

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI

Decision No. [2020] NZEnvC 164

IN THE MATTER of the Resource Management Act 1991  
AND of an application for declaration under s 310  
of the Act  
BETWEEN BARRY ALLAN FREEMAN AND GERARD  
PATRICK RICHARDSON AS TRUSTEES  
OF THE B A FREEMAN FAMILY TRUST  
(ENV-2020-CHC-080)  
Applicant  
AND WAIMAKARIRI DISTRICT COUNCIL  
Respondent

Court: Environment Judge J E Borthwick  
Sitting alone pursuant to section 309 of the Act  
Hearing: at Christchurch on 14 September 2020  
Appearances: P Steven QC for the applicant  
A Limmer and J Silcock for the respondent  
Date of Decision: 29 September 2020  
Date of Issue: 29 September 2020

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DECISION OF THE ENVIRONMENT COURT

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- A: Pursuant to s 313 of the Resource Management Act 1991, the Environment Court declines to make the declaration sought.
- B: Costs are reserved. Any application for costs is to be made by **Tuesday 6 October 2020**; any reply is to be made by **Tuesday 13 October 2020**; and any final reply by **Tuesday 20 October 2020**.



## REASONS

### Introduction

[1] A dispute has arisen as to whether the Advice Notes on a resource consent issued by the Waimakariri District Council comprise terms upon which the District Council granted resource consent.

[2] The consent holders, the Trustees of B A Freeman Family Trust, have applied for a declaration pursuant to s 310(h) of the Resource Management Act 1991 as to the interpretation of the resource consent.

[3] The declaration sought is as follows:<sup>1</sup>

The Advice Notes contained in a resource consent issued by Waimakariri District Council (**the Council**) dated 15 December 2015:

- (a) Comprise terms upon which consent was granted by the Council;
- (b) Inform the nature and extent of obligations falling on the Consent Holder in relation to the conditions expressly referred to, more specifically in relation to the cost of works required by conditions 16.2 and 16.3; and
- (c) Cannot be unilaterally altered by the Council after the consent was granted.

[4] The making of the declaration is opposed by the Waimakariri District Council. For reasons that I give next, I decline to make the declaration.

### Background

#### *First subdivision consent (RC 145629)*

[5] In November 2014 the Trustees were granted resource consent to subdivide land and create 152<sup>2</sup> residential allotments and secondly, to undertake services or works associated with the subdivision.<sup>3</sup> The works included:

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<sup>1</sup> Application for declaration, 21 May 2020 at [1].

<sup>2</sup> Synopsis of legal submissions for the applicant, 21 August 2020 ("applicant's submissions"), at [4].

<sup>3</sup> I record that the total number of allotments and number of residential allotments varied across documents in the Common Bundle and the submissions of counsel. In this decision, I refer to numbers provided by the applicant's lawyer Ms P Steven. That said, the actual number of allotments is immaterial to the outcome of this decision.



- (a) the piping of McIntosh Drain, an open drain located on road reserve and adjacent to the proposed subdivision; and
- (b) the upgrading of Parsonage Road, located on the outskirts of Woodend, so that it conformed with the minimum requirements set out in the District Plan.

[6] A full copy of the subdivision application is not in evidence but attached to the affidavit of Mr M C Bacon is a copy of a conceptual plan for stormwater prepared by the Trustees' consultants, e<sup>2</sup> Environmental Ltd.<sup>4</sup> I assume this report was part of the application's Assessment of Environmental Effects. The stormwater plan records that McIntosh Drain is "to be piped".<sup>5</sup>

[7] I come back to the salience of the piping of the McIntosh Drain to this case shortly but, for now, record the District Council's understanding that the Trustees proposed that the subdivision's stormwater management design would be in accordance with the District Council's requirements, which included the piping of McIntosh Drain.<sup>6</sup>

[8] A report prepared in response to the application by District Council engineer, Mr G Stowell, records that the District Council would require Parsonage Road to be widened and urbanised<sup>7</sup> and that it would contribute 50% of the cost of the urbanisation works, "excluding" – amongst other matters – the culverting of open drains in the development frontage.<sup>8</sup> In his report he attaches a draft set of conditions and at the end of these an Advice Note records the developer's share of costs as being 100%.

