



**Supreme Court of New Zealand
Te Kōti Mana Nui**

29 OCTOBER 2019

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**DOUGLAS CRAIG SCHMUCK v OPUA COASTAL PRESERVATION
INCORPORATED**

(SC 66/2018) [2019] NZSC 118

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Introduction

The appellant, Mr Schmuck, owns a boat repair business, Doug’s Opuā Boatyard, in Walls Bay, Opuā, in the Bay of Islands. The land on which the Boatyard is situated is adjacent to an esplanade reserve. The appeal concerned the validity of easements granted to Mr Schmuck over the reserve. The case raised issues as to the legal requirements for a valid easement, the power of an administering body to grant an easement for a commercial purpose over reserve land and the requirement for the Minister of Conservation (or the Minister’s delegate) to consent or withhold consent to such a grant.

Background

The reserve lies between the Boatyard and the sea. A slipway runs across the reserve from the sea to a turntable that is located mostly on Boatyard land but partially on the reserve. The turntable allowed for boats sitting on cradles to be turned onto different tramrails in the Boatyard. This included the southern slipway tramrail, which ran close to the border between the Boatyard and reserve. This meant one side of a boat on this tramrail could only be worked on from the reserve.

For many years, Mr Schmuck endeavoured to obtain easements – a right to use land for a specified purpose – over the reserve under s 48(1)(f) of

the Reserves Act 1977. This allows the administering body of the reserve, with the consent of the Minister of Conservation or their delegate, to grant rights of way and other easements over the reserve “for any other purpose connected with” land not forming part of the reserve. That power is subject to the Resource Management Act 1991 and the administering body must undertake a process of public notice and consideration of submissions relating to the proposal. The administering body of the reserve in Walls Bay is the Far North District Council.

In 2006, the District Council exercised its power under s 48(1)(f) to grant Mr Schmuck the easements sought. However, the Minister’s delegate at the time did not consent to all the easements granted by the District Council on the basis they were not capable of being granted under s 48. Mr Schmuck successfully challenged the decision of the Minister’s delegate in the High Court. The consent decision was sent back to the Minister or their delegate for reconsideration. By this time, the Minister had delegated the power to consent to easements granted under s 48 to the District Council. In 2015, the District Council consented to all the easements it had granted to Mr Schmuck in 2006.

The Opuia Coastal Preservation Society filed proceedings challenging, among other things, the 2015 decision of District Council to consent to the easements. The Society’s challenge related to only some of the easements consented to. The Society did not object to the easements allowing Mr Schmuck to maintain and use the beach slipway and turntable.

The Society’s claim was dismissed in the High Court. The Society appealed to the Court of Appeal. The Court of Appeal held that four of the easements granted were not capable of being valid easements. Accordingly, the District Council could not consent under s 48(1)(f) and the decision to consent to the grant of those easements was quashed.

Mr Schmuck was granted leave to appeal to the Supreme Court. The appeal raised three primary issues:

- (a) whether the easements that the Court of Appeal found to be invalid were capable of being easements at all;
- (b) whether easements for commercial operations may be granted under s 48; and
- (c) whether the 2015 consent decision was lawfully made.

The Supreme Court’s decision

The Supreme Court has unanimously allowed the appeal and reinstated the decision of the District Council as delegate of the Minister to consent to the easements.

In relation to the first issue, the Court interpreted the four easements in issue more narrowly than the Court of Appeal did in order to give effect to

the easements. On the basis of those narrower interpretations, it found that they were capable of being valid easements.

The Court also held that s 48(1)(f) enabled easements to be granted for a private commercial purpose. Section 48(1)(f) refers to the grant of an easement "for any other purpose". There was no reason to interpret this as excluding easements granted for commercial activity.

Finally, the Court held that the decision of the District Council as delegate of the Minister to consent to the easements was validly made. The Minister's consent power is not a rubber-stamping exercise, and the Minister or their delegate is free to take a different view to that of the administering body. But the Minister or their delegate is not necessarily required to reconsider matters decided by the administering body.

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