative bore water supply.

(49) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:

Any domestic wastewater system installed and utilised on this lot must be in compliance with the requirements of the Hawke's Bay Regional Council's Resource Management Plan or any successor of that Plan and must:

- Utilise drip-line irrigation for the discharge of treated effluent; and
- Include UV Treatment for the purpose of disinfection; and
- ~~• be of an OSET rating of A or better, or equivalent (being discharge quality of median total nitrogen of <15mg/L and media total phosphorus of <2mg/L.~~

The land owner must install, operate and maintain the system, and keep records in accordance with the manufacturer's specifications and for the purpose of compliance with Section 15 of the Resource Management Act 1991.