BEFORE THE ENVIRONMENT COURT

ORIGINAL

Decision No. A 119 /2008

IN THE MATTER	of the Resource Management Act 1991 (**the Act**)
AND	
IN THE MATTER	of an appeal under section 120 of the Act
BETWEEN	McKINLAY FAMILY TRUST AND OTHERS
	(ENV-2007-AKL-380)
	Appellants
AND	TAURANGA CITY COUNCIL
	Respondent

Hearing:	at Tauranga on 19-20 June and 6 October 2008
Court:	Environment Judge J A Smith Environment Commissioner C E Manning Environment Commissioner S J Watson
Appearances:	Mr D M Simpson for McKinlay Family Trust (**the McKinlay Trust**) Ms H J Ash and Mr W M Bangma for Tauranga City Council (**the Council**) Mr R Douglas for Oropi Downs Residents Group (**the Residents Group**) (section 274 party)
Date of Decision:	29 October 2008

DECISION OF THE ENVIRONMENT COURT

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

A: The appeal is refused and the decision of the Council is confirmed.

B: The question of costs is reserved. Applications to be made within 15 working days of the issue of this decision; any replies within 10 further working days.

REASONS

Introduction

[1] The McKinlay Family Trust seeks consent to subdivide a lot of some 1.5 hectares into three lots. A consent notice, placed on the title following a record of determination issued by the Environment Court, prevents subdivision of the lot. The central question before the Court is whether that consent notice should be lifted, given that the planning provisions now relating to the land in question would otherwise provide for subdivision to the level sought by the McKinlay Trust as a controlled activity.

Background

[2] In December 2002 the Environment Court issued a Record of Determination of Outstanding Issue[1] resolving final conditions for a rural-residential subdivision of land on Oropi Road in the City of Tauranga. The applicant, Asco Trust Limited, was at that point proposing a total of 34 lots. A number of these were rural-residential lots of between 3,000 m^2 and 6,700 m^2, while there were larger balance lots, notably Lot 26 of 4.18 hectares and Lot 27 of 20.74 hectares.

[3] The land at the time was zoned rural. In terms of the provisions of the District Plan then in force, subdivision in the Rural Zone was a controlled activity provided that the average allotment size was four hectares, and the minimum allotment size was no more than two hectares. The subdivision proposed required consent as a restricted discretionary activity.

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[1] A251/2002.

[4] In the final form of subdivision, agreed by the Court, Asco Trust Limited proposed to amalgamate Lots 26 and 27. The Court also imposed the following conditions:

> *[57] A subdivision covenant shall be registered against the Certificates of Title for Lots 2-25 inclusive and Lots 28 & 34 to the effect that no further subdivision will be permitted.*
>
> *[58] A subdivision covenant shall be registered against Certificates of Title for Lots 26 & 27 and for Lots 29-33 inclusive to the effect that no further subdivision of the lots shall take place until such time as they obtain an operative Rural/Residential zoning or equivalent thereof or at the expiry of 5 years from the date of the decision of the Environment Court (6 November 2002) in Proceedings RMA 013/02.*

The Court decision recorded that these conditions were sought by the applicant.

[5] Subsequently allotments were sold, and a number built on. One of the lots, Lot 19 of some 1.47 hectares, was later purchased by the McKinlay Family Trust.

[6] By reason of Plan Change 42, the land which was the subject of the Environment Court's 2002 decision has been rezoned from rural to rural-residential. In the Rural-Residential Zone, subdivision is a controlled activity provided that it achieves an average allotment size of 4,000 m^2 and a minimum allotment of at least 3,000 m^2. This change was being contemplated at the time of the original subdivision.

[7] On 29 August 2006, an application to subdivide Lot 19 was submitted on behalf of Mr J McKinlay to the Tauranga City Council. The application proposed two lots of 3,000 m^2 each and a larger lot of 8,716 m^2 which we will comment on in due course. Intriguingly the application made no reference to condition 57 of the resource consent applying to the land, and proposed that the application be dealt with on a non-notified basis as a controlled activity.

