

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 118

IN THE MATTER

of the Local Government Act 1974

AND

of a proposal by the HAMILTON CITY COUNCIL to stop part of Ruakura Road and part of Percival Road in Ruakura, Hamilton pursuant to s 342 and Schedule 10 of the Act

(ENV-2017-AKL-000165)

Court: Environment Judge M Harland
Environment Commissioner JA Hodges
Environment Commissioner SK Prime

Hearing: Decision on the papers

Appearances: LF Muldowney and S Thomas for the Hamilton City Council
J Milne for Tainui Group Holdings Limited (a s 274 party in support)
A Julian for himself and B Julian (a s 274 party in opposition)
G Goodwin for himself and J & M Goodwin (a s 274 party in opposition)

Date of Decision: 27 July 2018

Date of Issue: **27 JUL 2018**

FINAL DECISION OF THE ENVIRONMENT COURT

A: We confirm the Council's decision to stop the parts of Percival and Ruakura Roads depicted in Annexure 1(a) and (b) of the Reserved Interim Decision of the Environment Court dated 11 May 2018, and impose the conditions proposed and contained in Annexure 2 to that decision, with the addition of two new conditions (xi) and (xii) as outlined in paragraphs [6] and [13] of this decision.

B: Costs are not encouraged, but are reserved.



REASONS

Introduction

[1] We issued our Reserved Interim Decision on 11 May 2018 (**the interim decision**), which was final in all respects apart from in relation to the matters referred to in paragraphs [151] and [152] of that Decision. We invited further comment from the parties in relation to the matters outlined in those paragraphs no later than 5.00pm on 25 May 2018.

[2] Mr and Mrs Julian filed a submission on 1 June 2018, and a joint memorandum of counsel for Hamilton City Council (**the Council**) and Tainui Group Holdings Limited (**TGH**) was also filed on the same day. Responses were sought from the Council and TGH to the Julians' submission, but both advised they had nothing to reply as the parties had agreed about the further proposed conditions. The Goodwins elected not to make any further submissions to the Court on the matter.

The remaining issue to be determined

[3] The interim decision required the parties to address issues relating to "Road 2". We said:

[102] Rule 3.7.4.3.2 is intended to give effect to the policy, yet is more loosely worded. We received evidence that Road 2, the connecting road from Road 3 to the inland port and logistics area, is a private road, and TGH will have the ability to control who can use it. If Road 2 is not controlled, it is possible that some road users will use Road 2 as a short cut. This is not TGH's intention, but it should, in our view, be avoided to minimise the potential for conflict between light and heavy vehicles. One way to address this issue would be to provide a condition outlining that vehicles not associated with the inland port/logistics area are to be prevented from using Road 2, with the method of doing so to be determined by TGH to the satisfaction of the Council to ensure compliance with Rule 3.7.4.3.2

[103] If a control such as this was in place, we would be satisfied that the proposal is consistent with Policy 3.7.3.4 d.v, Policy 3.7.3.4 e and Rule 3.7.4.3.2, and all the other sub-clauses of Policy 3.7.3.4 d.

[4] We concluded:

Conditions

[151] In our view, the conditions proposed by the Council and TGH improve the overall situation for residents in the Percival/Ryburn enclave. We are satisfied that they are appropriate, and meet any residual concerns that we are lawfully able to consider, except in relation to the potential use of Road 2 in a way that might not accord with Policy 3.7.3.4 d v and Rule 3.7.4.3.2a). In our view, the parties should be given the opportunity to consider how to further address this matter either by way of an additional condition or by some other mechanism which can assure a certain outcome.



Conclusion

[152] For the above reasons, we are satisfied that there is reasonable cause for the proposal and that the need which the current roads fulfil will be adequately met by the new access road. We are minded to confirm the Council's decision to stop the parts of Percival and Ruakura Roads sought via this process and subject to the conditions proposed, if the remaining issue to do with Road 2 is resolved to our satisfaction...

