MacLaurin v Hexton Holdings Ltd

Court of Appeal Wellington CA 212/07; [2008] NZCA 570
26 June; 19 December 2008
Chambers, Arnold and Ellen France JJ

Easements — Landlocked land — Section 129B of Property Law Act 1952 — Definition of "reasonable access" under s 129B(1)(c) — Environment Court delivered interim decision approving application but not granting resource consent until access issue resolved — Land not landlocked — Not entitled to take into account "use for which the plaintiff has sought a resource consent" — Application before Environment Court should have been pursued to finality — Procedure to be adopted when resource consent required — Dismissal did not prevent subsequent application being made.

The appellants own a farm on the outskirts of Gisborne. Lot 54 is positioned in the middle of the farm, having been subdivided off in 1904. Lot 54 is the site of two natural springs, from which water had been taken since the 1880s. Lot 54 was sold to New Zealand Breweries Ltd in 1923, which owned it until 1974. The respondent company purchased it in 2003.

The respondent company seeks to market the water from lot 54 as "bottled at source". This requires the water to be literally bottled on site and not piped, even to a nearby bottling plant. Lot 54, however, lacks guaranteed physical access. The respondent applied for resource consent to erect a bottling plant on lot 54. Consent was granted by the Gisborne District Council. The appellants, who adamantly opposed the establishment of a bottling plant on lot 54, appealed to the Environment Court. The Environment Court delivered an interim decision on 28 November 2006 in which, in principle, it approved the application, but was not prepared to grant a resource consent until the access issue was resolved.

The respondent also applied to the High Court under s 129B of the Property Law Act 1952, seeking access over the appellant's land. In a decision delivered on 16 April 2007 (*Hexton Holdings Ltd v MacLaurin* (2007) 8 NZCPR 97) Andrews J held that lot 54 was landlocked and granted an easement over the proposed access route. She declined to vest the fee simple in the respondent. In a subsequent judgment she granted an easement for services over the access route (High Court, Gisborne, CIV 2005-416-275, 29 October 2007).

Held (allowing the appeal)

1 "Right" for the purposes of "reasonable access" as defined in s 129B(1)(c) of the Property Law Act does not mean "right to apply for a resource consent under the Resource Management Act 1991". The High Court was not entitled to take into account "the use for which the plaintiff has sought a resource consent". The finding that the land was landlocked could not stand (see paras [20], [21]).

2 The High Court had concluded that it was required to consider not only existing uses of the land but also the use for which application had been made for a resource consent. The Court was wrong to take into account the proposed bottling plant as a usage and the Court had never considered the question on a pure "existing uses basis" (see para [23]).

3 "Consent" in s 129B of the Property Law Act 1952 refers to an operative consent, that is, one which has commenced and can be used. An argument that the respondent was entitled to rely upon the consent issued by the Gisborne District Court, albeit that the consent was under appeal to the Environment Court, was rejected (see paras [28], [30]).

4 An argument that an order under s 129B could be made subject to the respondent obtaining an appropriate resource consent was rejected. The Court indicated that the approach adopted in *Williams v Joslin* (1981) 1 NZCPR 273, where the Court did not finally decide the conditions of the order granting access until the local body requirements had been ascertained, was entirely orthodox. An interim judgment only had been delivered, declaring the land to be landlocked and declaring that it was the intention of the Court when sufficiently precise information was available to make final orders. The decision was not held to be authority for the proposition that the High Court may conclude that land is landlocked because a consent authority may in the future grant permission for a new use which, for the first time, renders the land landlocked (see para [34]).

Williams v Joslin (1981) 1 NZCPR 273 distinguished.

5 The Environment Court was wrong not to decide the issue, and the respondent was wrong not to press the issue to finality before commencing an application under s 129B. There is no reason why the Environment Court could not have evaluated the three access options put up by the respondent. The respondent could have specified which of the various options it found satisfactory. This was the approach adopted by the District Council. The respondent then would have known which option to pursue in the High Court (see para [47]).

6 Rather than being remitted to the High Court, the application under s 129B was dismissed. The exercise would have been artificial and pointless. It was unlikely that the High Court Judge would find the respondent's land landlocked, as the appellants were prepared to continue to allow access on existing tracks for the purposes of existing uses. The dismissal would not prevent the respondent from reapplying under ss 326 – 331 of the Property Law Act if it eventually obtained a resource consent to build and operate a bottling plant (see paras [37], [38], [39], [40], [48]).

