

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA**

Decision No. [2020] NZEnvC 168

IN THE MATTER of the Local Government Act 1974
AND of an application under s 342 and the 10th
Schedule of the Act to stop unformed
road No. 1 Line, Silverstream, shown on
SO Plan 518795
BETWEEN UPPER HUTT CITY COUNCIL
(ENV-2019-WLG-000134)
Applicant

Court: Environment Judge B P Dwyer sitting alone under s 279 of the Act
Hearing: On the papers
Date of Decision: 2 October 2020
Date of Issue: 2 October 2020

FINAL DECISION OF THE ENVIRONMENT COURT

A: The stopping of No. 1 Line Silverstream, shown on SO Plan 518795, is confirmed.

REASONS

Introduction

[1] The Upper Hutt City Council (the Council) proposed stopping an unformed road known as No. 1 Line Silverstream (No. 1 Line) shown on SO Plan 518795. The Council lodged a notice of motion with the Court on 16 October 2019 together with affidavits of Brett Hugh Latimer (Parks and Reserves Manager at the Council) and Patrick Joseph Hanaray (Council's Roading Manager).



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[2] The Court issued an interim decision on 13 May 2020¹. In that decision, I indicated that I was tentatively satisfied that it may be appropriate to approve the road stoppage in this case. I directed that the Council address the following matters:

- Advice from the Council (either by affidavit of a Council officer qualified to make same or memorandum of counsel) identifying any provisions of the District Plan other than those referred to in paras [7] and [23] [of Decision [2020] NZEnvC 60] which are relevant to my considerations or advising accordingly if there are none;
- Submission of a draft condition "locking in" the improved physical access to No.1 Line referred to in para [19] [of Decision [2020] NZEnvC 60];
- Submission of a draft condition "locking in" easement rights for 2 Chatsworth Rd discussed in paras [23] and [24] [of Decision [2020] NZEnvC 60]. That may be achieved either as part of the road stopping process before vesting of parts of the road as reserve or alternatively as part of any subdivision of 2 Chatsworth Rd, whichever is the earlier.

[3] The Council responded on 16 September 2020. It submitted that an easement instrument creating a right-of-way cannot be registered prior to No. 1 Line being stopped. It submitted conditions which it said will ensure protection of access to Part Lot 2 DP12908 comprised and described in Record of Title WN508/3 Wellington Land Registry (Lot 2) and that the public use of the Road will continue and will be protected when the land is vested as recreation reserve. The Council proposed:

- 4 The stopping of the legal Road shown as sections 1-4 on SO 518795 is conditional on:
 - 4.1 The Council resolving to stop the Road to grant a right-of-way in favour of Lot 2 in the same position and with the same dimensions as the existing formed access to Lot 2 unless a larger area is required to comply with the Upper Hutt City Council District Plan (District Plan) requirements for a two lot subdivision
 - 4.2 The Council resolving to grant a larger area that is the minimum requirement under the District Plan for a two lot subdivision if the area and dimensions proposed in paragraph 4.2² are insufficient to comply with the District Plan.
 - 4.3 The Council resolving to preserve pedestrian access over the area granted as right-of-way in favour of Lot 2 in favour of the general public to facilitate improved access to Section 1 SO 518795.



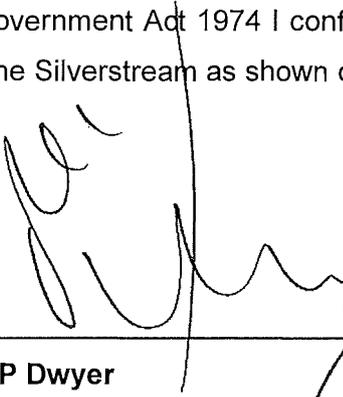
¹ *Re Upper Hutt City Council* [2020] NZEnvC 60.

² The reference to para 4.2 here appears to be an error. I understood this to be a reference to para 4.1.

- 4.4 The Council resolving to execute all documents and do all things within its power to create rights-of-way described in paragraphs 4.2 to 4.4.³
- 4.5 The Council resolving to declare sections 1 and 4 on SO 518795 as recreation reserve under the Reserves Act 1977 following the Road being stopped.
- 4.6 Council resolving that it will only:
- 4.6.1 apply for the consent of the Minister of Lands under section 342 of the Local Government Act 1974;
- 4.6.2 declare that the Road is to be stopped pursuant to clause 8 of Schedule 10 of the Local Government Act 1974; and
- 4.6.2 transmit notice of the Road being stopped to the Office of the Chief Surveyor pursuant to clause 9 of Schedule 10 of the Local Government Act 1974 if it is in a position to register the easement instrument(s) described in paragraphs 4.2 to 4.4⁴ in the same dealing as the transmission stopping the Road to the Chief Surveyor.

[4] The Council also lodged an affidavit of Bridget Susie Herries (Resource Consents and Compliance Manager), in which Ms Herries advised there are no other provisions of the Upper Hutt City Council District Plan relevant to the decision.

[5] I am satisfied that the conditions Council proposes are adequate to deal with the issues raised in the Interim Decision. Under cl 6 of Schedule 10 to the Local Government Act 1974 I confirm the stopping of the unformed road known as No. 1 Line Silverstream as shown on SO Plan 518795.


 B P Dwyer
 Environment Judge



³ The reference to para 4.2 to 4.4 here appears to be an error. I understood this to be a reference to para 4.1 to 4.3.

⁴ The reference to para 4.2 to 4.4 here appears to be an error. I understood this to be a reference to para 4.1 to 4.3.