[2001] ELHNZ 235, 2001 WL 943757

[2001] ELHNZ 235
Environment Court, Christchurch

Lakes District Rural Landowners Society Incv Queenstown Lakes District Council

C100/01
Decision: 21 June 2001
Judge Jackson

HEADNOTE

District plan proposed — Rule — Ultra vires — Resource consent — Subdivision — Condition validity — Rural — Land use consent — Jurisdiction — Landscape protection — Density — Building location — Building design — Contempt of court

DECISION NO. 3 ON CHAPTERS 5 AND 15 QUEENSTOWN RULES

This follows decision C075/01, 6 NZED 501.

The decision relates to the power of a consent authority to impose conditions relating to land use when granting a subdivision consent under the Resource Management Act 1991 ["RMA"]. The decision also deals with two procedural issues: comments made by the Mayor; and, attempts to assist the parties with a suggestion on the density of development in the rural area.

A. SUBJUDICE COMMENTS

The Mayor had issued a press release containing remarks about the Court's earlier rules decision. The release had focused on residential building platforms and density controls, even though the Court's decision was expressly stated to be not final on the first issue, and was implicitly not final on the second. The Court received an apology from the Mayor.

The Court commented that it was not the offence to the Court which was at issue, but protection of the administration of justice. The principal concern in contempt issues is to ensure that justice can continue to be done AND to be seen to be done. While the Court was confident that it could continue to resolve the reference in an objective and even-handed way which achieves the purpose of the RMA, the difficulty was to avoid the Court being seen as not being objective and independent because it may look as if it was bowing to political pressure. The apology from the Mayor, however, had removed that danger.

In view of the apology, the Court was unlikely to take the matter further except, in due course, to consider whether an order should be made under s285(1)(b) RMA, against the Council ordering it to pay costs to the Crown. Since the Court's jurisdiction to make such an order is in doubt (costs orders under s285(1)(a) are not given as a punishment) it was unlikely that any order would be substantial.

B. BUILDING DENSITY

The Court clarified that the intention of the second part of the new rule, relating to land within a 1.1km radius, was to overcome "practical difficulties" identified by the Council. One of those was the work imposed on the consent authority to make inquiries as to alternative sites. The intention was to put the onus on the landowners outside the inner 500m radius to make a submission as to the issue. If they do not then their concerns do not have to be considered. The rule could be reworded accordingly.

C. THE SUBDIVISION CONSENT CONDITION ISSUE

The question of whether there is an anomaly in the treatment of residential building platforms in the Proposed District Plan depends whether a consent authority has the power to impose what are in effect land use consent conditions (external appearance and colours of the building) on a subdivision consent.

1. The classes of resource consent

The powers to impose conditions on resource consents generally are contained in s108 RMA. Section 220 RMA provides express power for the imposition of conditions on granting a subdivision consent. Section 220 expressly does not limit the power to impose conditions on subdivision consents conferred by s108. [para 19, p12 full text]. Nothing in s406 over-rules the general powers in s108 to impose conditions on a resource consent, or the specific powers on a subdivision consent as contained in s220. [para 22, p14 full text]

2. Relevant authorities

The Court considered BROOKES v QUEENSTOWN LAKES DISTRICT COUNCIL and ROBINSON v ASHBURTON DISTRICT COUNCIL. In the first it had been held that imposition of conditions relating to dwellings on a subdivision consent, was unlawful. In the second the issue was whether "land use" conditions could be imposed on a consent to subdivide for horticultural development purposes. The Court found nothing in the RMA suggesting that the Act consolidates subdivision law but reforms all other rights and duties relating to sustainable management of natural and physical resources. It doubted whether any clear intention not to confuse subdivision with land use could be discerned from s108 or s220 or their place in the scheme of the Act. [para 25, p16 full text]

The Court also considered WALLACE V WAITAKERE CITY COUNCIL and agreed that the limit on the bulk of a building could be imposed to avoid, remedy or mitigate the adverse effects of the subdivision on the natural and physical environment. [para 29, pp18-19 full text]

3. The text and purposes of s108 and s220 RMA

The power to impose consent conditions under s108 RMA upon granting a resource consent is wide. There are two statutory exceptions and some common law restrictions on that power. The first statutory exception consists (potentially) of all the other provisions of s108. But upon examination they provide only limited exceptions. [para 31, p20 full text] The second statutory restriction on the general power to impose conditions is the restriction contained in any relevant regulations. There are none. There are also common law restrictions on the exercise of powers to impose conditions (the NEWBURY test), reconfirmed by the Court of Appeal in HOUSING CORPORATION OF NEW ZEALAND Ltd v WAITAKERE CITY COUNCIL as being applicable to the RMA.

The application of the NEWBURY tests provides the answers to concerns about land use conditions on subdivision consents. Recourse to the validity tests seems more appropriate if a condition proposed for a subdivision consent in effect controls a land use that is a permitted activity. In such a case, at least two of the NEWBURY tests may be offended (but not if s106 RMA applies). If the erection of dwellinghouses is a discretionary (land use) activity, then different considerations might apply. In particular granting subdivision consent subject to a land use condition as to, for example, the external appearance of a building might be the difference between obtaining subdivision consent and not. Further, the residential building platform approval process (with "land use" conditions if appropriate) enables an applicant to gain the relevant notified resource consents in one step. When, at a later stage, the step is taken of obtaining a land use consent for a dwelling, that can be applied for as a controlled, rather than as a discretionary, activity because the important issues will already have been dealt with on a notified basis at the subdivision stage. [para 36, p21 full text]

The Court found it significant that the majority of the extra suite of conditions that can be imposed on a subdivision consent under s220 clearly relate to LAND uses. [para 35, p22 full text] From s220(1) it appears that the purpose of the section is to ensure that when a subdivision takes place, all the land use matters which: need definition to create enforceable rights in land under the Land Transfer Act 1952; and/or, need to be imposed on public interest grounds - are properly attended to. Although s220 defines various circumstances in which particular (land use) conditions may be imposed that does not mean others cannot be. [para 34, p23 full text]

4. Subdivision in the scheme of the Act

The Court concluded that the legality of land use conditions on a subdivision consent is more a question of reasonableness in the circumstances than of a sharp definition of powers. Questions of reasonableness merge at their outer edges with vires issues. However, from a practical point of view, the NEWBURY tests are the answer to the complaint that conditions imposed on a subdivision consent can never relate to land use. There is jurisdiction to impose such conditions, but they may (sometimes) fail the NEWBURY tests. Just when conditions may fail is a question to be decided by the consent authority on the specific facts of any case. Given that s220 and s106 RMA expressly deal with land use matters, the boundaries for imposing conditions on subdivision consents with respect to other land uses may be quite wide. The outcome in any given case may depend more on the provisions of the relevant plan, than on the powers conferred by the RMA. [para 43, p26-27 full text]

CONCLUSION

The Court concluded that, in the present circumstances, where there are land use controls on the exterior appearance of buildings, it is lawful for the District Plan to contain subdivision rules which allow the Council to consider and, if necessary, impose similar conditions as conditions of a subdivision consent. Leave was reserved to apply for a declaration to that effect.