Cases mentioned in judgment

Williams v Joslin (1981) 1 NZCPR 273.

Kingfish Lodge (1993) Ltd v Archer [2000] 3 NZLR 364; [2001] NZRMA 1 (CA).

Newstart Holdings Ltd v Tidd Foundation Inc (2005) 6 NZCPR 510 (CA).

Ross v Number Two Town and Country Planning Appeal Board [1976] 2 NZLR 206 (CA).

Appeal

Appeal on decision of High Court (*Hexton Holdings Ltd v MacLaurin* (2007) 8 NZCPR 97) allowed. Matter not remitted to the High Court.

J O Upton QC for the appellants.
N S Gedye for the respondent.

The judgment of the Court was delivered by
CHAMBERS J.

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Access to a proposed bottling plant

[1] Anne and Graham MacLaurin, the appellants, own a farm on the outskirts of Gisborne. Members of their family have farmed the land since 1921. In the middle of the farm sits a piece of land owned by Hexton Holdings Ltd, the respondent. Hexton is the corporate vehicle of John McKendry. His family have also lived in the district for many years and indeed, his grandfather bought what is now Hexton's land in 1974. Hexton's land is less than a hectare in area. To get to Hexton's land, one has to cross the MacLaurins' farm.

[2] The story of how this piece of land came to be separated from the farm around it is intriguing. The land has two natural springs on it, the larger one being known locally as "the Brewery Spring" and the smaller as "the Acton Spring". Since around 1880 water has been taken from the springs. It has been piped off-site and used for domestic and rural water supply and, for many years, for brewing beer.

[3] The area of land around the springs was subdivided off from the rest of the farm in 1904. The springs land, now Hexton's land, became lot 54 on the relevant deposited plan. The subdivision was effected by the

Barker family, who owned the surrounding farm land and became the owners of lot 54. In 1923, however, lot 54 passed out of the Barker family's ownership. It was sold to New Zealand Breweries Ltd, which began to use the water at its brewery in Gisborne. The water was piped to the brewery. New Zealand Breweries obtained easements over neighbouring land to permit such piping. Those easements, however, did not permit general access to lot 54, other than for maintenance of the pipes.

[4] New Zealand Breweries sold lot 54 in 1974. Hexton acquired it in May 2003. By this stage, Mr McKendry had decided he wanted to bottle the water from the springs and export it. Water analysis shows that the spring water is of superior quality. According to Mr McKendry, highest returns for bottled water are achieved if the water can be branded and marketed as "bottled at source". That appellation may be used, apparently, only if the water is literally bottled at source; it cannot be piped, even to a nearby bottling plant. So Mr McKendry decided to try to get resource consent for erecting a bottling plant on lot 54.

[5] His business plan faced one formidable hurdle, however: lot 54's lack of guaranteed physical access. And the MacLaurins were adamantly opposed to the establishment of a bottling plant on Hexton's land and to permitting access for such a commercial venture.

[6] Hexton moved forward on two fronts. First, through a related Hexton company, it applied for a resource consent to establish the proposed bottling plant. The Gisborne District Council granted a consent. The MacLaurins and others appealed to the Environment Court. That Court delivered its decision on 28 November 2006. The decision was interim. In principle, the Court approved the establishment of the proposed bottling plant, but was not prepared to grant a resource consent until the access issue was resolved. Hexton had put up for consideration several access options. One involved just the MacLaurins' land; the other two involved other people's land as well.

[7] Hexton's other prong of attack was an application to the High Court under s 129B of the Property Law Act 1952. Under that section, the owner of landlocked land can apply to the Court for an order forcing a neighbour or neighbours to give access over their properties. Hexton sought access from a road called Glenelg Road across the MacLaurins' farm. Ideally, it wanted to have conferred on it a fee simple in that new accessway; failing that, an easement. Andrews J heard that application. On 16 April 2007, she delivered an interim judgment holding that Hexton's land was landlocked land and granting an easement over the proposed access route ((2007) 8 NZCPR 97 (the first judgment)). Her Honour refused, however, to grant Hexton a fee simple over the access. She subsequently delivered a further judgment, dated 29 October 2007, in which she also granted Hexton an easement for services over the access route ((High Court, Gisborne, CIV 2005-416-275) (the second judgment)).