[8] The Council dealt with the application as an application for cancellation of a consent notice condition restricting further subdivision and an application for

subdivision. Council decided that a number of parties were affected and notified them under section 94(1) of the Act. After a hearing at which a number of these parties were submitters the Council declined the application, stating among its reasons:

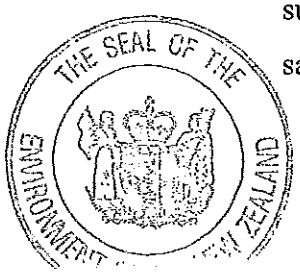
> *The Hearings Panel consider that the existing environment of Lot 19 DP 323783 and amenity it provides to surrounding properties was created by the design of the previous subdivision and for the purposes of the subsequent plan change for rezoning of the land to Rural – Residential, no change in amenity would result. The consent notice preventing subdivision is considered by the Panel to provide protection of character and amenity to the surrounding area for current land owners. Therefore, the cancellation of the consent notice to enable subdivision of the subject site is considered to result in intensification of the site that was not anticipated by surrounding owners, or Council's Hearings Panel at the time of the plan change, and it would impact on the existing amenity such that the resulting effects that are considered by the Hearings Panel to be more than minor.*

The McKinlay Family Trust has appealed the decision of the Council to this Court. Pursuant to section 290A of the Act, we are required to have regard to the Council decision.

[9] We note that the Hearings Panel refer to *effects more than minor* as a ground for declining consent. Given that the applications are for discretionary activities, this test arising under section 104D is not relevant. Nevertheless we conclude the Hearings Panel was concerned at the extent of adverse effects on amenity.

The issue

[10] The issue in this case is very simple. Should the Court set aside a condition offered by an applicant for consent in 2002 and imposed by the Court? If it does the subdivision follows given the current Plan provisions, subject to conditions being satisfactory.



The position of the parties

[11] Between the issue of the decision by the Council and the case coming to a hearing, the parties have had discussions, including Court-assisted mediation. As a result the applicant and the Council have reached a common position seeking that the Court agree to the removal of the condition of the 2002 consent order and permit Lot 19 to be subdivided into two allotments, one of 3,000 m^2 and one of 1.1716 hectares, each with a specified building platform marked on a plan prepared by R P C Limited, Land Surveyors, and submitted to the Court as Exhibit A.

[12] We note that the change in the applicant's position could be somewhat illusory. If we accede to the request of the applicant and the Council, it would be possible for the applicant to apply for a resource consent to subdivide the larger allotment as a controlled activity, an application which the Council has no jurisdiction to decline. This could produce a further 3,000 m^2 allotment, leaving a balance lot large enough for further subdivision. We draw this to the Council's attention inasmuch as the present provisions of the Plan enable piecemeal subdivision which could frustrate the purpose of the averaging provisions of the Plan.

[13] The residents were opposed to the new proposal not least because of concerns as to further subdivision. Their concerns focussed on the purpose of the consent notice to preserve the openness, flood and amenity functions of the lot.

The legal framework

[14] As the survey plan of the subdivision has been deposited, in accordance with section 127(1)(a) of the Act, the consent holder must apply under section 221 for a variation or cancellation of a consent notice. The relevant subsections of section 221 provide:

> *(3) At any time after the deposit of the survey plan, –*
>
> *(a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:*

(b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.

(3A) Sections 88 to 121 and 127(4) to 132 apply, with all necessary modifications, in relation to an application made or review conducted under subsection (3).

We note in particular that section 127(4) provides that:

(4) For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who –

(a) made a submission on the original application; and

(b) may be affected by the change or cancellation.