[9] The Trustees did not proffer any conditions of consent and the application was processed, non-notified, as a controlled activity. Consent was granted in January 2014 subject to 31 conditions, together with two Advice Notes. Conditions 16.2 and 16.3, Advice Note (b) and the attached table are important in this proceeding and so I set them out in full:<sup>9</sup>

<sup>4</sup> Affidavit of M C Bacon, affirmed 15 June 2020, Annexure C.

<sup>5</sup> Affidavit of M C Bacon, affirmed 15 June 2020, Annexure C.

<sup>6</sup> Affidavit of K J Lavalley, affirmed 15 June 2020 at [17], citing Subdivision Consent Application, Baseline Group, at 13.

<sup>7</sup> Urbanisation is given as meaning: "the design and construction of the carriageway widening (providing two 3m wide lanes plus a 2.0m parking lane), footpath construction, kerb and channel with road drainage, and the management of open drains". Affidavit of K J Lavalley, affirmed 15 June 2020, Annexure A: Engineer's Report for RC145629 "Roding" at 4-5.

<sup>8</sup> Affidavit of K J Lavalley, affirmed 15 June 2020, Annexure A: Engineer's Report for RC 145629 "Roding" at 4-5.

<sup>9</sup> Affidavit of L M Blakie, sworn 20 May 2020, Annexure A: Waimakariri District Council decision on resource consent application RC 145629 at 12 and 18-19.



16.2 The Consent Holder shall urbanise Parsonage Road to a local road standard for the length of the frontage between the western boundary of 50 Parsonage Road to the eastern boundary of Lot 201 of the subdivision. The urbanisation shall comprise a widening in front of the northern road frontage (including all metal courses, kerb and channel, road drainage, a 1.5 metre wide concrete footpath, soiled and grassed berms and road surfacing). The southern road frontage shall include all metal courses, hard shoulder and road surfacing to meet any road widening requirements providing the required two traffic lanes plus one 2.0 wide parking lane.

16.3 The urbanisation of Parsonage Road shall also include the piping of any open drains, relocation and/or undergrounding of any existing services, all road marking, street signs, street trees and street lighting.

#### ADVICE NOTES

- (a) ...
- (b) **Cost Sharing Agreement**

This consent requires the construction of infrastructure that is to be partly funded by the Council. The Council and the Consent Holder have entered into a separate agreement regarding the cost sharing arrangements. In the interests of clarity, this cost sharing agreement is summarised below:

| Works Description   | Council share of Cost (%) | Consent Holder share of Cost (\$) |
|---|---------------------------|-----------------------------------|
| Upgrade Parsonage Road to a local road standard for the length of the northern frontage between the western boundary of 50 Parsonage Road and the eastern boundary of Lot 201. Urbanisation construction works as per Consent Condition 16.2. | 50%                       | 50%                               |
| Upgrade Parsonage Road to a local road standard for the length of the northern frontage between the western boundary of 50 Parsonage Road and the eastern boundary of Lot 201. Urbanisation construction works as per Consent Condition 16.3. | 0%                        | 100%                              |
| Upgrade Parsonage Road to a local road standard for the length of the southern frontage between the western boundary of 50 Parsonage Road and the eastern boundary of Lot 201.  | 100%                      | 0%                                |



