

BEFORE THE ENVIRONMENT COURT

Decision No: [2013] NZEnvC 175

ENV-2012-WLG-000113

IN THE MATTER of an application for declarations
pursuant to s311 of the Resource
Management Act 1991

BETWEEN AARON RUCK
First Applicant

AND TE NGAIO NOMINEES LTD
Second Applicant

AND HOROWHENUA DISTRICT
COUNCIL
Section 274 party

Court: Environment Judge B P Dwyer
Environment Commissioner J R Mills
Environment Commissioner D Kernohan

Hearing: at Wellington on 2 April 2013

Counsel: C Mitchell for Aaron Ruck and Te Ngaio Nominees Ltd
S Curran for Horowhenua District Council

DECISION ON APPLICATION FOR DECLARATIONS

Decision issued: 06 AUG 2013

A: Application granted in part.

B: No reservation of costs.



Introduction

[1] These declaration proceedings consider the interpretation of the provisions of ss125, 223 and 224 Resource Management Act 1991 (RMA) which relate to the lapse of resource consents (subdivision consents particularly in this case) and the process for deposit of subdivision plans.

[2] Aaron Ruck (Mr Ruck) and Te Ngaio Nominees Ltd (Te Ngaio) (jointly the Applicants) seek declarations in the following terms:

Declarations Sought

4. *The applicants seek the following declarations:*

- a) *A survey plan may be submitted to a territorial authority under section 223(1) within five years of the commencement date of the subdivision consent to which it relates, notwithstanding that a survey plan has previously been submitted in respect of the same subdivision consent but not deposited within the time specified by section 224(h).*
- b) *A territorial authority has power under section 37 to extend the time specified by section 224(h).*

[3] Both of the Applicants are persons who have obtained subdivision consents from Horowhenua District Council (the Council). In each case, the Applicants have had survey plans in accordance with their consents approved by the Council pursuant to s223. An approval under s223 is confirmation by a territorial authority that a survey plan accords with the terms and conditions of a resource consent which that territorial authority has previously granted. It is a requirement of s224(h) that subdividers have a period of three years from date of approval of a survey plan under s223 within which to deposit that plan (i.e complete the subdivision), failing which the consent lapses. In neither case did the Applicants deposit their survey plans within that period.

[4] The matter at issue between the Applicants and the Council is whether or not their respective subdivision consents have *lapsed* as a result of failure to deposit the survey plans within three years of the date of Council approval under s223, when



s125(1) provides that resource consents lapse five years after their commencement and that period has not yet expired for these subdivision consents.

[5] We will return to these statutory provisions in more detail later in this decision. Before doing so we briefly set out the relevant background facts in respect of each of the subdivision consents.

Te Ngaio Subdivision

[6] On 20 August 2008, the Council granted resource consent to Te Ngaio allowing the subdivision of one existing allotment of land into eight lots (plus road to vest). It was common ground between Te Ngaio and the Council that the consent would have commenced on or about 11 September 2008.

[7] On 24 October 2008, Te Ngaio submitted a survey plan in respect of the subdivision to the Council for its approval under s223. The Council issued that approval on 27 November 2008.

[8] For reasons not relevant to our considerations, the survey plan was not deposited within three years of issue of the Council's approval pursuant to s223, as required by s224(h).

Ruck Subdivision

[9] On 2 March 2009, the Council granted resource consent to Mr Ruck allowing the subdivision of one existing allotment of land into two allotments. It was common ground between Mr Ruck and the Council that the consent would have commenced on or about 24 March 2009.

[10] On 26 March 2009, Mr Ruck submitted a survey plan in respect of the subdivision to the Council for its approval under s223. The Council issued that approval on 30 March 2009.

[11] Again for reasons not relevant to our considerations, the survey plan was not deposited within three years of issue of the Council approval pursuant to s223, as required by s224(h).



Te Ngaio/Ruck Common Issue

[12] The matter before the Court is whether or not in each case, the Applicants' subdivision consents have lapsed because of their failure to deposit their subdivision plans within three years of issue of the Council certificates pursuant to s223.

[13] The Applicants contend that the consents have not lapsed as s125(1) provides a lapse period of five years for resource consents and that they are entitled to submit further plans for approval under s223 up until the expiration of five years from the dates on which their respective consents commenced¹, pursuant to that provision.

[14] The Council disagrees with that contention and contends that s224(h) operates to lapse the resource consents notwithstanding that the five year lapse period for the respective subdivision consents under s125(1) has not expired. It advises that its interest in the proceedings is to assist the Court in bringing clarity to a process which currently causes uncertainty for Councils and subdividers.