[15] The wording of section 221(3A) appears to indicate that section 127(3) does not apply to applications for subdivision consent. Section 127(3) provides for applications for change or cancellation of a consent condition to be dealt with as if they were an application for a discretionary activity. However, both Mr Simpson and Ms Ash reached the conclusion, by a different route, that the application fell to be treated as if it were for a discretionary activity. Mr Simpson noted that the activity of removing a portion of a consent notice is an innominate activity. Section 77C(1) of the Act requires an application for a resource consent for an activity to be treated as an application for a discretionary activity if –

...

(b) a plan or proposed plan requires a resource consent to be obtained for an activity, but does not classify the activity as controlled, restricted discretionary, discretionary, or non-complying under section 77B.

[16] The consequence is that we are required to consider the matter under section 104, and (subject to Part 2) to have regard to:

(a) any actual and potential effects on the environment of allowing the activity; and

(b) *any relevant provisions of*

...

(iv) a plan or proposed plan;

(c) *any other matter the consent authority considers relevant and reasonably necessary to determine the matter.*

There is no requirement to give more weight to any of these considerations than any other, and the importance of each of them varies according to the facts of the particular case. Issues as to the certainty of such covenants are to be considered along with flexibility to allow planning changes to occur over time. The particular resolution will turn on the facts of the case and the reasons for the covenant.

The Plan

[17] Plan Change 42 zoned the land which is the subject of this application rural-residential. Under this zone, as we have indicated, subdivision to the lot sizes proposed by the McKinlay Trust and now supported by the Council is a controlled activity. This change became operative on 1 November 2005.

[18] The only professional witness called to give evidence was Mr K Frentz, a consultant planner called by the Council. His evidence was adopted by the McKinlay Trust. Mr Frentz outlined the various matters over which the Council had reserved control and gave his opinion that the design of the new subdivision and the proposed conditions proposed addressed all the relevant matters in the rule. Mr Frentz then turned his attention to the various objectives and policies of the Plan he regarded as relevant, including the rural objectives and explanations which refer to the Rural-Residential Zone. Not surprisingly, since the activity status of subdivision to the lot sizes proposed is controlled, he came to the conclusion that such subdivision was consistent with the objectives and policies of the Plan. We do not understand the consistency of the proposal with the Plan provisions to be under challenge in this case, and indeed, given that Plan Change 42 is now operative, we consider that any such challenge would have encountered extreme difficulty.

[19] Equally we do not think it would be possible to argue successfully that in this case subdivision of the type proposed would have any adverse effects on the environment which are not contemplated by the Plan.

Outcomes of the Consent Notice

[20] We accept that there may be some effects of a subdivision on the environment for the neighbours which are prevented by the operation of the consent notice provided for by condition 57. We proceed to describe those effects.

[21] Lot 19 is a bowl-shaped allotment, the contours of which descend steeply from:

(a) Phillips Drive;
(b) the lots on Waioroi Place which are on its western boundary; and
(c) Lot 18 on the north-eastern boundary.

[22] In the hollow of this basin is a man-made pond, around which flax and other wetland vegetation has become well established. Mr Frentz accepted, when it was put to him by the Court, that a number of lots around the application site had been developed in a way which takes advantage of the significant amenity offered by this large lot and its wetland area.

[23] In addition the pond area serves as:

(a) a water detention and drainage basin for surrounding properties;
(b) a view shaft of lower lying land permitting surrounding properties to overlook the ponding to the stream reserves beyond.

[24] We accept that the other property owners have planned and orientated their homes to take advantage not only of the terrain around the pond but also its amenity values. Given its open nature it gives a real feeling of openness or spaciousness to surrounding sites.

[25] If the consent notice attached to Lot 19 is removed, these neighbours will be faced with at least two lots from the subdivision proposed, and potentially two more which can be created as a controlled activity. At least two houses with associated domestication will be located on the site.

[26] We also consider we should have regard to the potential effect if three lots are created. Although this application does not seek that outcome, the effect of the removal of the consent notice unconditionally is that the Council could not refuse consent to a three lot subdivision, and Ms Ash, the Council's solicitor, stated that this *would happen* at some time (page 27 of the Transcript).