**Notes:**

- (1) The costs in the table above are exclusive of GST.
- (2) The costs to be shared include all construction costs and reasonable engineering fees.
- (3) The costs shall be based on actual costs procured through a competitive tendering process and a fixed engineering fee to be approved by both parties.
- (4) The Council shall review and approve the construction costs prior to a contract being entered into between the Consent Holder and the Contractor.
- (5) Any variations to the construction works shall be paid in accordance with the agreed cost apportionment or in accordance with the benefits to each party where the cost apportionment is not applicable.
- (6) In the event of any dispute or disagreement between the Council and the Consent Holder regarding the cost sharing agreement, the parties will first promptly and reasonably attempt to agree on the matter in dispute. If after 10 working days of the parties first discussing such matters the parties have been unable to resolve the dispute or disagreement to the satisfaction of both parties, then either party may commence mediation of the dispute. If within 15 working days of the commencement of mediation the parties have been unable to agree on the appointment of a mediator then either party may make application to AMIEZ for the appointment of a mediator. Neither party is entitled to commence court proceedings until a qualified mediator has certified that mediation has taken place.

[10] The Trustees did not appeal the conditions of consent, nor lodge an objection to the same.

***A second subdivision consent (RC 155328)***

[11] In October 2015, the Trustees applied for a second subdivision consent. The application related to the same subdivision (as above), but now the Trustees propose to locate the development's stormwater basin to an adjoining allotment. The relocation of the stormwater basin would enable the creation of additional new residential allotments, to create a total of 172 residential allotments.<sup>10</sup>



<sup>10</sup> Affidavit of L M Blakie, sworn 20 May 2020 at [18]-[22]; affidavit of M C Bacon, affirmed 15 June 2020 at [25] records eight new residential lots whereas affidavit of M E Freeman, sworn 29 June 2020, Annexure A records 13 additional residential lots.

[12] The application for subdivision consent records an increase in the length McIntosh Drain is to be piped.<sup>11</sup> In response to the District Council's request for further information, the Trustees noted that "another stormwater main will need to be installed [sic] Parsonage Road (additional to the piping of McIntosh Drain already agreed to)"<sup>12</sup> and the Trustees prepared a conceptual stormwater design showing the area of McIntosh Drain to be piped.<sup>13</sup>

[13] The second application was processed non-notified as a new application for a subdivision consent because of the increase in land area, which attracted a change in the activity status.<sup>14</sup> Again, the Trustees did not propose any new or amended conditions of consent.

[14] Prior to the determination of the new application District Council engineer, Mr B Cathro, prepared a report on the subdivision and he too records that the Council would require Parsonage Road to be widened and urbanised and that it would contribute 50% of the cost of the urbanisation works, but excluding the culverting of open drains in the development frontage.<sup>15</sup> The draft set of conditions attached to his report records in an Advice Note, the developer's share of costs for the drain as being 100%.<sup>16</sup> However, in a subsequent report by the District Council's planning officer, the Advice Note records the developer's share of costs for the drain as being 0% and instead attributes 100% of the costs to the District Council.<sup>17</sup> There is no discussion about cost sharing or the Advice Notes in the planner's report.

[15] The Trustees were granted subdivision consent in December 2015. The grant was again subject to conditions including conditions 16.2 and 16.3 (as above). The Advice Notes, however, were different from those previously imposed and read:<sup>18</sup>

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<sup>11</sup> Affidavit of M C Bacon, affirmed 15 June 2020 at [29] and Annexure D, extracts from the application for subdivision consent, October 2015 (Baseline Group), Appendix 5: memo e<sup>2</sup> Environmental Ltd to M Freeman, 5 October 2015.

<sup>12</sup> Affidavit of M C Bacon, affirmed 15 June 2020 at [31].

<sup>13</sup> Affidavit of M C Bacon, affirmed 15 June 2020 at [32] and Annexure E.

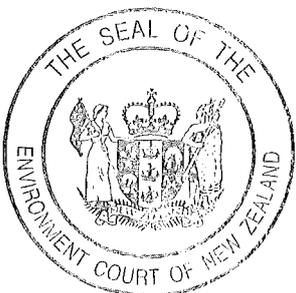
<sup>14</sup> Affidavit of M C Bacon, affirmed 15 June 2020, Annexure D at [3.2].