[15] In the event that their submissions regarding lapse of the initial consents are rejected, the Applicants advance a *fall back position* that it is possible for the Council to extend the time for the subdivision plans to deposit beyond the period of three years from approval under s223 specified in s224(h) RMA. They seek a second declaration to that effect. Again the Council, advances a contrary view. We will return to that issue once we have reached a decision on the first declaration.

[16] The question may be asked why a simple solution to these disagreements would not have been for the Applicants to simply resubmit fresh subdivision applications in the form previously approved to the Council, rather than undertake litigation in this Court. However, we were advised that as a result of changes in the Council's District Plan, it is highly unlikely that the subdivision proposals previously approved would now obtain consent. Hence these proceedings.



Statutory Provisions Applicable To First Declaration

[17] The subdivision of land as proposed by the Applicants requires the undertaking of four steps²:

- Firstly, obtaining resource consent to the subdivision in accordance with the provisions of Part 6 RMA. Part 6 covers all resource consents and subdivision consents are a subset of resource consents generally³. The provisions of Part 6 of particular relevance in this case are those contained in s125 which relate to the lapsing of consents. Having obtained resource consent under Part 6, completion of the subdivision and obtaining the issue of new titles falls under the provisions of Part 10 RMA;
- The second step in the subdivision process is the submission of a survey plan to the territorial authority which granted consent to the subdivision, for approval under s223. A subdivider has 5 years after the commencement of a subdivision consent within which to submit such a plan⁴. As long the survey plan submitted for approval conforms with the subdivision consent, the territorial authority must approve it within 10 working days of receipt. This happened in respect of both the Te Ngaio and Ruck subdivisions. After issue by a territorial authority, s223 approvals are lodged by the subdivider at the Land Transfer Office to enable that Office to undertake its processing functions;
- The third step in the process is for the subdivider to obtain from the territorial authority a certificate pursuant to s224(c) confirming that the conditions of the subdivision consent have either been complied with or secured in a manner satisfactory to that authority. This step generally occurs once the subdivider has undertaken the works necessary to physically complete the subdivision and met or secured all outstanding obligations in respect of the subdivision such as payment of financial contributions and the like;
- Once a certificate has been obtained from the territorial authority pursuant to s224(c), the final step in the process is *depositing* the survey

² The following description follows the summary provided by the High Court in *Wilbow Corporation (NZ) Ltd v North Shore City Council* [2002] 1 NZLR 114; [2002] NZRMA 32.

³ Section 87(b) RMA.

⁴ Section 125(1) RMA.



plan at the Land Transfer Office. This involves the final *sign-off* of the subdivision from the Registrar-General of Land who, on being satisfied that all of the conditions of subdivision have been met, issues new titles to the subdivided allotments. Section 224(h) provides that this step may only be effected if less than 3 years has elapsed since the territorial authority certified its approval to the survey plan being deposited, under s223. Neither Te Ngaio nor Mr Ruck deposited their plans within this period and the Council contends that their subdivision consents have lapsed accordingly.

[18] The provisions of RMA embodying the above process and which are relevant to our considerations in this case are set out more fully below.

[19] Section 116(1) RMA relevantly provides:

- (1) *Except as provided in subsections (1A), (2), (4) and (5), or section 116A, every resource consent that has been granted commences -*
- (a) *When the time for lodging appeals against the grant of the consent expires and no appeals have been lodged;*

It was common ground in this case that the Te Ngaio consent commenced on or about 11 September 2008 and the Ruck consent on or about 24 March 2009;

[20] Section 125 relevantly provides⁵:

- (1) *A resource consent lapses on the date specified in the consent or, if no date is specified, 5 years after the date of commencement of the consent, unless, before the consent lapses, -*
- (a) *the consent is given effect to; or*⁶...
- (2) *For the purposes of this section, a subdivision consent is given effect to when a survey plan in respect of the subdivision has been submitted to the territorial authority under section 223, but shall thereafter lapse if the survey plan is not deposited in accordance with section 224.*

⁵ We have cited s125 RMA as it was prior to changes made by the Resource Management Amendment Act (No 2) 2011. The changes made in 2011 are not relevant to the current application. We will use the pre-2011 numbering throughout the remainder of the decision.

⁶ Section 125(1)(b) RMA provides for an extension of the 5 year period but no such extension was applied for in this case so this provision is not relevant to our considerations.