[27] A third lot on the site is likely to bring buildings, domestication and all that is associated with it much closer to the properties on Waioroi Place. This will have consequent effects on both the visual and other amenities enjoyed by the residents of those properties. Mr McKinlay stated that subdivision would improve the amenity of Lot 19, because the smaller lots would enable Lot 19 to be maintained *in a rural-residential style.* We imagine that by this he meant that they would present a more manicured appearance than the present Lot 19. On the other hand, the residents of Waioroi Place would lose some of the open outlook they currently enjoy, and on which they considered, on the basis of condition 57 of the earlier resource consent, they could rely beyond the change of zoning of the land to rural-residential. Along with the loss of open outlook they would experience a greater degree of human activity than they had anticipated.

[28] Whilst neighbours could anticipate one house on Lot 19 under the consent notice they have the view that its placement was to be located in the north-east corner of the site. There are foundation excavations already in that position. That conclusion is reasonably based on the position shown on the maps annexed to the consent order. Mr Simpson asserted that there was no restriction on house placement but we consider there is at least a case to argue the building platform positions are fixed (unless discounted for geotechnical reasons). We do not have to finally decide the point for this hearing. Nevertheless a house in the position shown on those plans would have minimal impact on existing residents.

[29] Any alternative site or additional house would have significant impact on at least some residents. We are also concerned at attempts to fill and reclaim some of the pond which now appears reduced in size from that in the landscaping plan attached to the consent.

[30] Our conclusion is that while the effects of further subdivision on the environment do not exceed those anticipated by the Plan, they were not envisaged by the earlier resource consent. In particular condition 57 fixed an expectation that the amenity and open space of Lot 19 would be preserved into the future. Thus the condition provides a higher level of amenity and openness than contemplated in the Rural Residential Zone generally.

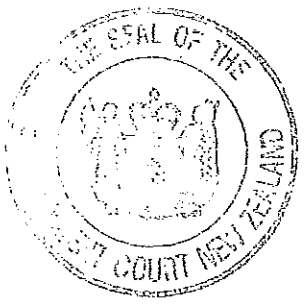
Section 104(c) Other matters relevant and reasonably necessary to determine the application

[31] We consider the precise wording of conditions 57 and 58 and their juxtaposition a matter relevant and reasonably necessary to determining this case. In doing so we note the comments of the Court of Appeal in ***Kapiti Environmental Action Incorporated v Frandi and Anor***[2] that in making decisions on applications under section 221 of the Act, decision-makers will need to have proper regard to:

> *the circumstances in which the condition was imposed, to the environmental values sought to protect, or to the pertinent general purposes of the Act as set out in s 5 to 8.*

The purpose of conditions 57 and 58 is not formally stated, but we are surprised that Mr Frentz, at least in his evidence given to us, did not seek any guidance from the words of the conditions, and the difference between them, to assist in understanding their purpose.

[32] Before we deal with that question of purpose, we refer to and dismiss a submission of the McKinlay Family Trust. The Trust submitted that condition 57 was *ultra virus* [sic]. That submission is simply not open to it. As we have indicated,



[2] [2003] NZRMA 337 at para 39.

condition 57 was sought by the applicant. It is thus a condition of the type referred to in the English case ***Augier v Secretary of State for the Environment***[3], and followed by the Environment Court and High Court in New Zealand. In the High Court Justice Randerson stated the principle involved in that case in ***Springs Promotions Limited v Springs Stadium Residents Association***[4]:

> *That case is authority for the proposition that an applicant for planning permission who gives an undertaking to a planning authority, which is relied upon in granting the permission is estopped from later asserting that there was no power to grant the permission subject to a condition based on the understanding.*

Is condition 57 now redundant?