- [5] The joint memorandum of counsel for the Council and TGH advised:
- (a) The Council met with TGH, the Goodwins and the Julians in respect of the issue identified by the Court in its interim decision referred to above;
 - (b) The Council and TGH have agreed a proposed wording to reflect the form of the condition set out in paragraph [102] of the interim decision. The proposed wording also includes a mechanism for monitoring the effectiveness of the access controls introduced and requires that, if deemed necessary, those controls must be modified to the Council's satisfaction;
 - (c) The Council presented an earlier draft of the proposed conditions to the Julians and Goodwins at a meeting on 22 May 2018, and a revised final draft as is now proposed was sent to them by email on 27 May 2018. Mr Goodwin told the Council that he had advised the Court he did not wish to make any further comment on the proposed condition. The Council understanding is that, while indicating they broadly agree with the conditions, the Julians would also be making a submission to the Court.
- [6] The additional conditions proposed by the Council and TGH are as follows:
- (xi) The private way identified as "Road 2" on the Boffa Miskell Concepts Layout Plans Stage I and Stage II attached to and forming part of the Land Development Plan Consent for Areas A, C, E and F (010.2015.00008413.001), or any private way authorised in substitution therefore, may be physically formed from its intersection with "Road 3" (which is identified on those plans and is to be vested in the Hamilton City Council as a public road) and from its intersection with the realigned Ruakura Road (which is identified on those plans and is to be vested in the Hamilton City Council as a public road) but shall not be connected to provide continuous access between Road 3 and the realigned Ruakura Road unless and until Tainui Group Holdings Limited has determined a method, authorised in writing by and to the satisfaction of the General Manager, City Infrastructure, Hamilton City Council, to ensure that vehicles not associated with the inland port/logistics area are prevented from using Road 2, and such method has been implemented by Tainui Group Holdings Limited.
 - (xii) If Road 2 is connected to provide continuous access between Road 3 and the realigned Ruakura Road, then Tainui Group Holdings Limited will monitor the use of Road 2 on an ongoing basis, and if vehicles not associated with the inland port/logistics area are passing through Road 2 despite the measures in condition (xi) above, then Tainui Group Holdings Limited will take further measures to prevent any unauthorised through use of Road 2. Such further measures shall be authorised in writing by and to the satisfaction of the General Manager, City Infrastructure, Hamilton City Council.



[7] By way of explanation, the joint memorandum outlined that “Road 2” is a “private way” within the definition in the Local Government Act 1974 rather than a “private road” as had been referred to in the Court's interim decision. By way of completeness, counsel included a copy of the part of s 315 outlining the difference between the two definitions, which we now include:

315 Interpretation

In this Part, unless the context otherwise requires,

...

private road means any roadway, place or arcade laid out or formed within a district on private land, whether before or after the commencement of this Part, by the owner thereof, but intended for the use of the public generally

private way means any way or passage whatsoever over private land within a district, the right to use which is confined or intended to be confined to certain persons or classes of persons, and which is not thrown open or intended to be open to the use of the public generally; and includes any such way or passage as aforesaid which at the commencement of this Part exists within any district

...

(emphasis added)

[8] In their joint memorandum, counsel advised that:

- “Road 2” is authorised by the Land Development Plan Consent for areas A, C, E and F (010.2015-00008413.001) and by the associated subdivision consent 011.2015.000061112.001;¹
- Unlike Road 3 or the realigned Ruakura Road, which are to vest in the Council as public roads, “Road 2” does not form part of the road stopping proposal, and does not serve a Council roading function;
- The function of “Road 2” is only to provide internal access to TGH’s subdivided lots and it does not have to provide a continuous connection from Road 3 to the realigned Ruakura Road to fulfil that purpose;
- “Road 2” could be formed as two separated roads, or from one end only;
- The possibility of “Road 2” being used as a short cut cannot arise if “Road 2” is not formed in a manner that provides a continuous road connection between Road 3 and the realigned Ruakura Road.

¹ Affidavit of Peter Raymond Hall dated 21 December 2017, Exhibits B and D.



[9] Counsel submitted that:

- The first proposed additional condition (Condition (xi)) prohibits such continuous access unless, following the Court's wording, vehicles not associated with the inland port/ logistics area are to be prevented from using "Road 2", with the method of doing so to be determined by TGH to the satisfaction of the Council, and accordingly it is submitted that the approved method had been implemented;
- The second proposed additional condition (Condition (xii)) includes a mechanism for monitoring the effectiveness of the controls introduced and requires that if deemed necessary, those control must be modified to the Council's satisfaction.

[10] Mr Goodwin advised the Court by email dated 24 May 2018 that "I do not wish to comment on the two clauses highlighted in the decision. This relates to an issue which I believe is a matter for the City Council and Tainui Group Holdings to resolve." Mr and Mrs Julian's email of 1 June 2018 advised that they had no issue with the proposed changes to the connection between Roads 2 and 3 to meet the matters identified in the Court's interim decision.

[11] We are satisfied that the proposed conditions are appropriate, and accordingly they are to form part of the conditions attached to the proposed stopping of the parts of Percival and Ruakura Roads depicted in Annexure 1(a) and (b) of our interim decision.

Other matters

[12] The Julians' email of 1 June 2018 also sought to clarify aspects of paragraphs [31] and [109] of our interim decision. These matters are outside the scope of the matters reserved by us in our interim decision, and therefore cannot be taken further. We do, however, note that Mr Muldowney for the Council, in his email of 3 July 2018 (a copy of which was forwarded to the Julians) provides another perspective on the matters raised by the Julians with reference to paragraph [31] of the interim decision.

Decision

[13] The conditions outlined in paragraph [6] of this Decision are to be added to the conditions contained in Annexure 2 to the interim decision.



[14] Costs are not encouraged, but are reserved.

For the Court:



M Harland

**M Harland
Environment Judge**