As we have noted, s224(h) provides that a subdivision plan must be deposited within three years of issue of the Council approval under s223 and this requirement has been incorporated into s125(2). It is this latter provision which lies at the heart of these proceedings. The Applicants contend that *...section 125(2) does not derogate from the 5 year lapsing period in section 125(1)-and that a consent will lapse under section 125(2) if and only if the 5 year period has lapsed and a survey plan approved within that 5 year period has not been deposited within the time allowed by section 224⁷*. We will return to that issue shortly.

Historical Context

[21] Both Mr Mitchell and Ms Curran discussed the historical context leading to the enactment of s125 in its present form. They referred to the equivalent provisions and processes relating to the deposit of subdivision plans under Local Government Act 1974, subsequently replaced and incorporated in RMA.

[22] Mr Mitchell noted that when s125 was initially enacted, it provided a two year period for lapse of resource consents.

[23] Mr Mitchell and Ms Curran pointed to an initial shortcoming in s125 which did not specify when effect was deemed to have been given to a subdivision consent. That shortcoming was remedied by the insertion of s125(2) in the Resource Management Amendment Act 1993, providing that a subdivision consent was given effect to when a survey plan was submitted to a territorial authority pursuant to s223. We were told that s125(2) has remained in its present form since then.

[24] A further and substantial change to the provisions of s125 was made by the Resource Management Amendment Act 2003. Section 51 of that Act amended s125(1) by replacing the initial two year lapse period with the five year lapse period which is the subject of our current consideration. Mr Mitchell scrutinised the Parliamentary record regarding the 2003 Amendment and provided such information as was available regarding that. Ms Curran submitted that consideration of the statutory history of s125 is unnecessary in resolving these proceedings. We disagree

⁷ Para 11 Applicants' Supplementary Notes for Hearing.



with that proposition and consider that there is a very significant feature apparent in the statutory history itself.

[25] When s125(1) was initially enacted it provided that resource consents lapsed two years after commencement unless given effect to or extended within that time. In 2003 that two year period was increased by Parliament to five years, whilst retaining the ability to obtain a further extension of that period if required. It is difficult to regard such a substantial change as signalling anything other than a clear intention on the part of Parliament that resource consent holders should have a generous period of time (five years plus any extended period) within which to give effect to their consents. We consider that signal provides the context within which we should interpret s125.

Applicants' Case On First Declaration

[26] The central plank of the Applicants' case on the first declaration might be summarised as being that the provisions of ss125(2) and 224(h) do not derogate from the five year lapsing period contained in s125(1).

[27] That proposition was expressed in these terms in the application for declaration:

The correct interpretation of section 125(2) is that it is a cumulative lapsing period: failure to deposit a plan in accordance with section 224 only results in a lapse if the 5 year period under section 125(1) has elapsed. If the 5 year period under section 125(1) has not elapsed, there is nothing in the language of section 223 to restrict the submission of a new survey plan for approval where an earlier plan has not been deposited under section 224.

[28] Mr Mitchell contended that Parliament has provided a lapse period of up to eight years within which to finally deposit a subdivision plan. A subdivision consent holder has up to five years from the grant of consent to give effect to a subdivision consent by submitting a survey plan pursuant to s223 and then a further three years from issue of s223 approval by the Council within which to deposit the plan. He urged the Court to adopt a purposive interpretation of s125(2) to reflect Parliament's



intention that there ought be a period of eight years to enable that process to occur. He contended that is consistent with the purpose of sustainable management.

[29] Mr Mitchell pointed to the fact that the five year lapse period provided for in s125(1) does not expire until 11 September 2013 (in the case of the Te Ngaio consent) and 24 March 2014 (in the case of the Ruck consent). He contended that in each case the Applicants must be permitted to submit further plans to the Council for approval pursuant to s223 by those dates, notwithstanding the earlier submission of s223 plans which (he accepted) may not now be deposited because they were not deposited within three years of the date of their respective approvals by the Council.

Council's Case On First Declaration

[30] The starting point of Ms Curran's submissions for the Council on this topic was that s223(1) is permissive in that it allows a consent holder to submit a survey plan to a territorial authority for its approval if a subdivision consent has been obtained and that consent has not lapsed. Once a subdivision consent has lapsed a subdivider is precluded from submitting a survey plan for approval under s223. There is no dispute about that proposition.

[31] Ms Curran then referred to the five year lapse period provided in s125(1) which she referred to as a default lapse date, recognising that a subdivision consent (or any other resource consent) may specify some other lapsing date. It was common ground between the parties that the five year default lapse period applies in this case.