[33] The key proposition of both the Trust and the Council is that Plan Change 42 made condition 57 redundant. Mr Simpson for the Trust accepted that the application for removal of the consent notice was made in reliance on Plan Change 42 rezoning the land to rural-residential, and of the changes in the environment that could flow from that.

[34] Mr Frentz' written evidence was in similar vein, to the effect that now the rezoning of this land has taken place it was appropriate to remove the consent notice to enable the appellant to develop the site in a way that is consistent with the different standards of the Rural-Residential Zone. This assumes that the principal purpose of condition 57 was to maintain rural amenity until a rural-residential zoning was obtained.

[35] We conclude that such an interpretation of condition 57 is precluded by the wording of condition 58. Condition 58 anticipates that the land on which the 2002 subdivision was proposed would become rural-residential and specifies which lots may be subdivided when that occurs. It is reasonable to assume the lots referred to in condition 58 could be subdivided once the land is zoned rural-residential. Accordingly the reason they cannot be subdivided in the meantime was to maintain rural character to

3 [1978] 38 P & CR, 219.
4 [2006] NZRMA 101 at para 76.

the area. It is also reasonable to assume that the no subdivision covenant on the lots referred to in condition 57 is for some other purpose, and continues to have a purpose beyond any rezoning of the land. There can be no other purpose for the two conditions. If the consent notice is to be removed over Lot 19 then control over all Lots 2-25 and 28-34 should also be removed. The conditions do not see Lot 19 in a different category.

[36] In oral evidence led by counsel, Mr Frentz suggested that condition 57 was necessitated by the planning provisions operative at the time. He reminded the Court that at the time of the subdivision consent, although rural-residential style allotments were created, the underlying zoning was rural. In the Rural Zone the building of two houses per allotment was a permitted activity. What the covenants and consent notices were intended to guard against was an application for the construction of two houses on the Rural Zoned lots, and a subsequent application to subdivide these lots, predominantly around 4,000 m^2, into two. Mr Frentz told us that the rules of the Rural-Residential Zone now provide for only one house per allotment, but that without the consent notices there would have been a period of two and a half years in which the density of development could have doubled and have been twice that anticipated in the Rural-Residential Zone.

[37] That explanation, which sees the consent notices derived from condition 57 as an interim measure until rural-residential zoning was secured and necessary to ensure the retention of rural-residential amenity, encounters the same difficulty as the explanation contained in Mr Frentz' written evidence. The wording of condition 58 which limits the operation of the covenant to the period before Rural-Residential Zoning is obtained would have been sufficient to achieve that purpose. There would have been no necessity for a separate condition (57) specifying a number of lots on which the covenants were to enure beyond the anticipated zoning change.

[38] Quite simply we have concluded the purpose of condition 57 was to give certainty to purchasers of the lots 2-25 and 28-34 and the public generally that the subdivision would not be subject to further applications for subdivision by individual owners whatever the terms of the Plan. In part purchasers were acquiring certainty as to the amenity, density and views they would receive in the long term.

Function of Lot 19

[39] Mr B H Askin, a director and shareholder of Asco Trust Limited, the trust which developed the Oropi Downs subdivision, was called to give evidence by the Oropi Downs Residents' Group. He was unavailable during the period for which the case was set down for hearing, and his evidence was given and examined before Commissioner P A Catchpole on 27 May 2008. He told the Court that as planning of the subdivision progressed it became clear that a stormwater pond would be necessary in the area that became Lot 19. It was also anticipated that the area would become a visual focal point and provide additional amenity for the surrounding lots. To that end, the land around the pond has been densely planted with native species.

