

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KOTI TAIAIO O AOTEAROA
KI TAMAKI MAKARAU

RMA-2022-AKL-

UNDER	THE RESOURCE MANAGEMENT ACT 1991
IN THE MATTER	of AN APPEAL PURSUANT TO SECTION 120 OF THE RESOURCE MANAGEMENT ACT 1991
AND	
IN THE MATTER	of AN APPLICATION FOR RESOURCE CONSENT FOR SUBDIVISION
BETWEEN	SANDRA ELLMERS FAMILY TRUSTEE LTD A duly incorporated company having its registered office at Gisborne Appellant
A N D	CENTRAL HAWKE'S BAY DISTRICT COUNCIL A duly constituted Local Authority under the Local Government Act 2002 Respondent

(Continued next page)

NOTICE OF APPEAL



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Counsel: Matthew Lawson

To The Registrar
Environment Court
Auckland

1. Sandra Ellmers Trustee Ltd (trading as Springhill Farm Holdings) appeals part of a decision on the following matter:
2. The decision dated 13 July 2022 imposing conditions on the application by the appellant for the subdivision of the appellants property at 1080, 1152 and 1200 State Highway 50 and 604 and 612 Wakarara Road, being the conditions imposed in granting subdivision consent to the appellant.
3. The appellant received notice of the decision on 13 July 2022.
4. The decision was made by the Central Hawke's Bay District Council.
5. The appellant is not a trade competitor for the purposes of section [308D](#) of the Resource Management Act 1991.
6. The part of the decision that the appellant is appealing is:
 - (a) That part of condition of consent 48 that limits the provision of a potable drinking water supply to rainwater collection.
 - (b) That part of condition of consent 49 that requires any on-site domestic wastewater system to be of an OSET rating of A or better, or equivalent (being discharge quality of median total nitrogen of < 15mg/l and median total phosphorus of <2mg/l).
7. The reasons for the appeal are as follows:
 - (a) With regard to condition 48, while it is intended that potable water for each Lot will be provided by way of rainwater collection and storage, the condition of consent provides a mandatory limitation on the source of potable water and would preclude supplementary water being tankered in during times of drought and would preclude the lawful application for a supply of water from groundwater. Any application for groundwater by an individual property owner would be required to meet the

requirements of the Regional Resource Management Plan and/or the Resource Management Act 1991.

- (b) With regard to condition 49, domestic wastewater systems installed and utilised on each Lot will be required to meet the requirements of the Hawke's Bay Regional Council Regional Resource Management Plan (or any successor to that plan).
- (c) The discharge of wastewater is a matter that is controlled by and within the jurisdiction of the Hawke's Bay Regional Council planning framework and is not within the jurisdiction of the respondent. There are no appropriate rules or standards in the respondents planning framework that can be applied so as to support this condition.
- (d) The conditions imposed in relation to discharge quality for nitrogen and phosphorus loadings seek to impose restrictions that are additional to and more stringent than those required by the Hawke's Bay Regional Resource Management plan.
- (e) The On-Site Effluent Testing (OSET) national testing programme has been closed down indefinitely. Systems previously tested through the facility are eligible for certificate extension, but at this time no further systems will be tested by OSET.
- (f) The OSET testing and certification programme did not provide an overall grading of the tested systems other than the compliance with the AS/NZS 1547:2012 secondary effluent quality treatment standard. A letter based ranking for benchmark purposes was provided for the individual measured treated wastewater constituents, but no overall letter based rating was provided for the systems. There is therefore no domestic wastewater system with an A rating.
- (g) The requirement of condition 49 for the installed domestic wastewater system to "be of an OSET rating of A or better" is therefore not able to be met, as there is no such system rating.

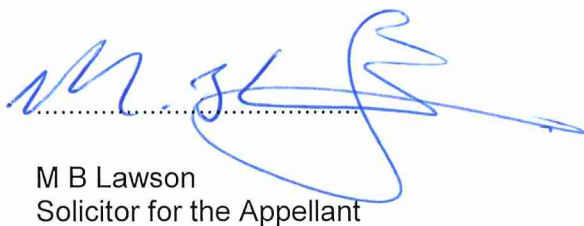
- (h) The condition imposed in relation to discharge quality for phosphorus imposes a limit that was not achieved by any proprietary on-site wastewater system tested through the OSET programme. While most systems achieved a B rating of less than 5mg/litre for total phosphorous, none met the A rating of less than 2mg/litre of total phosphorous.
- (i) The imposition of that part of condition 49 requiring a specified loading limit for phosphorus has the effect of negating the grant of consent for a controlled subdivision activity.
- (j) The parts of conditions 48 and 49 are unreasonable and ultra vires.

8. The appellant seeks the following relief:

- (a) The amendment of condition 48 to make it clear that obtaining supplementary water by way of tanker or by way of an application for a take of groundwater is not precluded.
- (b) The deletion of the third bullet point in condition 49.

I attach the following documents to this notice:

- (a) a copy of the relevant decision
- (b) a list of names and addresses of persons to be served with a copy of this notice:



M B Lawson
Solicitor for the Appellant

4/8/22

Date

Address for service of appellant:

Telephone: 068335012

Fax/email: mlawson@lawsonrobinson.co.nz

Contact person: Matthew Lawson

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to become a party to the appeal, you must,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form [33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

You may apply to the Environment Court under section [281](#) of the Resource Management Act 1991 for a waiver of the above timing requirements (see form [38](#)).

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section [274\(1\)](#) and Part [11A](#) of the Resource Management Act 1991.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.