[32] Ms Curran then pointed to the provisions of s125(1)(a) which provides that a consent does not lapse under s125(1) if (relevantly in this case) before the consent lapses it is *given effect to*. She contended that s125(1)(a) is an exception to the operation of s125(1) and that the 5 year default lapse date is supplanted when effect has been given to the consent.

[33] That contention encapsulates the issue before the Court. Was it Parliament's intention that the five year default lapse period should be *supplanted* by a (potentially) shorter lapse period of three years commencing on the date of Council approval of the s223 plan? That is what has happened in this case if the Council's



argument is correct. The three year periods from date of s223 approval expired on 27 November 2011 and 30 March 2012 respectively whereas the five year lapse periods under s125(1) do not expire until 11 September 2013 and 24 March 2014 respectively. On that basis there has been a dramatic shortening in the five year lapse period arising out of operation of ss125(2) and 224(h).

[34] Related to consideration of that issue is the issue of whether or not anything contained in s125 precludes a consent holder from *giving effect* to a subdivision consent on more than one occasion by submitting more than one survey plan for approval pursuant to s223.

Discussion

[35] We consider that the correct approach to interpretation of these provisions is that we should interpret the words in accordance with their natural and ordinary meaning unless that natural and ordinary meaning does not give effect to the purpose of the legislation.

[36] It was Mr Mitchell's contention that the clear purpose of the relevant provisions of RMA was that consent holders should have a period of up to eight years (five years under s125 and three years under s224) within which to deposit a survey plan. We ask two questions:

- What is the natural and ordinary meaning of the relevant provisions of s125?;
- Is that natural and ordinary meaning in conflict with the clear purpose of RMA or the provisions in question?

Natural and Ordinary Meaning

[37] We summarise the natural and ordinary meaning of the words contained in the relevant provisions of s125 in these terms:

- If no lapse date is specified in a resource consent (including a subdivision consent) then the consent lapses five years after the date of its commencement⁸;

⁸ Section 125(1) RMA.



- However a resource consent does not lapse under s125(1) if, before it lapses, it has been given effect to⁹;
- A subdivision consent is given effect to when a survey plan is submitted to a Council under s223¹⁰;
- A subdivision consent which has been given effect to by submission of a survey plan under s223 lapses if that survey plan is not deposited in accordance with s224 (i.e. within three years of its approval)¹¹.

[38] We consider that the natural and ordinary meaning of the words contained in s125 is clear enough and arguably supports the interpretation advanced by Ms Curran for the Council that s125(1)(a) creates an exception to the operation of s125(1) so that once a subdivision consent has been given effect to by the submission of a survey plan for approval under s223, the lapse period for that consent becomes the three year period provided for in ss125(2) and 224(h). However, in our view, it is questionable whether these provisions are directed at the situation applicable in this case, where the lapse period provided for in s125(1) has not expired and it may be possible to submit a further survey plan for approval under s223. We consider both of these issues in the following paragraphs.

Purposive Approach

[39] We ask whether or not the natural and ordinary interpretation which we have identified in the two immediately preceding paragraphs is contrary to the purpose or objectives of RMA. We make a number of observations in that regard:

- Firstly, we return to our earlier observation¹² that there was a clear intention on Parliament's part when enacting the Resource Management Amendment Act 2003 and extending (the then) two year lapse period, that consent holders would be allowed a generous period of time before consents lapsed. In the case of subdivisions, that could be as long as eight years pursuant to Parts 6 and 10 (or potentially even longer if an extension of lapse period was granted);

⁹ Section 125(1)(a) RMA.

¹⁰ Section 125(2) RMA.

¹¹ Section 125(2) RMA.

¹² Para [25] (supra).