Mr W Goldsmith for the Lakes District Rural Landowners Society Incorporated
Mr B Lawrence for the Wakatipu Environmental Society Inc
Mr N T McDonald for Clark, Fortune McDonald
Mr N S Marquet for the Queenstown Lakes District Council
Mr M Parker for various section 271A parties
Mr G Goldsmith and *Mr D Gunn* for various section 271A parties

Party Names

Anne Pinckney (RMA132/98) *(Referrer)*, Clark Fortune McDonald (RMA1405/98) *(Referrer)*, Lakes District Rural Landowners Society Incorporated (RMA1402/98) *(Referrer)*, Queenstown Lakes District Council *(Respondent)*, Wakatipu Environmental Society Inc (RMA1043/98; 1394/98; 1165/98) *(Referrer)*

Judgment

DECISION No. 3 ON CHAPTERS 5 AND 15 QUEENSTOWN RULES

Judge J R Jackson

[A] Introduction

[1] This decision is primarily about the power of a consent authority to impose conditions relating to land use when granting a subdivision consent under the Resource Management Act 1991 ("the RMA" or "the Act"). The subdivision consent issue arose out of the Environment Court's second decision [1] ("the rules decision") on references about Parts 5 and 15 of the revised proposed district plan ("the revised plan") of the Queenstown Lakes District Council ("the QLDC"). The Court also takes the opportunity to deal with two other procedural issues:

- Part [B] considers some *sub judice* comments made by the Mayor of Queenstown;

- Part [C] attempts to assist the parties with a suggestion on another aspect of the rules decision on which leave was reserved to make further submissions: the density of development; and
- Part [D] deals with the subdivision consent condition issue.

[2] The Court raised the land use condition issue in Part [G] of the rules decision but in the narrower framework of a discussion of residential building platforms ("RBPs"). The Court stated: [2]

> " … there is an anomaly in the residential building platform (RBP) concept. If someone applies under the rules in Part 15 to have one or more RBPs in any rural area then that is considered without reference to matters of house appearance or design. That is because those are irrelevant matters for subdivision consents: Brookes v Queenstown Lakes District Council; [3] Darrington v Waitakerere City Council. [4] The consent authority's jurisdiction is confined to such matters as location of the building platform and the height of any structure on it. [5]
>
> …
>
> When the owner of land containing an approved residential building platform (presumably shown on a subdivision plan) applies to the Council for a land use consent under Part 5 of the revised plan to construct a dwelling on the RBP then that is treated as a *controlled* activity …
>
> … However, if a person applies for land use consent to erect a dwelling on land which does not contain a RBP then the question of external appearance is a broad discretionary issue to which the assessment matters apply and on which other persons may make submissions. It seems to us that that scrutiny can be avoided if the RBP route is followed because then no public notification is required.
>
> …
>
> In our view the issue should be addressed by making building on a RBP a discretionary activity but it appears we have no jurisdiction to do so under any submission and reference. However, since at first sight a case is made out for change we consider this is a case where we might consider amending the problem under section 293 of the RMA. We will give directions on that issue."

[my emphasis]

[3] The building density issue was discussed in the rules decision and a draft rule proposed [6] as follows:

> "If a proposed residential building platform is not located inside existing development (being two or more houses each not more than 50 metres from the nearest point of the residential building platform) then on any application for resource consent and subject to all the other criteria, the suitability of all possible sites:
>
> (a) within a 500 metre radius of the centre of the building platform, whether or not:
>
> (i) subdivision and/or development is contemplated on those sites;
>
> (ii) the relevant land is within the applicant's ownership; and

(b) within a 1,100 metre radius of the centre of the building platform if any owner or occupier of land within that area wishes possible future development on that alternative site(s) to be taken into account as a significant improvement on the proposal being considered by the Council

- must be taken into account."

[4] To ascertain the provenance of that rule one needs to look at our first decision [7] ; the discussion of the evidence there and the proposed rules. The density rule in the rules decision differs in that the Council now has to consider all possible sites within a 500 metre radius of any proposed development in the rural general zone, but within a 1,100 metre radius only if an adjoining owner raises the issue.

[5] In the rules decision the Court then gave two sets of directions on the issues — the first set being expressly subject to the second. First the Court made orders [8] as follows:

" … (*subject to* paragraphs [86] to [88]):

… Part 5 of the revised plan

Part 5 of the plan is *deleted* and Part 5 as in the attached Schedule A … is substituted.

Part 15 of the revised plan

We *direct* that the [QLDC]:

…

(2) Draft a programme and wording for section 293 and circulate them to the parties and the Registrar for notification under paragraph [79] of this decision."

[My emphasis].

Part 5 of the revised plan as set out in Schedule A to the rules decision contains the building density rule in terms of paragraph [52] of the rules decision. Paragraph [79] of the rules decision relates to residential building platform approvals upon grant of subdivision consent.

Secondly the Court stated: [9]

"(1) While this decision is final as to the matters in parts [A] to [G] — except where it is expressly stated not to be, or where section 293 issues arise — … we reserve leave for any party to make written submissions on the wording of Parts 1, 5 (included in Schedule A) and 15 so as:

…

(b) to achieve the spirit and intent of this decision particularly with respect to:

(i) paragraph [52] of this decision … ;

(c) to address the issue of building on a residential building platform as a controlled or discretionary activity."

Thus the rules decision is final on neither the RBP issue (in any way) nor on building densities so far as the wording of the rule is concerned. The Court also set a timetable for any further submissions.