[8] From those judgments, the MacLaurins have appealed. Hexton has cross-appealed, on the basis that it should have been awarded a fee simple in the access route. The Environment Court decision remains unperfected. The parties decided they would await this Court's decision

on the s 129B appeal before progressing matters in the Environment Court.

[9] We note at this point that, since the High Court judgments, the Property Law Act has been repealed and replaced by the Property Law Act 2007. The parties agreed, however, that the 1952 Act continued to govern this appeal, pursuant to s 18 of the Interpretation Act 1999.

Issues on the appeal and the cross-appeal

[10] The appeal raises a number of issues. Because of the view we take on the first issue, however, we do not need to consider the rest. The first issue is whether Andrews J was right to find Hexton's land was landlocked.

[11] On this issue, for the reasons that follow, we find she was not right. If Hexton's land is not landlocked, there is no jurisdiction to make orders under s 129B. The MacLaurins must win.

[12] Our finding on this first issue also disposes of the cross-appeal. Since in our view Hexton had no right to an order under s 129B, it follows it is irrelevant whether the accessway granted was by way of an easement or a grant in fee simple.

Is Hexton's land landlocked?

[13] Section 129B states that "a piece of land is landlocked if there is no reasonable access to it". "Reasonable access" is defined in s 129B(1)(c) as meaning:

> . . . physical access of such nature and quality as may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land for any purpose for which the land may be used in accordance with the provisions of any right, permission, authority, consent, approval, or dispensation enjoyed or granted under the provisions of the Resource Management Act 1991.

The meaning of right

[14] It seems from Andrews J's judgment that Hexton's application was put forward in the High Court on two bases. The principal basis was that Hexton's land was landlocked because it could not be used as a bottling plant. Operation of a bottling plant was a recognised "use" for the purpose of the statutory definition because, although a resource consent was not in place, Hexton had a right to apply for a resource consent to build and operate a bottling plant. That right, so it was said, amounted to a "right . . . under the provisions of the Resource Management Act". That is to say, Hexton's argument was that "right" in the definition meant (or included) a "right *to apply* for a resource consent under the Resource Management Act". Although apparently not essential to the argument, Hexton had also noted that it had exercised the right in this case.

[15] Andrews J adopted that argument. She noted that "right" was not a defined term under the Resource Management Act (first judgment at para [32]). She noted the varied way in which the term was used in the Act. She concluded that the interpretation that best served "the remedial purpose of s 129B should be adopted" (at para [34]). That was that "right" meant the right to apply for a resource consent (at para [34]).

[16] Having defined what "right" meant, the Judge went on to describe the focus of her inquiry:

> [40] I have already concluded that the word "right" in the definition of "reasonable access" in s 129B(1) includes the right to apply for a resource consent. Accordingly, my inquiry as to whether the currently available access is reasonable must take into account the permitted uses of the land under its zoning, and the use for which the plaintiff has sought a resource consent.

[17] Mr Upton QC, for the MacLaurins, disputed the Judge's interpretation. We think Mr Upton's challenge was well made. The definition of "reasonable access" originally referred to the Town and Country Planning Act 1953. That was changed to a reference to the Town and Country Planning Act 1977 by virtue of s 21 of the Acts Interpretation Act 1924. In turn, the reference to the 1977 Act was changed to the Resource Management Act by s 362 of that Act. It is clear that, under s 129B as originally enacted, the reference to land use "in accordance with the provisions of any right . . . enjoyed . . . under the provisions of the Town and Country Planning Act" was a reference to the right to use land in conformity with a district scheme (then called a predominant-use right) or to an existing-use right (see s 36 of the 1953 Act and reg 15 of the Town and Country Planning Regulations 1960 (SR 1960/109)).

[18] From 1977, it became a reference to rights enjoyed under s 36(4)(a) or s 90 of the 1977 Act. The former referred to uses which were "permitted as of right provided that they [complied] in all respects with all controls, restrictions, prohibitions, and conditions specified in the scheme". These were to be contrasted with other land uses which required council or Planning Tribunal approval in some form or other. Section 90 referred to existing use rights.

[19] The equivalent of "uses as of right" under the Resource Management Act are uses that do not contravene any rules in a district plan or proposed district plan and some existing uses (see ss 9, 10 and 10A). It is those uses which are covered by the expression "right . . . enjoyed . . . under the provisions of the Resource Management Act". Such uses do not require any consent to be granted under the Act.