- Secondly, we refer to our description of the subdivision process and the steps which it involves, with the first step being to obtain resource consent under Part 6 (including provision for a period of five years to give effect to that consent). The remaining steps might be described as *process* steps under Part 10. It is apparent that the purpose of s224(h) is to specify the time within which the Part 10 process must be completed. We consider that it is also apparent that the restriction contained in s224(h) applies to any particular survey plan which is presented for deposit. Interpreting ss125(2) and 224(h) in the manner contended by the Council conflates the Part 6 and Part 10 processes;
- Thirdly, both Counsel recognised that s125(2) was inserted into RMA by the 1993 Amendment to correct a shortcoming in the Act as it previously stood, in that there was uncertainty as to when subdivision consents were given effect to. As we observed above, the purpose of the lapse period contained in s224(h) is to set a deadline for depositing any particular survey plan approved pursuant to s223 under the Part 10 process. If s125(2) and 224(h) operate to supplant the five year period contained in s125(1) as contended by the Council, they do so by a *side wind* rather than as the result of clear legislative purpose in our view;
- Fourthly, a consequence of interpreting these provisions as submitted by the Council is to penalise consent holders who act promptly by submitting s223 plans shortly after consent is obtained (as these Applicants did). By doing so they lose the benefit of having a five year lapse period available to them. That is what the Council contends has happened to the Applicants in this case and in our view it is a perverse outcome;
- Finally we observe that we see no obvious purpose or principle of RMA which is advanced by interpreting s125 in the manner contended by the Council. Rather, that interpretation is contrary to Parliament's clear intention to allow a period of five years before resource consents lapse.

[40] In light of those observations, we turn to consider the related issue which we have identified as to whether or not it is possible for a consent holder to *give effect* to a subdivision consent on more than one occasion by submitting more than one survey plan for approval pursuant to s223.



[41] Mr Mitchell contended that there is nothing in s125 which precludes the submission of more than one survey plan to a territorial authority for approval pursuant to s223 as long as the five year period provided in s125(1) has not lapsed.

[42] Ms Curran agreed that it was possible to submit more than one survey plan pursuant to s223 but contended that once the first of such plans had been approved by a territorial authority, then any subsequent plans had to be lodged with it for approval within three years of the first approval, failing which the subdivision consent would have lapsed by operation of s125(2).

[43] We also agree that it is possible to submit survey plans for approval by a territorial authority under s223 on more than one occasion. Nothing in any of the statutory provisions to which we have referred precludes that. In our experience there are various reasons why subdividers may wish to make changes to survey plans previously approved under s223, whilst still complying with the terms of the subdivision consent. The three year lapse period provided for in s224(h) must apply to each specific survey plan approved pursuant to s223. If another survey plan was presented for approval with a later approval date under s223 then the three year lapse period would run from that later date insofar as that particular plan was concerned.

[44] For the sake of completeness, we refer to the provisions of s16 Interpretation Act 1999 which relevantly provides:

16 Exercise of powers and duties more than once

(2) A duty or a function imposed by an enactment may be performed from time to time.

In this case a territorial authority has a duty under s223(1A)(a) to issue an approval to a survey plan submitted to it as long as the plan conforms to the subdivision consent which it has granted and the consent has not lapsed. It is clear from s16 that a territorial authority may exercise that duty more than once. The converse of that proposition must be that a subdivider may request a territorial authority to do so more than once by submitting such plans on more than one occasion.



Outcome in respect of first declaration

[45] Having regard to all of the above matters, we determine that it is appropriate to take a purposive approach to interpretation of these provisions. In doing so we do not overlook nor seek to minimise the plain words of s125, however it appears to us that those provisions have not been directed at the situation before the Court in this instance. In particular, how does the ability to give effect to a subdivision consent on more than one occasion affect the interaction of ss125(1) and (2)?

[46] Mr Mitchell contends that the answer to that question is to interpret s125 on what he calls a *cumulative* basis so that the failure to deposit a specific s223 plan approved by the Council within three years does not operate to preclude a subdivider from giving effect to a subdivision consent on more than one occasion by submitting a further survey plan (or possibly plans) provided that is done within the five year lapse period provided for in s125(1).

[47] For the reasons set out above, we consider that proposition is consistent with the purposes and objectives of RMA set out above and we concur with it. We determine that the correct manner in which to interpret s125(2) is that the provision contained therein as to the lapsing of consent applies in respect of any specific plan submitted by a subdivider pursuant to s223. Any given survey plan approved pursuant to s223 must be deposited within the three year window from date of approval of that survey plan failing which the subdivision consent lapses in respect of that particular plan, without removing the ability for a subdivider to submit further survey plans during the five year period provided by s125(1).

Statutory Provisions Relevant To Second Declaration

[48] We have noted that the second declaration was sought by the Applicants as a fall back position in the event that the first declaration was not granted and we intend to grant that first declaration. Notwithstanding, it is still appropriate for us to consider the second declaration if for no other reason than that our finding on the first declaration may be subject to challenge.

[49] The second declaration sought by the Applicants is founded on the provisions of s37(1) RMA which relevantly provides:



- (1) *A consent authority or local authority may, in any particular case,-*
 (a) *extend a time period specified in this Act or in regulations,*
whether or not the time period has expired;

The Applicants seek a declaration that a territorial authority has power under s37 to extend the three year time period specified in s224(h).