[6] In fact, the Council regarded the RBP issue as urgent, and so on Wednesday 23 May 2001 Mr Marquet, counsel for the QLDC applied orally and *ex parte* for an urgent hearing. I then issued directions [10] for an urgent hearing on 5 June 2001 of the legal issue involved in this case. However, before I turn to that issue, there are two other procedural matters relating to the conduct of this case.

[B] Sub judice comments

[7] On May 23 or 24 2001 the Mayor of Queenstown, His Worship Mr Cooper, issued a press release. This contained some remarks about the rules decision. It focused on the two issues discussed above — residential building platforms and density controls — even though the Court's consideration was, as I have just shown, expressly stated to be not final on the first issue, and was implicitly not final on the second since leave was reserved for the parties to make further submissions. The Court subsequently issued a memorandum asking whether the Mayor had been accurately reported, and if so for submissions on why the remarks were not in contempt of Court as being made *sub judice*, that is, in the course of proceedings.

[8] At a reconvened hearing before me on Thursday 5 June 2001 — sitting alone to resolve the jurisdictional issue in Part [D] below — I received a written statement ("the apology") by Mr Cooper from counsel for the QLDC which counsel said was an apology, although in fact it was somewhat conditional in that it did not concede the Mayor's press release was made sub judice. The apology gives various explanations of how the press release came to be issued. It also recognises the importance of the Environment Court being free of political influence.

[9] That last is an important point because it is not the offence to the Court which is at issue here. The law as to contempt has been authoritatively described by the Court of Appeal in Solicitor-General v Radio Avon Ltd [11] as follows:

> "It will be as well, before proceeding further, to say something of the expression 'contempt of court' and of the purpose of the law of contempt in our society. The use of the term 'contempt of court' has been criticised, with some justification, as inaccurate and misleading. As was pointed out by the Report of the Committee on Contempt of Court (Cmnd 5794) presented to the United Kingdom Parliament in 1974, and generally referred to as the Phillimore Report, the term may suggest, in some contexts, that the law of contempt exists to protect the dignity of the judges whereas in fact it exists to protect the administration of justice. This point was made by Lord President Clyde in Johnson v Grant 1923 SC 789. The Lord President said:
>
> > 'The phrase "contempt of court" does not in the least describe the true nature of the class of offence with which we are here concerned … The offence consists in interfering with the administration of the Law; in impeding and perverting the course of justice … . It is not the dignity of the Court which is offended — a petty and misleading view of the issues involved — it is the fundamental supremacy of the law which is challenged
> >
> > (ibid, 790).
>
> The same point was made, more briefly, by Lord Morris when delivering the judgment of the Privy Council in McLeod v St Aubyn [1899] AC 549:

> ‘The power summarily to commit for contempt of Court is considered necessary for the proper administration of justice. It is not to be used for the vindication of the judge as a person
>
> (ibid, 561).
>
> No one can question the extreme public importance of preserving an efficient and impartial system of justice in today's society which appears to be subject to growing dangers of direct action in its various forms. It is to that end, and to that end alone, that the law of contempt exists.”

[10] The principal concern in contempt issues is to ensure that justice can continue to be done *and* to be seen to be done. I am confident that this Court can, despite the intemperate and incorrect conclusions in the Mayor's press release, continue to resolve this and other Queenstown references in an objective and even-handed way which achieves, to the best of our ability, the purpose of the RMA. The difficulty I perceive is to avoid the Court being seen as not objective and independent because it looks as if we are bowing to political pressure. For example if the Court, after hearing further submissions (pursuant to the leave reserved in the rules decision) decides something in the Council's favour, it may appear we have been influenced in some way by the Mayor's remarks — see Part [C] below. The apology has, to a large extent, removed that danger.

[11] In view of the apology I consider that the Court is likely to take this matter no further except in due course to consider whether an order against the Council to pay costs to the Crown should be made under section 285(1)(b) of the RMA. Naturally the Court would seek submissions on that issue first. Since it is a novel point, and even our jurisdiction to make such an order is in doubt - since costs orders under section 285(1)(a) are not given as a punishment - it is unlikely that any order would be substantial.

[C] Building density

[12] It was clear from Mr Marquet's submissions in Wanaka (and even more so from Mr Cooper's press release) that the Council, at least, is not reading the proposed density rule in Para [52] of the rules decision in the same way I do. Mr Marquet appears to consider that the only way the second part of the rule can be complied with is for the Council to consider all land within a 1.1 km radius. Since leave has expressly been reserved for further submissions on that rule I do not think it is improper for me to write that the purpose, as I understand it, of the second part of the rule is quite different. The intention is to overcome certain “practical difficulties” [12] identified by the Council. One of those difficulties was the work imposed on the Council as consent authority to make inquiries as to better alternative sites. The idea of the second part of the new rule is to put the onus on landowners outside the inner 500m radius to make a submission as to the issue. If they do not then their concerns do not have to be considered. Perhaps the parties might consider a rewording of the second point in the rules quoted in paragraph [3] of this decision to read along these lines:

> “(b) within a 1,100 metre radius of the centre of the building platform if any owner or occupier of land within that area wishes possible future development on that alternative site to be taken into account … by the Council *and makes a submission to that effect*
> - must be taken into account.”

The underlined words are the possible addition.

[D] The subdivision consent condition issue

[13] The question whether there is an anomaly in the treatment of residential building platforms in the proposed plan depends on whether a consent authority has the power to impose what are in effect land use conditions on a subdivision consent. The latter question is what I agreed to hear as a matter of law, urgently, in Queenstown on Tuesday 5 June 2001.

[14] In a memorandum to the parties before the hearing, I asked them to consider whether it might be more appropriate for the Environment Court to state a case on the legal issue to the High Court. [13] My reasons for that suggestion included: that there was a serious question to be resolved which might affect the operations of the revised plan; that there were apparently conflicting decisions of the Environment Court on the issue; and further that I had presided over the cases which (it was asserted) were in conflict with other decisions of the Environment Court.

[15] However, at the hearing all parties urged this Court to deal with the question on the grounds of urgency. Counsel submitted that there are persons with approved residential building platforms (approved as conditions of subdivision consents) who are uncertain as to whether they should apply for land use consents immediately or not; and that if this issue goes to the High Court that superior Court would benefit from this Court having considered the matter. I agreed that it would be fairer to the parties if some resolution is given as soon as possible and so I continued to hear the case.