<sup>15</sup> Affidavit of K J Lavalley, affirmed 15 June 2020, Annexure B: Engineer's Report for RC 155328/151209161872 "Roading" at 4-5.

<sup>16</sup> In the engineer's report the condition reference is given as condition 2.14.3, whereas in the conditions attached to the grant of consent the condition appears as condition 16.3.

<sup>17</sup> Affidavit of M C Bacon, affirmed 15 June 2020, Annexure F: Waimakariri District Council Report dated 11 December 2015.

<sup>18</sup> Affidavit of L M Blakie, sworn 20 May 2020, Annexure B: Waimakariri District Council decision on resource consent application RC 155328 at 18-19.



**(b) Cost Sharing Agreement**

This consent requires the construction of infrastructure that is to be partly funded by the Council. The Council and the Consent Holder have entered into a separate agreement regarding the cost sharing arrangements. In the interests of clarity, this cost sharing agreement is summarised below:

| Works Description   | Council share of Cost (%) | Consent Holder share of Cost (\$) |
|---|---------------------------|-----------------------------------|
| Upgrade Parsonage Road to a local road standard for the length of the northern frontage between the western boundary of 50 Parsonage Road and the eastern boundary of Lot 201. Urbanisation construction works as per Consent Condition 16.2. | 50%                       | 50%                               |
| Upgrade Parsonage Road to a local road standard for the length of the northern frontage between the western boundary of 50 Parsonage Road and the eastern boundary of Lot 201. Urbanisation construction works as per Consent Condition 16.3. | 100%                      | 0%                                |

[16] The Advice Notes attached to the second subdivision consent (RC 155328) differ from the first grant (RC 145629) in two respects:

- (a) first, the District Council is now to pay 100% of costs for piping McIntosh Drain; and
- (b) second, the entry recording the District Council is to also pay 100% for roading works along the southern frontage of Parsonage Road is omitted.

[17] The cost of the piping works is approximately \$550,000.<sup>19</sup> The differences noted above are at the crux of this application.

[18] The Trustees did not appeal the conditions of consent but did raise, informally and without recourse to the Local Government Act 2002, concerns over the development




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<sup>19</sup> Affidavit of L M Blakie, sworn 20 May 2020 at [27].

contribution (condition 6).<sup>20</sup> The parties have settled their differences on this matter.<sup>21</sup>

[19] In January 2016, the development was put on hold due to poor market conditions. The development remained on hold until March 2018, when the Trustees submitted plans to the District Council for engineering approval, which was granted in August 2018.

[20] Then, in September 2018, the Trustees and the District Council entered into discussions around the valuing of link strips required by a condition of consent. It was around this time that the District Council became aware of the differences between the Advice Notes on the two consents and, despite the parties' best efforts, they have not been able to resolve what those differences mean (if anything).

### **Trustees' submissions**

[21] The Trustees say the content of the Advice Notes tempers the obligation upon the consent holder under conditions 16.2 and 16.3.<sup>22</sup> Read together with the conditions, the obligations are presently that the consent holder will meet:<sup>23</sup>

- (a) 50% of the cost of the upgrade to the northern side of Parsonage Road (from 50 Parsonage Road to Lot 201, covering a total length of 565 metres);<sup>24</sup>
- (b) 100% of the upgrades to the southern side of Parsonage Road over the new length;<sup>25</sup> and
- (c) 0% of the cost of piping of any open drain (McIntosh Drain), road marking, street signs or street trees or street lighting (over the new length of Parsonage Road).<sup>26</sup>

[22] The Trustees accept conditions 16.2 and 16.3 are lawful, being conditions imposed pursuant to s 108(2)(c) and meeting the requirements of s 108AA.<sup>27</sup>

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<sup>20</sup> Transcript (Limmer) at 37; affidavit of K J Lavalley, affirmed 15 June 2020 at [49].

<sup>21</sup> Affidavit of M E Freeman, sworn 29 June 2020, Annexure A: letter from Waimakariri District Council to Mark Freeman, 18 November 2016.