[20] With respect to her Honour, "right" cannot mean "right to apply for a resource consent under the Resource Management Act". There are no restrictions on what anyone can apply for under the Act. Hexton could have applied to put a 20-storey five-star hotel on its land. On her Honour's interpretation, that would mean that, on a s 129B application, one would be bound to take into account that proposed hotel use for which a resource consent had been sought. Indeed, that proposed use would have to be taken into account even if a resource consent in respect of it had not been sought, as it would be enough that it *could* be sought. Further, her Honour's interpretation leaves no expression in the "right, permission, authority, consent, approval, or dispensation" list applicable to activities that comply with district plans or existing uses, and do not require any consent, yet such activities and uses must clearly be within the intended reach of s 129B.

[21] It is common ground that Hexton's proposed bottling plant is not a facility to which Hexton is entitled as of right. It follows that

her Honour approached the question of whether Hexton's land was landlocked from the wrong premise. She was not entitled to take into account "the use for which the plaintiff has sought a resource consent", as the bottling plant is not yet a permitted use. In light of this error, her finding that the land was landlocked cannot stand, at least on this basis.

Other existing uses

[22] The second basis upon which the case was advanced in the High Court was that the existing access to Hexton's land was not satisfactory for the use to which the land was currently being put. That is, as an olive plantation. In this regard, Mr Gedye placed much emphasis on Andrews J's judgment in the following passage in the first judgment:

> [50] . . . I am also satisfied that vehicular access is necessary for the purposes for which lot 54 is presently used, including tending the olive plants. In the present case, therefore, I am satisfied that "reasonable access" to lot 54 requires vehicular access. Reasonable access is not gained on foot.

[23] Notwithstanding that, it is clear from the judgment as a whole that the Judge never turned her mind to whether s 129B criteria were satisfied if one looked myopically only at existing uses. In saying that, we are not criticising the Judge. She had, after all, concluded she was required to consider not only existing uses of the land, but also the use for which a resource consent had been applied. In those circumstances, it would be quite unreal – indeed, wrong – to compartmentalise the uses. Obviously, she had to look at all relevant "uses" on an overall basis, which she did. But we have held she was wrong to take into account the proposed bottling plant. It follows that the question has never been considered on a pure "existing uses" basis.

[24] In these circumstances, ordinarily one would remit the matter to the High Court for reconsideration. Whether we should adopt that course in this case is something we consider further below.

New arguments on Hexton's behalf

[25] Mr Gedye did not appear as Hexton's counsel in the High Court. He also did not sign Hexton's notice of cross-appeal or Hexton's notice advising an intention to uphold Andrews J's judgments on other grounds (see r 33 of the Court of Appeal (Civil) Rules 2005 (SR 2005/69)).

[26] Mr Gedye sought to raise before us three new arguments in support of the Judge's conclusion that Hexton's land is landlocked. None of these three arguments had been raised in the High Court (so far as we can see) or was mentioned in the r 33 notice. Mr Upton raised no objection to our considering these arguments. In those circumstances, we do so.

[27] Mr Gedye's first additional argument was that a resource consent for the bottling plant had been granted. That meant, he argued, the Judge was entitled to take into account the land's use as a bottling plant for the purposes of s 129B.

[28] The resource consent he relied upon was that issued by the Gisborne District Council. He accepted that consent had not "commenced" because of s 116 of the Resource Management Act. But

"commencement" of a resource consent was different, he argued, from its grant. The fact the resource consent was inoperative until the Environment Court determined the appeal was irrelevant.

[29] We cannot accept that argument. At the time s 129B was enacted, it was an offence to act on a consent which was under appeal (see s 50A of the Town and Country Planning Act 1953 and see also *Ross v Number Two Town and Country Planning Appeal Board* [1976] 2 NZLR 206 (CA)). That continued to be the position under the Town and Country Planning Act 1977 (see s 172). While there is no direct statutory equivalent of that section in the Resource Management Act, it is clear that a resource consent that has not "commenced" could not be relied on as a defence to an offence of contravening s 9, for instance (see s 338).

[30] Further, it would make no sense that someone, for the purposes of a s 129B application, should be able to rely on a resource consent which is under challenge. They might secure their s 129B easement on the basis of a resource consent which is later amended or cancelled. There would be no way of revoking the easement, at least if the High Court appeal period had expired. The end result would be that the s 129B applicant had obtained the easement quite improperly. We have no doubt that the correct interpretation of s 129B is that "consent" refers to an operative consent; that is, one which has commenced and can be used. We reject this first argument of Mr Gedye's.