[16] Mr Marquet for the QLDC submitted that "land use" conditions, for example as to external appearance and colours, may lawfully be imposed on a subdivision consent, and that the cases referred to in the rules decision have been superceded by developing law. Mr Goldsmith supported Mr Marquet's position and analysed the cases further. Mr Parker's clients abided the decision of the Court. The Council's position was opposed by Mr McDonald who although not a lawyer, has, as a surveyor, a real understanding of the practical difficulties that can arise on this issue. The Wakatipu Environmental Society Inc made no submissions on the illegality issue but is concerned about the consequences if all aspects of buildings cannot be considered at the subdivision stage when a RBP has been applied for as part of the subdivision process.

The classes of resource consent

[17] The RMA categorises [14] resource consents into five classes — land use consents, subdivision consents, coastal permits, water permits and discharge permits according to which section in Part III of the Act they relate to. This case is concerned (mainly) with the first two classes and the conditions which can be attached to each. I note that "resource consent" is defined [15] as having:

> " … the meaning set out in section 87; and includes all conditions to which the consent is subject."

[18] The powers to impose conditions on resource consents generally are contained in section 108 of the Act. This states (relevantly):

> **"108. Conditions of resource consents —**
> (1) Except as expressly provided in this section and subject to any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2).
> (2) A resource consent may include any one or more of the following conditions:
> (a) Subject to subsection (10), a condition requiring that a financial contribution be made:
> (b) A condition requiring that a bond be given in respect of the performance of any one or more conditions of the consent, including any condition relating to the alteration or the removal of structures on the expiry of the consent:

(c) A condition requiring that services or works, including (but without limitation) the protection, planting, or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource, be provided:

(d) In respect of any resource consent (other than a subdivision consent), a condition requiring that a covenant be entered into, in favour of the consent authority, in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates):

(e) Subject to subsection (8), in respect of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or section 15B, a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site or source:

(f) In respect of a subdivision consent, any condition described in section 220 (notwithstanding any limitation on the imposition of conditions provided for by section 105(1)(a) or (b)):

(g) In respect of any resource consent for reclamation granted by the relevant consent authority, a condition requiring an esplanade reserve or esplanade strip of any specified width to be set aside or created under Part X:

(h) In respect of any coastal permit to occupy any part of the coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council), a condition —

(i) Detailing the extent of the exclusion of other persons:

(ii) Specifying any coastal occupation charge.

…

(6) Any condition under subsection (2)(b) may, among other things, -

(f) … provide that the bond may be varied or cancelled or renewed at any time by agreement between the consent holder and the consent authority.

…

(10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless … [two conditions are met].”

[19] Section 220 of the Act provides express power for the imposition of conditions on granting a subdivision consent. This states (relevantly) [16]:

“(1) Without limiting section 108 or any provision in this Part, the conditions on which a subdivision consent may be granted may include any one or more of the following:

(a) Where an esplanade strip is required under section 230, a condition specifying the provisions to be included in the instrument creating the esplanade strip under section 232:

(aa) A condition requiring an esplanade reserve to be set aside in accordance with section 236:

(ab) A condition requiring the vesting of ownership of land in the coastal marine area or the bed of a lake or river in accordance with section 237A:

(ac) A condition waiving the requirement for, or reducing the width of, an esplanade reserve or esplanade strip in accordance with section 230 or section 405A:

(b) Subject to subsection (2), a condition that any specified part or parts of the land being subdivided or any other adjoining land of the subdividing owner be —

(i) Transferred to the owner of any other adjoining land and amalgamated with that land or any part thereof; or

(ii) Amalgamated, where the specified parts are adjoining; or

(iii) Amalgamated, whether the specified parts are adjoining or not, for any purpose specified in a district plan or necessary to comply with any requirement of the district plan; or

(iv) Held in the same ownership, or by tenancy-in-common in the same ownership, for the purpose of providing legal access or part of the legal access to any proposed allotment or allotments in the subdivision:

(c) A condition that any allotment be subject to a requirement as to the bulk, height, location, foundations, or height of floor levels of any structure on the allotments:

(d) A condition that provision be made to the satisfaction of the territorial authority for the protection of the land or any part thereof, or of any land not forming part of the subdivision, against erosion, subsidence, slippage, or inundation from any source (being, in the case of land not forming part of the subdivision, subsidence, slippage, erosion, or inundation arising or likely to arise as a result of the subdividing of the land the subject of the subdivision consent):

(e) A condition that filling and compaction of the land and earthworks be carried out to the satisfaction of the territorial authority:

(f) A condition requiring that any easements be duly granted or reserved:

(g) A condition requiring that any existing easements in respect of which the land is the dominant tenement and which the territorial authority considers to be redundant, be extinguished, or be extinguished in relation to any specified allotment or allotments.

… "

It is important to note that section 220 expressly does not limit the power to impose conditions on subdivision consents conferred by section 108 of the Act.

Relevant authorities

[20] I consider the relevant Planning Tribunal and Environment Court cases on the question in chronological order. First, in Brookes v Queenstown Lakes District Council [17] the Planning Tribunal had to decide an appeal under section 120 of the RMA concerning an applicant/appellant's proposal to subdivide land in a rural zone in the Wakatipu Basin. The respondent (the QLDC) was concerned about the effects of dwellings in the landscape if subdivision was allowed. The Court held that a further application for land use consent for a dwelling would be needed (under the transitional plan) and continued [18] :

> "Therefore there is no need, … to impose conditions on the *subdivision* consent relating to dwellings. Indeed, not only is there no need to do that, but in our view conditions such as those are unlawful. A consent to subdivide is a separate and distinct consent from a consent to erect a dwelling. The Act makes this perfectly clear — see section 87. Hence … [land use conditions] … should not be imposed on a consent to subdivide."

There was no further analysis by the Tribunal, for example of sections 108 and 220 of the RMA and their purpose and place in the Act. This case was followed, again without analysis, in Upper Clutha Environment Society Incorporated v Queensland Lakes District Council [19] .