<sup>22</sup> Applicant's submissions above n 2 at [10].

<sup>23</sup> Applicant's submissions above n 2 at [11].

<sup>24</sup> Condition 16.2.

<sup>25</sup> Condition 16.2.

<sup>26</sup> Condition 16.3.

<sup>27</sup> Applicant's submissions above n 2 at [17]-[18].



[23] In addition to the restrictions in s 108AA, counsel for the Trustees submits the conditions will be valid if they meet the pre-requisites set out in the House of Lord's decision of *Newbury District Council v Secretary of State for the Environment (Newbury)*,<sup>28</sup> namely:

- (a) the condition must be for a resource management purpose, not for an ulterior purpose;
- (b) the condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and
- (c) the condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it.

[24] The Trustees submit that a condition imposing a requirement upon a consent holder to undertake certain works may, as it did in *Waitakere City Council v Estate Homes Limited (Estate Homes)*,<sup>29</sup> come down to whether the compensation payable by the District Council for those works is reasonable.

[25] Counsel for the Trustees submits that at issue between the parties is whether works required by conditions 16.2. and 16.3 are for the benefit of the developer or whether there is also a public benefit in the works being undertaken. I understand the Trustees' case to be that the Advice Notes are evidence that the works are for the benefit of the public.<sup>30</sup>

[26] I am told that the Trustees did not object to conditions of the second subdivision consent because they had no reason to do so. I understand the Trustees to say that the Advice Notes accord with their own assessment of the relative apportionment of the benefit of the works as between the developer and the wider public. The Trustees do not accept the District Council's position that the record showing that the District Council would pay 100% of cost for piping McIntosh Drain to be an error.<sup>31</sup> Had the Advice Notes stipulated that the developer is to bear this cost, they say they would have appealed/objected to the condition.<sup>32</sup>

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<sup>28</sup> [1981] AC 578; [1980] 1 All ER 731.

<sup>29</sup> *Waitakere City Council v Estate Homes Limited* [2007] 2 NZLR 149 (SC) at [68].

<sup>30</sup> Applicant's submissions above n 2 at [48]; Transcript (Steven) at 10 and 18-19.

<sup>31</sup> Transcript (Steven) at 25.

<sup>32</sup> Applicant's submissions above n 2 at [48]-[49].



[27] As matters stand, the Trustees submit that the time for lodging an appeal/objection has long since passed and the District Council's stance that there is an error leaves them in an untenable position,<sup>33</sup> and more so if the District Council were also to resile from the balance of the Advice Notes.<sup>34</sup>

[28] Counsel for the Trustees emphasises that the court is not being asked to make a finding of whether the conditions are fair and reasonable.<sup>35</sup> Put another way, the court is not being asked to rule on the validity of the conditions or to determine the reasonableness of the conditions, again, I surmise, insofar as the works are to benefit the public.

[29] While that may be the Trustees' position, counsel for the District Council gives considered submissions on the validity and reasonableness of the conditions in support of her primary submission that the Advice Notes contain an error.

#### **District Council's reply**

[30] The District Council submits that, in the second consent, the figure "100%" has been erroneously transposed from one column to another in the Advice Notes and sets out the evidence in support of her submission.<sup>36</sup> Having reviewed the reports prepared by District Council staff in relation to the two applications for consent, which are produced in evidence, they have no other explanation for the change.

[31] The District Council points out that the Trustees did not object to condition 16.3 when it was imposed on the first subdivision consent, even though the Advice Notes said 100% of the cost was to be borne by the developer.

[32] From the District Council's standpoint, there are a range of benefits accruing to the developer from piping the drain, including that it:<sup>37</sup>

- (a) allows direct access to new allotments from Parsonage Road;
- (b) enables optimal placement of the water rider main, stormwater main, power

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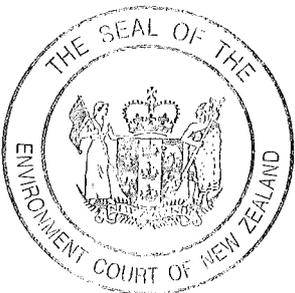
<sup>33</sup> Applicant's submissions above n 2 at [53].