[50] Section 224(h) relevantly provides that:

- No survey plan shall be deposited...unless-*
 (h) *less than 3 years has elapsed since the territorial authority approved*
the plan under section 223.

It is this restriction incorporated into s125(2) which gives rise to the issue we have dealt with under the first declaration.

Applicants' Case On Second Declaration

[51] Mr Mitchell contended that s37(1) gives a territorial authority the power to extend the three year lapse period contained in s224(h). The practical effect of that power being (in this case) that the Council could extend the periods within which the plans approved by the Council for Te Ngaio and Mr Ruck under s223 must be deposited. As we have observed, in the case of the Te Ngaio subdivision that period expired on 27 November 2011 and for the Ruck subdivision on 30 March 2012.

[52] Mr Mitchell contended that the historical antecedents of ss223 and 224, more specifically ss305 and 306 Local Government Act 1974 (LGA), gave territorial authorities specific powers to extend the time periods provided for in the equivalent provisions of that Act. He acknowledged that comparable provisions were omitted from RMA but questioned whether there was a deliberate abandonment of these extension powers. He noted that s37 contains a *general extension power*¹³ and suggested that was intended to operate as the previous LGA provisions had done.

Council's Case On Second Declaration

[53] Ms Curran acknowledged the broad wording of s37 but contended that...*this broad wording ... does not result in an unqualified power*¹⁴. She contended that the

¹³ Para 69 Applicants' submissions.

¹⁴ Para 36 Council's submissions.



specific provisions of RMA relating to extensions of various time limits were preferable to the unqualified interpretation of s37 advanced by the Applicants and that the Council was *functus officio* in any event insofar as the survey plans in question were concerned.

Discussion

[54] At the outset, we observe that there appears to be a certain academic aspect in relation to this declaration. Even if we were to conclude that the Council has the power to extend the time limit contained in s224(h), we have no jurisdiction to direct the Council to exercise that power. It is a discretionary power vested in the Council by s37 subject to conditions and limits set out in s37A RMA. The Act does not contain any procedures enabling persons to apply to a consent authority to exercise the power nor is there any right of objection or appeal against a consent authority's exercise (or non exercise) of this discretionary power.

[55] In any event, we consider that the contention advanced by the Applicants founders on a very basic proposition, namely that the powers vested in consent or territorial authorities by s37 can be applicable only to the functions that those authorities undertake under RMA.

[56] Once a territorial authority has issued a subdivision consent under Part 6, its functions in completing the subdivision process under Part 10 are limited to:

- Approving a survey plan pursuant to s223, which it is obliged to do within 10 working days of receipt as long as the conditions contained in s223(2) have been met;
- Issuing a certificate pursuant to s224(c) that it has approved a survey plan under s223 and that all conditions of subdivision consent have been met or secured to the territorial authority's satisfaction. Again, as long as those requirements are met, the territorial authority is obliged to issue the certificate.

[57] The function of depositing subdivision plans of the kind advanced by the Applicants in this case, lies with the Registrar-General of Land under Part 10. RMA



explicitly recognises that¹⁵ and it is the Registrar-General whose powers are subject to the restriction contained in s224(h). We do not consider that s37 was intended to give consent or territorial authorities some general overarching power to extend time limits applying to functions under RMA in which they have no part, in this case the time limit for the Registrar-General to deposit a subdivision plan.

[58] We concur with the propositions advanced by Ms Curran and decline to make the second declaration sought by the Applicants.

Outcome

[59] For the reasons set out in paras [35] to [47] (supra), we make a declaration in the following terms:

A survey plan may be submitted to a territorial authority under section 223(1) within 5 years of the commencement date of the subdivision consent to which it relates, notwithstanding that a survey plan has previously been submitted in respect of the same subdivision consent but not deposited within the time specified by section 224(h).

Costs

[60] There will be no reservation of costs. The issues before the Court involved interpretation of statutory provisions in a situation not obviously contemplated by the legislation in question. Although we have ultimately disagreed with the interpretation advanced on behalf of the Council, there can be no suggestion that the Council's case was not arguable or that it was not reasonably advanced. This decision resolves a situation of some legislative uncertainty.

DATED at Wellington this 6th day of August 2013

For the Court:

B P Dwyer
Environment Judge



¹⁵ Section 11(1)(a)(i) and (iii) RMA.