[21] In Robinson v Ashburton District Council [20] the Planning Tribunal had to decide an appeal under section 120 of the RMA concerning a proposal to subdivide rural land for a calla lily farm. The respondent apparently [21] declined land use consents (except for a separate consent relating to a packhouse) and subdivision consent. However at the Planning Tribunal hearing the only issue was as to whether a 90 hectare property could be divided into 19 smaller lots of 2 hectares each [22] (plus a balance allotment presumably). The issue arose as to whether "land use" conditions could be imposed on a subdivision consent. The conditions proposed were [23] :

> "(i) that each lot shall be used in conjunction with a joint venture flower-growing horticultural development and/or some other permitted intensive farming activity or one consented to by the council
>
> (ii) No certificate of title shall issue (except on lot 15) until the applicant has established the first-year planting of 20,000 tubers of calla lily and perimeter shelter belt plantings on each or a suitable bond entered into between any purchaser and the council to this effect."

(called "the Robinson conditions")

[22] Because I respectfully have to differ from the views expressed in Robinson I shall quote extensively from the relevant passages concerning those conditions. The Tribunal commenced its consideration of the argument by considering section 406 of the RMA. In my view that transitional provision is irrelevant. The section does not, and does not need to deal with conditions that might be imposed if subdivision consent is to be granted. Nothing in section 406 over-rules the general powers [24] to impose conditions on a resource consent, or the specific powers on a subdivision consent. [25]

[23] The Tribunal in Robinson then turned to the real issue and continued: [26]

> "In support of his argument counsel also refers to section 108 which prescribes the conditions which may be imposed on resource consents and draws attention to the fact that section 108(1)(c) expressly exempts subdivisions. It provides:
>
> A resource consent may include any one or more of the following conditions. …
>
> (a) In respect of any resource consent (*other than subdivision consent*) a condition requiring that a covenant be entered into in favour of the consent authority in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates). (Our emphasis).
>
> Section 108(1)(f) provides that a condition may be imposed:
>
> 'In respect of a subdivision consent notwithstanding section 114(1) any condition described in section 220.
>
> "Mr Milligan further draws attention to the fact that although section 108(2) allows the imposition of:

‘any other condition that the consent authority considers appropriate

“in granting a resource consent, it is subject to the exception:

‘Except as expressly provided in subsection (1).

“Subsection (1)(c) [now(2)(d)] as we have noted exempts from its scope a subdivision consent.

Finally, counsel refers to section 220 which allows for the imposition of conditions on subdivision consents and draws attention to the fact that nowhere in that section is there any power to impose the sort of conditions proposed by the applicants in this case. Mr Milligan submits, that all of the conditions referred to in section 220 generally relate to the physical nature of the subdivision itself rather than the use to which the subdivided land will be put.

…

In our view Mr Milligan is correct and for the reasons given by him. Although the relevant sections are unhappily scattered throughout the legislation, when collected together, a pattern emerges of a legislative intent to deal with subdivision of land according to criteria different from those which are applicable to other resource consents. That is not surprising having regard to the historical antecedents of legislation relating to land subdivision in New Zealand. It was formerly to be found in the Land subdivision in Counties Act 1946, (in particular s 4), The Municipal Corporations Act 1954 (in particular s 351(2)(a)), and the Counties Amendment Act 1961 (Part II). Traditionally, in considering questions of land subdivision, the territorial local authorities were empowered to impose such conditions as may be necessary to ensure that what might be described as the physical attributes of a subdivision accorded with the public interest. Thus, for example, there has long been power to consider matters such as section size, extent of boundaries, access to legal roads, provision of services such as water, power, electricity and the like. (Although s 23(1)(d) did allow councils to consider whether closer subdivision was in the public interest).

Parliament chose different mechanisms for controlling what activities were permitted upon subdivided land and traditionally has empowered and, indeed, required territorial local authorities to bring into existence planning documents governing the use of land within its boundaries. The impact of those provisions on the subdivision of land was to be found in s s 75 of the Town and Country Planning Act 1977 which prohibited the carrying out of any work which included a subdivision of land which was contrary to the provisions of the provisions of any district scheme. When the various statutory provisions relating to land subdivision were consolidated and brought into the Resource Management Act there was in our view a clear intention on the part of the legislature not to confuse land subdivision matters with land use matters. Unhappily, the intention is somewhat confused by the way in which the subdivision provisions of the Act are scattered throughout the text, but we, nevertheless, think that when construed together they lead to the conclusion that the conditions which may be imposed upon subdivisions are not coincidental with those which may be imposed upon other resource consents. That, in our view, can be the only explanation for the provisions of section 108(1)(c) which expressly exempt subdivision consents from the power to require covenants supporting the performance of conditions lawfully made in relation to the resource consents pursuant to that section. Further support for the view is to be found in the provisions of section 106 referred to above. Those are all matters relating to the physical aspects of the subdivision and also the transitional provisions of section 406. They too relate

> to the physical aspects of the subdivision including matters such as suitability of the land and availability of stormwater drainage, sewage disposal, water and electricity. A similar general approach is to be found in section 407 — the transitional provision relating to land in respect of which there is no district plan.
>
> We are therefore of the view that even had we thought it desirable to grant the application and allow the appeal on the terms and conditions suggested by the applicant, the Tribunal lacks the power to do so. Given that finding the application must fail because no one has suggested that it can properly be granted in the absence of such conditions."

[24] The initial approach of the Planning Tribunal in Robinson to subdivision under the RMA is contained in the sentence: [27]

> "When the various statutory provisions relating to land subdivision were consolidated and brought into the Resource Management Act … "

Before me, Mr Goldsmith submitted that the RMA is not a consolidating statute. I agree. The long title expressly states that it is:

> "An Act to *restate* and *reform* the law relating to the use of land, air and water."
>
> (My emphasis).

Subdivision is not expressly mentioned, but that is, in my view, because subdivision is only a technical matter. There is nothing in the RMA which suggests it consolidates subdivision law but reforms all other rights and duties relating to sustainable management of natural and physical resources.

[25] Further I have real doubts as to whether any clear intention not to confuse subdivision with land use can be discerned from sections 108 or 220 or their place in the scheme of the Act. Indeed for the Tribunal to write (twice) that the subdivision provisions "are unhappily scattered throughout" the legislation [28] rather suggests it has failed to realise the RMA does have "form and organisation" [29] and overlooked that those are a guide to meaning.