<sup>34</sup> Transcript (Steven) at 14-15, 17 and 20-21.

<sup>35</sup> Transcript (Steven) at 14, 24 and 25.

<sup>36</sup> Synopsis of legal submissions for the respondent ("respondent's submissions"), 4 September 2020 at [21]-[22].

<sup>37</sup> Affidavit of K J Lavalley, affirmed 15 June 2020 at [64].



- and telecommunications within the berm;
- (c) enables optimal placement of necessary street features above the pipe (eg footpath); and
  - (d) that the piping is required for the subdivision to connect to established urban area.

[33] The District Council submits that the reasonableness of the consent conditions is not determined by the contents of an Advice Note. Presently, the McIntosh Drain functions well and meets the required level of service for the rural area<sup>38</sup> so the piping of McIntosh Drain confers no public benefit. If there was a public benefit from its piping, the District Council would consider a cost-sharing arrangement.<sup>39</sup> Their evidence on this matter was not challenged by the Trustees.

[34] It no longer is the case that the District Council records in the conditions of consent Local Government Act development contributions or notations as to any cost-sharing arrangements.<sup>40</sup> These matters are now recorded outside the grant of a resource consent. Contrary to the Trustees' submission that the District Council has left them in an untenable position, it remains open to them to object to condition 16.3 (or any condition) under s 357A RMA and test the validity of the conditions.<sup>41</sup>

### Discussion

[35] Having read the evidence and counsels' pre-circulated submissions, prior to the hearing commencing I released a Minute seeking confirmation whether it was being contended that there was a cost-sharing agreement as between the parties, noting that the existence of a putative agreement was not justiciable in this court.<sup>42</sup> In addition to the declaratory orders themselves, I gained the impression from the written submission filed on behalf of the Trustees that this was being contended when counsel said at paragraph [64]:

It is true that the consent contemplates that a side agreement would be entered into, although it is equally true that the essential terms of that agreement are reflected in the terms of the Advice Notes, at least in relation to the allocation of costs. The Council cannot be allowed

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<sup>38</sup> Affidavit of K J Lavalley, affirmed 15 June 2020 at [33].

<sup>39</sup> Affidavit of K J Lavalley, affirmed 15 June 2020 at [32]-[33].

<sup>40</sup> Transcript (Limmer) at 46.

<sup>41</sup> Transcript (Limmer) at 43-44.

<sup>42</sup> Minute, 11 September 2020.



to take the position that because the arrangements reflected in the Advice Notes were never formalised in a binding agreement, they (or parts of them) are of no legal effect.

[36] My impression was reinforced by the Trustees' submission at paragraph [52] that the content of the Advice Notes should be construed as tempering the obligations imposed on the Trust, and again at paragraph [53] where counsel submitted that the District Council should not be able to unilaterally change the "terms" of the Advice Notes.

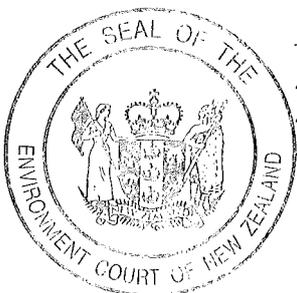
[37] However, during the hearing counsel for the Trustees was at pains to emphasise that the declaration is not brought on the basis that the parties either reached an agreement, or even an agreement to agree.<sup>43</sup> I proceed on this basis.

[38] The parties agree the Advice Notes are not conditions and nor are they to be treated as conditions of consent.<sup>44</sup> The issue raised by the declaration is whether the Advice Notes are evidence of the fact the works are for a public benefit.