[31] Mr Gedye next argued that the decision that the land was landlocked could be supported on the basis of an existing and operative right to take water. A consent to take water was granted in 2004. We reject this submission. The case has never been pleaded or argued on the basis that the current right to take water was being impeded by the present means of access. Further, Hexton or a related company already has an easement which permits it to take water off Hexton's land to other land within its control.

[32] Mr Gedye's third argument was that any s 129B order could be made subject to Hexton's acquiring an appropriate resource consent. In this regard, he relied on *Williams v Joslin* (1981) 1 NZCPR 273.

[33] We do not accept that argument. If access to land is reasonable for existing uses of that land, it cannot become unreasonable, even conditionally, because in the future the owner might acquire consent to use the land differently. It behoves the landowner first to see whether he or she can persuade the consent authority to grant that resource consent. Only when that consent has been granted should the owner then turn to considering the feasibility of a s 129B application.

[34] The problem in *Williams v Joslin* was quite different from what we are presently discussing. In that case, Thorp J concluded that Mrs Williams should be granted permanent access rights over an existing driveway to her land which was in part on her neighbour's property. There was no question in that case about Mrs Williams's right to use her property for residential purposes. What was unknown, however, was "what the requirements of the local authority [would] be in respect of the creation of the proposed easements" (at p 278). Thorp J did not consider he could finally decide the conditions of the court order granting access

until the local body's requirements had been ascertained. Thus, he delivered only an interim judgment, declaring the land landlocked and declaring that it was the intention of the Court, "when sufficiently precise information is available to it, to make final orders . . . [f]or the granting of a right of way in favour of the applicant's land" (at p 278). His Honour's approach was entirely orthodox. It is not authority, however, for the proposition that the High Court may conclude that land is landlocked because a consent authority may in the future grant permission for a new use which, *for the first time*, renders the land landlocked.

[35] All the new arguments on Hexton's behalf on this topic fail.

Remission to the High Court or dismissal of the s 129B claim?

[36] The only argument which has merit is that concerning existing uses (see paras [20] – [22] above). To date, the case has never been considered on the basis of just existing uses and whether there is reasonable access for such uses. Mr Gedye did faintly suggest that the passage from para [50] of the first judgment, which we cite above at para [22], could justify the Judge's decision on its own. But for the reasons already given we reject that as a possibility.

[37] What then should we do about the possibility of the High Court holding Hexton's land to be landlocked on the basis of its existing use? There are really two choices. We could remit the matter to the High Court for its reconsideration on the new basis. Alternatively, we could simply dismiss the s 129B claim at this stage. The latter would not prevent Hexton reapplying in the event that it eventually obtains a resource consent to build and operate a bottling plant.

[38] An appellate court's instinctive response would be to remit the matter for reconsideration in the High Court. And indeed, that is exactly what Mr Gedye urged we should do in the event that we did not uphold his stalwart defence of the Judge's interpretation of "right" or his other arguments.

[39] In the end, we have decided not to remit for two reasons. First, the exercise would be artificial and pointless. This dispute is all about access for a proposed bottling plant, not access for an olive plantation. It would be a waste of time to consider what reasonable access for an olive plantation might be. Even if the Judge did conclude the land (as an olive plantation) was landlocked, the appropriate solution might be quite different from what the solution should be if Hexton's land can be used for a bottling plant.

[40] Secondly, we think it very unlikely the Judge would find Hexton's land (as an olive plantation) landlocked. That is because the MacLaurins do not object to Hexton having access, including vehicular access, to its land for the purposes of farming operations. Mr Upton confirmed to us orally, and later in writing, that the MacLaurins were prepared to continue to allow access on existing tracks to Hexton's land for the purposes of Hexton's existing uses. He mentioned that such access would be "subject, of course, to farming requirements" on the MacLaurins' land. He gave an example of a "farming requirement" qualification: he said, for instance, there might be problems "if there was a mob of in-lamb ewes in a paddock" over which access was sought. We

do not see that qualification as unreasonable. There is good cause to believe the MacLaurins will continue to act reasonably provided Hexton's land continues to be used for current purposes. The land, as currently used, seems to us to have reasonable access.

