

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

Decision No. [2018] NZEnvC 230

IN THE MATTER of the Local Government Act 1974
AND of road stoppings under Schedule 10 to the
Local Government Act 1974
BETWEEN SOUTH WAIKATO DISTRICT COUNCIL
(ENV-2018-AKL-000070)
Applicant
AND R YOUNG
Objector

Court: Environment Judge M Harland sitting alone under s 279 of the Act

Date of Decision: 3 December 2018

Date of Issue: -3 DEC 2018

DECISION OF THE ENVIRONMENT COURT

- A: The decision to stop two lengths of unformed roads located off Tomalin Road, south west of Putaruru and at Lichfield Road/Baldwin Road between Putaruru and Tokoroa in the South Waikato District is reversed.
- B: There is no order as to costs.



REASONS

Introduction

[1] This matter involves a proposal by South Waikato District Council to stop two lengths of unformed roads. The roads are located off Tomalin Road, south west of Putaruru and at Lichfield Road/Baldwin Road between Putaruru and Tokoroa in the South Waikato District.

[2] On 11 September 2018 the Council filed a letter seeking to withdraw the proposals to stop the unformed roads. The Objector, Mr Young, advised the Court that he opposed the notice of withdrawal.

Withdrawal of Road Stopping Proceedings

[3] The Court issued a Minute on 5 October 2018 in response to the notice of withdrawal, setting out the Court's concerns that the Council was not in a position where it could withdraw the proceedings.

[4] The Court's concerns were based on Clause 6 of Schedule 10 to the Local Government Act 1974, which sets out the scope of the Court's power in road stopping proceedings. Clause 6 requires the Court to confirm, modify or reverse the decision of Council.

[5] In decision [2011] NZEnvC 386 *Auckland Council*, Judge Smith found that when a road stopping matter is referred to the Court the Council is *functus officio* and the Court becomes the decision authority seized of the matter.

[6] As such, he held that the Council has no power to withdraw the road stopping and that the Court must reach a final conclusion in respect of the proceedings in accordance with Clause 6. E.g. If the Council no longer supports the road stopping then the decision to stop the road must be reversed.

[7] The Minute also noted that the consequence of the Court making a decision in relation to the road stoppings is that:

... no proceedings shall be entertained by the Environment Court for stopping the road for 2 years thereafter.¹



¹ Clause 7, Schedule 10 to the Local Government Act 1974.

[8] Due to the implications of not being able to stop the roads for a period of two years after the Court's decision, the Court provided the parties with an opportunity to file submissions as to whether the Court should proceed and reverse the Council's proposal to stop the roads.

The Council's submissions

[9] In its memorandum in response to the Court's Minute the Council agreed that it is effectively *functus officio* given that the objection has been formally referred to the Court. The Council also agreed that the Court must now make a determination to confirm, modify or reverse the decision of Council to stop the roads.

[10] The Council's position is that the only option available to the Court is to reverse the Council's decision to stop the roads.

[11] This position is based on the Council's submissions that the information provided by it in support of the road stopping does not meet all of the criteria set out in the Tenth Schedule of the Local Government Act 1974. In particular, it submitted that the evidence does not address the relevant provisions of the South Waikato District Plan or the Council's explanation for stopping the roads.

[12] In order to satisfy those requirements and support the road stopping proposal, the Council submitted that it would be obliged to prepare and file a significant amount of additional evidence. The Council has advised that it does not have sufficient resources to prepare this evidence. Furthermore, the deponent of the affidavit in support of the road stopping proposal is no longer an employee of Council. As such, the Council has concluded that it will not file any further evidence, and seeks that the Court reverse its decision to stop the roads.

[13] The Council also acknowledged in its memorandum that it understands that it will be precluded from recommencing the road stopping process for a period of two years following the Court's determination.

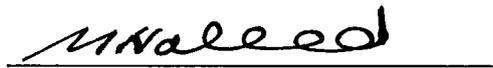
Decision

[14] Having considered that Council's submissions seeking that the decision to stop the roads be reversed, I am satisfied the Council understands that it cannot recommence the road stopping proposal for two years following this decision. I am also satisfied that there is no prejudice to Mr Young in reversing the decision to stop the roads, as this was the outcome he sought when he objected to the road stoppings.



[15] Accordingly, the decision to stop two lengths of unformed roads located off Tomalin Road, south west of Putaruru and at Lichfield Road/Baldwin Road between Putaruru and Tokoroa in the South Waikato District is reversed.

[16] There is no order as to costs.



M Harland
Environment Judge