[39] I have carefully considered all the decisions referred to by counsel, including *Estate Homes*. Counsel for the Trustees refers to this case to illustrate the use of Advice Notes by councils to acknowledge a cost-sharing arrangement. Be that as it may, I did not find the case – or the other cases referred to in support of the declaration which each turn on their own facts – helpful.

[40] In *Estate Homes* the developer proposed to construct a road along the path of a designation. In its decision granting resource consent, Waitakere City Council required that the road be designed, formed and constructed to the standard of an arterial road. Recognising that there was a public benefit in doing so, a condition of consent<sup>45</sup> determined the amount payable by the City Council for the work. At issue was whether the compensation payable was reasonable, and this turned on the appropriate standard of road that could reasonably be required for the subdivision.

[41] The Trustees invite the court to infer from the Advice Notes that the drainage works required by condition 16.3 have a public benefit. However, I find that to do so would be to make an inference in the absence of evidence of fact; whereas inferences, correctly approached, are conclusions or logical deductions drawn from established



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<sup>43</sup> Transcript (Steven) at 31-32.

<sup>44</sup> Transcript (Steven) at 11; memorandum for Waimakariri District Council, 14 September 2020 at [6].

<sup>45</sup> Including a note attached to the same.

facts. Whether the drainage works have a public benefit is a disputed fact about which I only have evidence from the District Council. This is not a matter on which I can make a finding as I do not have relevant evidence from the Trustees and indeed, I am asked specifically not to rule on the reasonableness of the conditions.

[42] For two reasons, the same issue does not arise in relation to the works required in condition 16.2. First, the Trustees and District Council agree works on the northern side of Parsonage Road have both a public and private benefit.<sup>46</sup> The 50/50 cost-sharing arrangement set out in the Advice Notes is consistent with their shared understanding. Consequently, there is no dispute of fact here to be resolved. Second, condition 16.2 provides that the southern road frontage is to meet “any road widening requirements”. I can understand the Trustees’ unease with the retention of this part of the condition, because in the absence of a cost-sharing agreement they could be asked to incur the cost of those works, if required. However, I accept the District Council’s interpretation of the condition: the upgrade of the road is only required if the current road does not meet the relevant standards. The District Council’s advice is that no upgrade is required and, again, no dispute of fact arises.

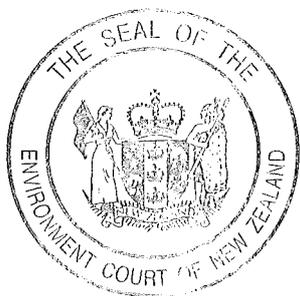
[43] In line with the guidance given by the Supreme Court in *Estate Homes*, it is usually preferable that the applicant for subdivision consent proposes conditions they consider suitable. If the District Council grants consent on different conditions, the applicant then has the right to appeal those conditions.<sup>47</sup>

[44] That said, an alternative course(s) still available to the Trustees is to apply to change or cancel the conditions of consent or – as suggested by the District Council – to object to its decision to grant consent, I presume under s 357A of the Resource Management Act 1991. If the right of objection is available, s 357C(1) requires an objection to be made by notice in writing not later than 15 working days after the decision is notified to the objector, or within any longer time allowed by the person or body to which the objection is made. I assume that the District Council will take no issue with the length of time that has passed since the consent was granted – it has, after all, specifically mentioned the existence of this right during this hearing. Either way, there are avenues under the Act where the reasonableness of the conditions can be properly aired.

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<sup>46</sup> Respondent’s submissions above n 10 at [9](b).

<sup>47</sup> *Estate Homes Limited* above n 29 at [41].



**Outcome**

[45] Given the above, I therefore decline the application for declaratory orders.

*ae.B.*  
\_\_\_\_\_  
**J E Borthwick**  
**Environment Judge**

The seal of the Environment Court of New Zealand is circular. It features the text "THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND" around the perimeter. In the center is the coat of arms of New Zealand, which includes a crown, two figures holding a shield, and a banner below with the motto "EUREKA".