[41] This Court has on several occasions stressed that s 129B is concerned with practical access to land, not necessarily a legal right to access (see, for example, *Kingfish Lodge (1993) Ltd v Archer* [2000] 3 NZLR 364 (CA) at para [26] and *Newstart Holdings Ltd v Tidd Foundation Inc* (2005) 6 NZCPR 510 (CA) at paras [12] – [15]). If access as a matter of practice is currently being accorded, then the land is not landlocked, even if in the future, through a change of current practice, the land may become landlocked.

[42] In our view, the proper course is for Hexton's application to be dismissed.

Has something gone wrong here?

[43] Although we think Hexton's claim must be dismissed, we are sympathetic to the difficulties Hexton has faced. Should it first get its resource consent or should it first secure appropriate access rights under s 129B? Mr Gedye described the "procedural morass" into which the two proceedings had descended. He referred to it as a "chicken and egg" situation in that the Environment Court had held off making a final decision while access was sorted out in the High Court, but the lack of resource consent was now being used as a ground of opposition to the s 129B application.

[44] We can certainly understand Hexton's concern. But we think the legal answer to the apparent conundrum is clear. Hexton should have pursued the Environment Court proposal to finality. Hexton – more accurately, its related company – had advanced its case in the Environment Court on the basis of three different options for access (see *Hexton Residents Society Inc v Gisborne District Council* (Wellington, W 104/06, 28 November 2006, Judge Whiting) at para [19]):

(a) an accessway (easement) over part of the Tietjen and MacLaurin properties from Back Ormond Road (option 1);
(b) an accessway over the MacLaurin property from the end of Glenelg Road (option 2); or
(c) an accessway involving the use of the MacLaurin, Tietjen, Graham and Benson properties (option 3).

[45] The Environment Court eventually concluded:

> [94] . . . We have refrained from having regard to the proposed access options and the possible effects of those in their own right and cumulatively with the effects of the proposed bottling plant, because they are at this stage hypothetical. Until such time as there is a sound proposal for access we would be second guessing the overall effect of the proposal.

[46] The Court then said it would place the Environment Court proceedings "on hold" until such time as Hexton was able to apply to the Court "with a firm access proposal" (at para [95]).

[47] With respect, we think the Environment Court was wrong not to decide the issue. And Hexton was wrong not to press that issue to finality before commencing its s 129B application. The structure of the Resource Management Act is such that "any person" may apply for resource consents affecting land over which they might have no ownership or other rights (see s 88 and Gordon et al, *Brookers Resource Management 1991* (looseleaf), para [A88.01]). What consent authorities are concerned with is the proposed activity's effects, not the nature of the applicant's legal rights or interest in the particular land. Of course, obtaining a resource consent in circumstances where the applicants have no rights to the land in question will not avail those applicants unless they can acquire an interest in the land which permits them to make use of the resource consent obtained. In this case, there is no reason why the Environment Court could not have evaluated the three access options Hexton put up. If minded to grant the resource consent, the Environment Court could have specified which of the various options it found satisfactory. Hexton would then have known which option to pursue in the High Court. What we have said the Environment Court should have done is exactly what the Gisborne District Council had done at first instance.

Result

[48] It follows that the MacLaurins' appeal must be allowed. All the orders made in the High Court, both in the first judgment and in the second judgment, must be quashed, as all were dependent on Hexton's land being landlocked land. We have found it is not.

[49] The MacLaurins are entitled to costs in this Court. We are not sure whether costs have ever been fixed in the High Court. If they have been, we quash that costs order. We hope the parties will be able to agree costs in that Court. If they cannot, however, the High Court should fix that Court's costs in light of this judgment and the reasons therefor.

[50] As we have suggested, Hexton, assuming it wishes to pursue its bottling plant venture, should press on with and bring to finality its Environment Court hearing. If the Environment Court grants a resource consent, then those affected by the proposed accessway or ways approved will need to consider their position. If they are still not minded to grant access to Hexton, then Hexton will at that point be able to bring a new application for access under ss 326 – 331 of the Property Law Act 2007. The appropriate defendants for such an application will depend on which of the three access options finds favour with the Environment Court. If, on the other hand, the Environment Court refuses to issue a resource consent, then the bottling plant idea will not be a starter. Presumably in those circumstances, the status quo will pertain.

Reported by: Roger Fenton, *Barrister*