[40] Mr Askin further indicated that his company had always considered Lot 19 suitable for one building site only, and that in its application for the 2002 subdivision had proposed to the Council a consent notice registered against the titles of all the rural-residential lots created to the effect that there should be no further subdivision of those lots. When Asco Trust Limited applied for a change of zoning to enable further development of their subdivision, it requested that all its land south of the existing Rural-Residential Zone be included. Mr Askin's evidence was that in making this application the directors of Asco Trust did not in any way consider that the legitimacy of their consent notices on the 2002 subdivision would be affected. Mr Askin agreed in cross-examination that it might have been wiser in hindsight to leave a land covenant as well as a consent notice on the land if the intention had been to guarantee that Lot 19 would not be subdivided. However he was consistent in his statements that at the time he had believed that the consent notices could not be lifted without the consent of the neighbouring landowners.

[41] For our purpose the significant point in Mr Askin's evidence is that the consent notice was imposed with the intention of providing for the amenity of surrounding lots by providing a visual focal point, and to provide drainage. On the plain wording of conditions 57 and 58, it is a more satisfactory explanation of the reason for those conditions and the consent notices that derive from them than those offered by Mr Frentz.

[42] That conclusion on the purpose of the consent notices is strengthened by the character of the site and surrounding land. We have described the relationship of Lot 19 to other sites in the subdivision earlier. We add here that the site drains to the Waioroi Stream and that, on its northern boundary it adjoins an area of land zoned *green belt*. In other words, a number of sites have views beyond Lot 19 to an area uncluttered by structures.

[43] We conclude that the purpose of the consent notice on Lot 19 was to provide drainage, a visual focal point and an open view and to provide a higher level of amenity for surrounding lots than would be guaranteed by the provisions of the Rural-Residential Zone. We conclude those purposes continue to be important.

[44] We also accept the submission of Mr Douglas for the section 274 parties that a number of current owners of lots in the subdivision relied on the condition of consent in making decisions to purchase their properties and in orientating the houses they built on them. That was amply supported by the evidence of these parties. We refer to the evidence of Mr F A Barker, a company director who resides at 28 Phillips Drive. He told us that the house site on proposed Lot 1 would sit immediately in front of their house, blocking views of the wetlands and their abundant wildlife. He further indicated that he and his wife had purchased the lot and sited the house because of the covenants that were in place.

[45] Mrs S Ewart, a resident and part owner of 20 Waioroi Place, stated that development of that property had been planned and undertaken taking into account the sites shown on the subdivisional scheme plan, the location of neighbouring dwellings and the view of the pond on Lot 19. She stated the deck of the house would directly face a house on proposed Lot 1.

Part 2

[46] Any consideration of the matters in section 104(1) is subject to Part 2. In the circumstances of this case we note the loss of views, openness and amenity as a diminution of the quality of the environment suffered by the section 274 parties if the consent notice is removed. These are matters to which we are required to have

particular regard under section 7(c) and 7(f). We also consider in terms of the broad overall purpose of the Act contained in section 5 that the ability of the public to rely on conditions put forward by an applicant in order to obtain a consent is a significant matter in terms of enabling people and communities to provide for their social and economic wellbeing.

[47] We conclude these matters are more significant in determining the outcome of this case than the economic and social wellbeing of the McKinlay Trust or any potential purchasers of the subdivided lots may derive from allowing the consent notice to be removed. Particularly the existing landowners have designed their properties in reliance on the amenity and drainage function of Lot 19.

Interim amendments

[48] At the end of the June 2008 hearing, with the applicant's case concluded, we communicated our view to the parties in broad terms so that they could consider whether the application could be revised, ensuring by notices on the land titles that if an additional lot were created no further subdivision would be possible, and providing additional amenity for surrounding residents on Lot 19, without committing the Court to any proposal that might arise.

[49] At the resumed hearing, the McKinlay Trust offered further conditions:

(a) a restrictive covenant be placed over 4,000 m^2 of land in the pond and wetland area, identifying the area as natural open space in perpetuity, and indicating that for the purposes of assessing the subdivision potential of proposed Lot 2 the land subject to the covenant is not to be included in the assessment of land area;

(b) a consent notice that there should be no further subdivision of Lot 2.

