

Paper Road Stopping Brought to a Halt

Tasman District Council - EC 26 January 2009

This judgment from the Environment Court reversed a decision made by the Tasman District Council ("TDC") to stop a public road pursuant to the Local Government Act 1974.

The road consisted of three parts: the first was formed with a gravel surface, the second was unformed but could be used as a four wheel drive track and the third was unformed and was a farm track. The third part was a type of unformed legal road sometimes referred to as a 'paper road' ("Paper Road"). Carter Holt requested that the Tasman District Council stop the part of the Paper Road which ran over land Carter Holt was subdividing. TDC prepared a survey plan, advertised the stopping of the Paper Road and provided an explanation of why it was stopping the Paper Road. Objections to the stopping were heard by the Council but disallowed (the primary objection being the increased volume of cars as a result of the subdivision) and the matter was then referred to the Environment Court.

Council's main reasons for stopping the Paper Road were:

- There were adequate roads in the area to accommodate the increased traffic;
- A condition of the subdivision consent was for an existing road to be upgraded with the intention it would service the subdivision;
- A walkway was being constructed by Carter Holt and this would mitigate any negative effects of the stopping of the Paper Road;
- Construction of the Paper Road would be difficult and expensive due to the terrain.

The Court reversed the Council decision its main reasons being:

- The Tasman Resource Management Plan ("TRMP") included a subdivision design guide which referred to maintaining a single and central access to the Coastal Highway from each sub unit. The provision of access to the subdivision from a different road was inconsistent with the TRMP in this respect.
- A planned by-pass road development included the intersection of the Paper Road at its farthest end. The Court considered it a possibility that this development may be a reason to develop the Paper Road.
- The increased traffic resulting from the subdivision would mean the Paper Road would be well used if developed.
- The Court was not satisfied the Council had adequately considered the strategic development of the roading network needed to cater for the development of the area.



The Court stated:

“We are not convinced that the closure of the road is needed for the development of the Carter Holt subdivision nor indeed that that is a valid reason for closing the road. Nor do we consider the retention of the unformed legal road is an improper use of the land.

...

The key issue to be considered by the Court on a road closure application is the need for the road for public use, or more specifically in this case whether or not the paper road could be used to provide feasible and practicable access in the future and should therefore retain its status as a road.

The evidence of Mr Barclay for the Council did not raise any compelling reasons why the road could not be built in engineering terms although he said that there would be design and environmental issues to be resolved. That is frequently the case when considering road formation.

All three members of the Court were disturbed at the apparent lack of any long term of strategic planning on the part of the Council in their considerations on this road closure proposal. Certainly, little such planning was apparent in the evidence we saw.”

It is interesting that the potential future use of the Paper Road was the basis on which the road stopping was reversed even though no personal property rights would have been impinged by its stopping. This judgment suggests that councils must carefully and thoroughly review and consider all of the surrounding transport and planning issues when exercising the power to stop public roads.

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