[26] As Mr Goldsmith submitted, a distinction between conditions that are able to be imposed on subdivision consent and other conditions is *not*"the only explanation for the provisions of section 108(1)(c) which expressly exempt subdivision consents from the power to require covenants supporting the performance of conditions … ." [30] At first sight that paragraph does suggest a land use covenant cannot be imposed — and the reason might have been that it was inappropriate to do so. However Mr Goldsmith pointed out that the real reason is that, on subdivision consents, the power to impose covenants is found elsewhere - in the consent notice provisions of section 221. A registered consent notice is deemed [31] to be a covenant running with the land. Thus there was no need to have the power in section 108 — duplication may cause confusion.

[27] The distinction that the Tribunal relied on between the Robinson conditions and those contemplated by sections 106, 108 and 220 of the Act is that the latter all relate "to the physical aspects of the subdivision". I am not quite sure what that means: if the Tribunal had said "to the physical aspects of the land" that might have had more meaning, but then the Robinson conditions could fall into that category too. The distinction is simply not a useful one, especially for the purposes of making a jurisdictional decision. I note that the Tribunal continued to consider the merits anyway.

In case I am wrong about any of the above, I note that Robinson was of course decided well before the Resource Management Amendment Act 1997 [32] which repealed and substituted section 108(1) and (2).

[28] In Darrington v Waitakere City Council [33] the Planning Tribunal raised a more fundamental problem with the imposition of land use controls as conditions of a subdivision consent. It stated that it agreed with the reasoning in Robinson but continued:

> "We do not intend to repeat the reasoning in that decision with which we agree. To us section 108 clearly differentiates between resource consent and subdivisional consent situations. The additional powers contained in section 220(1)(c) can relate to bulk, height, location, foundations, or height of floor levels of any structure but such a condition of subdivision consent could not be imposed if it had the effect of negating the policies, objectives and rules of the district plan, the latter having the force and effect of a regulation, unless registered as a restrictive covenant upon the title or achieved by conservation covenant. If registered on title covenants can still be extinguished with the consent of the covenantee. Therefore the regulatory effect of plan provisions relating to building size and rights of clearance would extinguish the condition. The Tribunal under the provisions of the Town and Country Planning Act 1977 and under the RMA have [sic] consistently refused to impose conditions which purport to restrict permitted activities."

The Tribunal then held that section 220(1)(c): [34]

> "does not provide for the imposition of conditions governing:
>
> - The colour of structures
> - The building materials to be used
> - Details of external design …
>
> [T]he ultimate use of the building."

The point about permitted activities is a significant one and it was raised, in effect, by Mr McDonald in his submissions to me. However it seems to me that that is an issue that is better dealt with under the tests for the validity of conditions rather than as a type of provision implicitly barred by the Act itself and therefore automatically *ultra vires*.

[29] In Wallace v Waitakere City Council [35] the Environment Court was concerned with a subdivision condition that was proposed to limit future development. This was opposed for the two reasons:

- that it was imposing a land use condition on a subdivision consent; and
- that it was imposing restrictions on permitted activities.

As to the first point, the Court held, rather ingeniously, that: [36]

> "The proposed condition as amended by us in this case seeks to limit the bulk of structures on Lots 1 and 2 to no more than the existing buildings. It is in our view a condition that can be imposed by the Court under 220(1)(c) [37] of the Act."

It continued:

> "Even if we are wrong in that regard we accept Ms Embling's submission that the condition in this case relates directly to the effects that could arise as a result of the subdivision. The limit on the bulk of the building is imposed to avoid, remedy or mitigate the adverse effects of the subdivision on the natural and physical environment. This case can be distinguished from those cases where it is sought to restrict the use to which the land can be put following subdivision as in the series of cases including Robinson v Ashburton District Council … ."

I respectfully agree with that passage (although I think Robinson may be wrong on other grounds). Further, I consider the Environment Court in Wallace was applying the correct test when it stated that the argument about imposing a land use condition on a subdivision consent: [38]

> " … is a reference to the general principle that conditions must fairly and reasonably relate to the subject matter of the consent."

This is a reference to the validity tests which I consider shortly.

[30] On the second issue — whether the proposed condition was imposing restrictions on permitted activities - the Court stated: [39]

> "Mr Enright submitted that it was not appropriate for the Court to allow the use of the consent notice in circumstances where the condition prohibits what is a permitted activity. In support of that submission he referred to obiter statements of the Planning Tribunal (as it then was) in Darrington v Waitakere City Council (Decision No. W68/96). In this regard we refer to Smeaton and others v Queenstown Borough Council and others 4 NZTPAat 410. This was a decision of Beattie J in the Supreme Court (Administrative Division) concerning inter alia whether a condition imposed by the Tribunal in allowing consent to a conditional use, relating to standards as to bulk, location and height could be different from the standards contained in the zone ordinances. Beattie J said at p.421:-
>
> > ' … the Board was plainly right in finding the standards in the Ordinance were not determinative because the very concept of conditional use zoning is that there is no development as of right and the matter ultimately becomes discretionary under section 28(c)(3). The standards in the particular Ordinance are a general guide to be taken into account when that discretion comes to be exercised under an application for conditional use consent. At that time, certainly more stringent standards could be laid down or less stringent standards also.

> "While that was a decision relating to the Town and Country Planning Act 1953 the principle is applicable to the exercise of a discretion arising out of an application for a consent for a non-complying activity.
>
> For the above reasons we are of the view that the condition as amended by us is a condition that we can validly impose and that the best way to give notice to subsequent owners of the condition is to impose a consent notice under section 221 of the Act."

I have some difficulty in understanding that aspect of the decision.

The text and purposes of sections 108 and 220 RMA

[31] The power to impose conditions under section 108 of the RMA upon granting a resource consent is very wide — it permits any condition that the consent authority considers appropriate. There are two statutory exceptions and some common law restrictions on the power. The first statutory exception consists (potentially) of all the other provisions of section 108. Upon examination they provide only limited exceptions.

(1) Although subsection (2) expressly identifies a number of specific powers, they do not limit the width of the general power in subsection (1). That is because the final words of that subsection, after the identification of the general power add the power to:
" … includ[e] any condition of a kind referred to in subsection (2). [40] "
In my view those words preclude the application of the interpretative concept that latter specific words control an earlier more general power [41] .

(2) Section 108(2)(d) provides a restriction on conditions that may be imposed on a subdivision consent which I consider later.

(3) There is a limitation [42] on the power to impose financial contributions.

[32] The second statutory restriction on the general power to impose conditions is the restriction contained in any relevant regulations [43] . There are none.