[50] The Council supported the appellant's position and added that if it would assist, it would accept the gazetting of the covenanted area as reserve for conservation purposes under section 77 of the Reserves Act. Ms Ash also offered the opinion that a robust decision of the Court stating the purpose of the new consent notice would provide

adequate guidance to deter the Council from lifting it or consenting to subdivision of Lot 2 as a discretionary activity.

[51] The section 274 parties, understandably after their experience in this proceeding, had reservations about the effectiveness of the consent notice procedure. Mr Douglas submitted on their behalf that the open space outlook offered by Lot 19 unsubdivided, and the drainage purpose it served, were more important to the residents' group than the maintenance of the vegetation around the pond.

Certainty and flexibility

[52] For our part, we have concluded that the ability of people and communities to rely on conditions of consent proffered by applicants and imposed by agreement by consent authorities or the Court when making significant investment decisions is central to the enabling purpose of the Act. Such conditions should only be set aside when there are clear benefits to the environment and to the persons who have acted in reliance on them.

[53] For the applicant, Mr Simpson contended that:

(a) the protection of the vegetation around the pond;
(b) the conditions which precluded subdivision as a controlled activity of the larger lot to be created; and
(c) a consent notice against further subdivision

represented such a package of benefits.

[54] The section 274 parties did not see things that way, and neither do we. They already have a consent notice against further subdivision. The wetland area is at least in part a result of the topography of the site. We do not accept Mr Simpson's proposition that the wetland vegetation could be removed as of right. Not only is it an attractive feature of the site, the landscaping and pond are shown on at least one plan attached to the Court consent. Thus the landscape plan incorporated in the consent may require their retention (although we do not express a final decision on that point).

Outcome

[55] We have concluded that the Council officers have wrongly focussed on the current Plan while overlooking the consent notice itself and its purpose. Flexibility as permitted by a plan can always be subject to restraints by consent notice or conditions. Often such constraints justify a development that would otherwise be a step of creeping incrementalism. This wide purpose of consent notices is one clearly recognised by the Council hearing panel in their decision. We agree entirely with the hearing panel decision and consider they correctly appreciated the issues surrounding the release of the consent notice. We would only alter the words of their decision *more than minor* to read *unacceptable*. Furthermore, we consider that the outcomes expected are in part inferred by the landscape and building platform diagram attached to the Court determination.

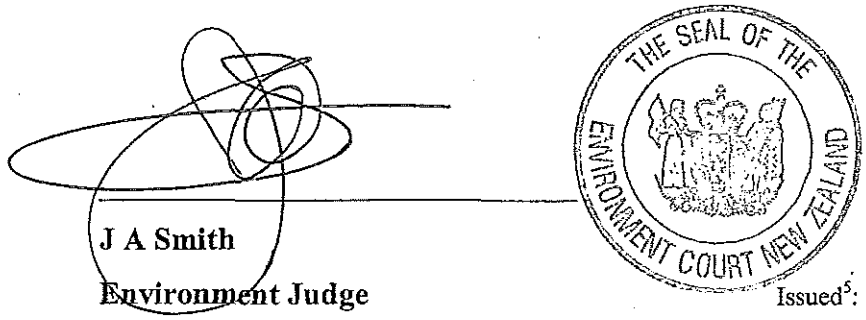
[56] In integrating the various matters we are required to consider under section 104(1), we have decided that we should not vary the 2002 subdivision consent by withdrawing the consent notice from Lot 19. We are required to have regard to the Council decision on the application under section 290A of the Act. We consider the original decision soundly based.

Costs

[57] The question of costs is reserved. Any applications should be served, with appropriate documentation, on the other parties and filed with the Court within 15 working days of the issue of this decision. Any responses should be served and filed within ten further working days.

DATED at CHRISTCHURCH this 29th day of **October** 2008

For the Court:



J A Smith

Environment Judge

Issued[5]: 29 OCT 2008

[5] Smithje/Jud_Rule/D/2007-AKL-380.doc.