

BEFORE THE HEARING COMMISSIONERS NAPIER

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of the application for residential subdivision and development at 16 and 38 Willow Bank Avenue Napier

**HEARING
REFERENCE**

Evidence of Jonathan Frazer Kingsford

On behalf of Napier City Council

Dated 28 April 2021

Introduction

1. My name is Jonathan Frazer Kingsford and

I am the Director of Infrastructure at Napier City Council.
2. I have a Bachelor of Engineering from the University of Auckland. I am a Member of Engineering New Zealand.
3. I have more than 26 years' experience in Asset Management, Infrastructure and engineering. In particular at a strategic, tactical and operational network management level. I am responsible for infrastructure management in transportation, utilities three waters, property, waste management parks, reserves, cemeteries and sports grounds.
4. I confirm I have read the "Code of Conduct for Expert Witnesses" contained in the Environmental Court Consolidated Practise Note 2014. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts know to me that might alter or detract from the opinions I express.

Scope and purpose of Evidence

5. My evidence is primarily intended to provide an overview of the strategic and legal context of asset management
 - 6.1 Legal ownership of roads
 - 6.2 Operation and maintenance of assets
6. The applicant proposes private road infrastructure to allow the roads of the subdivision to be gated. Furthermore the applicant proposes that all three water infrastructure would be owned and managed by Napier City Council covered by easement in gross to ensure council retain access to these services for operation and maintenance purposes. These services would be mostly located within and under the private road.

7. Section 316 and 317 of the Local Government Act provides that the property in roads and the control of roads being vested in Council. Council cannot restrict access to public roads and any restriction of public roads is a public nuisance which can result in Council being liable for damages.
8. Section 348(6) of the Local Government Act 1974 makes provision for Council to allow the construction of private roads as part of the subdivision consent.
9. Table C5.7 of Part C of the Code of Practice for Subdivision and Land Development of Napier City Council requires residential developments of 9 or more lots to be service by a public road. With Stages 2 -8 providing for 162 residential dwelling units, the use of private access ways for this subdivision is a substantial area of non-compliance with the Code of Practise, servicing a total of 154 dwellings beyond that which would otherwise be provided for within the Code of Practice.
10. Given the scale of the infringement to the Code of Practice, and the legal advice received with regard to the use of a resident's society to maintain and operate the private road network, it is not considered appropriate to allow for the construction of the private roads as proposed.
11. Infrastructure services that are not located under a Council road will be subject to easements or other legal mechanisms to ensure Council's ability to access these services for maintenance and repair as these services will not be subject to the statutory powers provided for in the Local Government Act 2002.
12. Furthermore, Council has no control over access to the private road corridor, either above or below ground by other utility providers. On this basis, the mechanisms (National Code of Practice for Utility Operators' Access to Transport Corridors, Utilities Access Act 2010) that Council employ to protect public assets from third party interference are not available to Council within a private road.

13. The National Code of Practice for Utility Operators' Access to Transport Corridors, Utilities Access Act 2010 provides for corridor managers to place reasonable conditions on utility operators by agreement and requires corridor managers to co-ordinate work of various utilities in a way which ensures the best outcomes for ratepayers and residents with regard to performance and longevity of utility services. This is not a function that can be expected to be delivered by a body corporate that might be put in place for the management of private common assets within the development.
14. Council have the right to specify at what point a connection to the public three waters services will be provided to any development based on what is best for the network and public at large. As is national practise Council have stipulated that connections to this development will be provided at the public/private property boundary.
15. The access, operation and maintenance of these services will be problematic and expensive for Council, should it be decided that 3 Waters infrastructure located within a private road corridor be publicly owned and operated.



Jonathan Frazer Kingsford