[33] There are also some common law restrictions on the exercise of powers like this, to impose conditions. They are often called the Newbury tests because they were first clearly articulated in a decision of the House of Lords in Newbury District Council v Secretary of State for the Environment. [44] The tests were recently reconfirmed by the New Zealand Court of Appeal as being applicable to the RMA — Housing Corporation of New Zealand Limited v Waitakere City Council. [45] The tests state that a condition is invalid if it:

(a) is for an ulterior purpose, i.e. is not for a resource management purpose;
(b) does not fairly and reasonably relate to the development or subdivision authorised by the consent on which the condition is imposed;
(c) is so unreasonable that no reasonable consent authority could have imposed it

-on the particular facts of the case.

[34] In my view, it is the application of these tests which provides the answer to the previous cases' concerns about land use conditions on subdivision consents. Recourse to the validity tests seems more appropriate: if a condition proposed for a subdivision consent in effect controls a land use that is a permitted activity then that might offend at least two of the Newbury tests (but not if section 106 RMA applied). If, as in the current QLDC revised plan, the erection of dwellinghouses is a discretionary (land use) activity then different considerations might apply. In particular granting

a subdivision consent subject to a land use condition as to, for example, the external appearance of a building might be the difference between obtaining a subdivision consent and not. Further, and even WESI encouraged this in Mr Lawrence's submissions, the RBP approval process (with "land use" conditions if appropriate) enables an applicant to gain the relevant notified resource consents in one step. When the later step of obtaining a land use consent for a dwellinghouse is taken, that can be applied for as a controlled, rather than as a discretionary activity, because the important issues have already been dealt with on a notified basis at the subdivision stage.

[35] Turning to the text of section 220, it is very significant in my view that a majority of the extra suite of conditions that can be imposed on a subdivision consent clearly relate to *land* uses. I consider each paragraph of section 220(1) in turn:

(a) the provisions to be considered for inclusion in the instrument creating the esplanade strip [46] include: [47]
"The purpose(s) … of the strip, including the needs of potential *users* of the strip; and

… the *use* of the strip and adjoining land by the owner and occupier; and

… the *use* of the river, lake, or coastal marine area within or adjacent to the strip … "

[My emphasis].
These are expressly matters of land use.

(aa) a subdivision condition may require an esplanade reserve [48] to be set aside: [49] that is, the condition does not merely define the *area* of the esplanade reserve but also requires it to be created.

(ab) a subdivision condition may also require the *vesting* of land in the coastal marine area or the bed of a lake or river;

(ac) is an exception: this is a power to waive or reduce esplanade strips or reserves. Even here the considerations relate more to land use matters — if in a negative way — than to the technicalities of subdivision;

(b) conditions may be imposed as to amalgamation of allotments and the transfer of land. While this is in itself a matter of subdivision technique, it appears to me that the reasons underlying it are most likely to relate to land use;

(c) conditions as to bulk, height, location, foundations and floor levels of any structure are the simplest examples of land use conditions. Indeed they provide the legal justification for the residential building platform approvals in the QLDC revised plan;

(d) a condition for the protection of land (including land outside a subdivision) against erosion, subsidence, slippage or flooding must of necessity be something much more than lines on a piece of paper — it must almost always be the requirement for some kind of physical work e.g. planting of trees or grass, construction of a retaining wall, or placement of a stop bank or water-channelling;

(e) a condition as to filling and compaction of land may be imposed — again matters of land use.

(f) a condition as to easements always, by definition, relate to land use (or the use of water and air — which are other natural resources managed under the Act);

(g) this is the converse of (f): it recognizes that some easements may need to be cancelled.

[36] From the discussion above of the various paragraphs in section 220(1) it appears that the purpose of the section as to conditions that may be imposed on subdivision consents is to ensure that when a subdivision of land takes place all the land use matters which:

(a) need definition to create enforceable rights in land under the Land Transfer Act 1952; and/or

(b) need to be imposed on public interest grounds

— are properly attended to. Although section 220 defines various circumstances in which particular (land use) conditions may be imposed that does not mean others cannot be. The introductory words are quite clear about that: [50]

> "Without limiting section 108 or any provision in this Part, the conditions on which a subdivision consent may be granted may include … "

Subdivision in the scheme of the Act

[37] There is no reference to subdivision in the titles to the RMA, nor in the Act's statement of its purpose. [51] The term "subdivision" is defined in sections 2 and 218 of the RMA as "the division of an allotment". [52] However the relationship between the technical act of subdivision and the sustainable management of resources is recognised in the matters of natural importance defined in Part II of the Act. [53] Two matters which must be recognised and provided for as matters of national importance are:

> "(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them *from inappropriate subdivision*, use, and development:
> (b) The protection of outstanding natural features and landscapes *from inappropriate subdivision*, use, and development:"
>
> (My emphasis).

[38] If subdivision was to be recognised by the RMA as a purely technical matter of translating survey points on the land onto paper then in my view the subject would have been dealt with in a self-contained part — such as Part X of the RMA, but with no reference to land use matters; and without reference to subdivision in section 6 of the Act. The reference in section 6 to "inappropriate" subdivision suggests that the RMA recognises that subdivision of land does have effects on the management of resources.

[39] In my view that is the reason why section 11 of the RMA provides restrictions on land. It directs that: [54]

> "No person may subdivide land … unless the subdivision is —
>
> (a) Expressly allowed by a rule in a district plan and in any relevant proposed district plan or a resource consent, and a survey plan … has …
> (i) [b]een deposited … ; or … ."

The place of subdivision under section 11 of the RMA was discussed by the Environment Court in Yates v Selwyn District Council [55] where the Court stated:

> "Section 11 of the [RMA] recognises that allotments which are usually (but certainly not always) contained in one certificate of title are fundamental units in terms of the creation of property rights which of course include (from an economic point of view) rights in resource consents or certificates of compliance under the Act … The smaller an allotment the greater the chances there are of causing external effects (or not being

> able to internalize effects) and of course this case is a classic example of that. Subdivision down to 2 hectares might mean that externalities in the form of sewage, pollution plumes or reverse sensitivity effects (such as complaint from what are, in effect, lifestyle units on the two hectare blocks about noise or spray or the other incidents of rural use) increase. In summary: subdivision of land tends to cause multiplication of complaints about effects."

In the later case Wakatipu Environmental Society Inc v Queenstown Lakes District Council we agreed with the earlier case as follows: [56]

> "Yates was not particularly concerned with landscape issues. However we consider the principle it states is correct and does apply when landscapes are in contention. Subdivisions draw lines across the landscape, and in fact those lines tend to be marked by fences or trees or other changes in vegetation patterns. All those demarcations have effects on the visual quality of the landscape and thus need to be taken into account."

[40] The functions, powers and duties under the Act of central and local government are set out in Part IV. The only reference to subdivision is a function given to territorial authorities in section 31: [57]

> "The control of subdivision of land."

In his submissions Mr Goldsmith (rhetorically) asked the question why the function is not expressed as "to control the effects of subdivision". His answer as I understand it is that subdivision as a technical (surveying) process needs to be controlled in itself — hence the need for section 31(c) - but that the effects of subdivision are effects which can be managed in an integrated way under section 31(a) and (b) of the Act.

[41] Part VI of the Act deals with the process for considering applications for resource consents. Earlier I pointed out that a "subdivision consent" is defined in this Part as: [58]

> "A consent to do something that otherwise would contravene section 11 … "

Thus all the provisions of Part VI apply to applications for subdivision consents as much as to any other category of resource consent. The matters to be had regard to on any application for resource consent include: [59]

> "Any actual and potential effects on the environment of allowing the activity;"

In this context it needs to be remembered that "effect" is defined [60] very widely as including:

> " …
>
> (a) Any cumulative effect which arises over time or in combination with other effects —

Regardless of the scale, intensity, duration or frequency of the effect … ”

So while the planting of a hedgerow after subdivision is most obviously the effect of the workers digging the holes, it can also be seen as an effect, under the RMA, of the grant of a subdivision consent. The idea that a cause can only have one effect or that all effects are of the same kind has been regarded as simplistic since Aristotle.

[42] If a consent authority grants a resource consent then it may always [61] impose conditions under section 108 of the Act. Indeed for controlled activities the only power the consent authority has, is to impose conditions since it has no power to refuse consent. [62]

[43] Taking all the above interpretative factors into account, I am persuaded that the legality of land use conditions on a subdivision consent is more a question of reasonableness in the circumstances than of a sharp definition of powers. I accept that questions of reasonableness merge at their outer edges with *vires* issues. However, from a practical point of view I consider that the Newbury tests are the answer to the complaint that conditions imposed on a subdivision consent can never relate to land use. There is jurisdiction to impose such conditions but that they may (sometimes) fail the Newbury tests. Just when conditions may fail is a question that would have to be decided by the consent authority on the specific facts of any case. Given that sections 220 and 106 of the RMA expressly deal with land use matters, the boundaries for imposing conditions on subdivision consents with respect to other land use issues may be quite wide. The outcome in any given case may depend more on the provisions of the relevant plan, than on the powers conferred by the RMA.

[44] I conclude that, in these circumstances, where there are land use controls on the exterior appearance of buildings, it is lawful for the revised plan to contain subdivision rules which allow the QLDC to consider and, if necessary, impose similar conditions as conditions of a subdivision consent. If any party wants a declaration to that, or more precise, effect it should apply in writing by 14 July 2001. I also reserve leave for any party to apply for any other consequential relief. In the meantime, the programme for submissions stated in the rules decision should be adhered to if possible.

All Citations

ENC Christchurch C100/2001, 21 June 2001, [2001] ELHNZ 235, 2001 WL 943757

Footnotes

1 Decision C75/2001 dated 22 May 2001.
2 Decision C75/2001 paras [76] to [79].
3 C81/94.
4 W68/96.
5 Section 220(1)(c) of the RMA.
6 Decision C75/2001 para [52].
7 Decision C186/2000 paras (6 November 2000) paras [31] to [40].
8 Para [85] of Decision C75/2001.
9 Para [86] of Decision C75/2001.
10 See the Court's Minute (undated) but forwarded on 28 May 2001.
11 [1978] 1 NZLR 225 at 229 (per Richmond P.)

12 C75/2001 para [52].
13 Under section 287 RMA.
14 Section 87 RMA.
15 Section 2 RMA.
16 Section 220 RMA.
17 Decision C81/94 (2 September 1994).
18 Decision C81/94 at p.16.
19 Decision C112/98.
20 Decision W92/94 (23 September 1994).
21 Decision W92/94 at p.2.
22 Decision W92/94 at p.3.
23 Decision W92/94 at p.3.
24 Section 108 RMA.
25 Section 220 RMA.
26 W92/94 at p.25.
27 W92/94 at p.26.
28 W92/94 at p.26.
29 Section 5(2) Interpretation Act 1999: of course *Robinson* predates this decision but the common law and the Acts Interpretation Act 1924 also required the scheme of an enactment to be considered when interpreting it.
30 W92/94 at p. ??.
31 Section 221(4).
32 1997/104.
33 W68/96 at p.7.
34 W68/96 at p.7.
35 A39/98.
36 A39/98 at p.5.
37 The Court wrote section 221(c) but that is an obvious typographical error.
38 A39/98 at p.4.
39 A39/98 at pp.5 and 6.
40 Section 108(1) RMA as amended by s 58(1) RMAA 1993.
41 See *Burrows*, JF *Statute Law in NZ* (1992, Wellington, Butterworths).
42 Section 108(10) RMA.
43 Section 108(1) RMA.
44 [1981] AC 578, [1980] 1 All ER 731.
45 [2001] NZRMA 202 at para [18].
46 Required under s 230 RMA and imposed under s 232 RMA.
47 Section 232(6), (c), (d) and (e) of the Act.
48 Under section 236 RMA.
49 Defined in section 2 RMA and under the Reserves Act 1977.
50 Section 220(1) RMA.
51 Section 5 RMA.
52 "Allotment" is defined in section 218(2) as (loosely) any parcel of land defined on a survey plan (or equivalent).
53 Section 6 RMA.

54 Section 11(1) — note the effect of s 11(2) that this does not apply to Maori land.

55 C44/99 [31 March 1999] at p.21.

56 [2000] NZRMA 59 at para (129).

57 Section 31(c).

58 Section 87(b) RMA.

59 Section 104(1)(a) RMA.

60 Section 3 RMA.

61 Section 105(1) of the RMA.

62 Section 105(1) (a) and 105(3) of the RMA.