

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-Ā-TARA**

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

AND

IN THE MATTER of an appeal under section 174 of
the Act

BETWEEN **ROBERT O'KEEFFE AND LINDA
O'KEEFFE**

Appellants

AND **WHANGANUI DISTRICT COUNCIL**

Respondent

NOTICE OF APPEAL

**BROOKFIELDS
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To The Registrar
Environment Court
Wellington

1. Robert O'Keeffe and Linda O'Keeffe (**Appellants**) appeal the decision of the Whanganui District Council (**Respondent**) to confirm, subject to conditions, a notice of requirement for a designation for a stormwater network swale, road, and shared pathway, at Springvale, Whanganui (**Proposed Works**).
2. The Appellants made a submission on the notice of requirement.
3. The Appellants received notice of the decision on 20 February 2020.
4. The Appellants are not trade competitors for the purposes of section 308D of the Act.
5. The reasons for the appeal are that the Respondent's decision:
 - a. Fails to promote sustainable management of resources and will not achieve the purpose of the Act under section 5;
 - b. Does not enable social, economic and cultural wellbeing; and
 - c. Is otherwise inconsistent with Part 2 and the provisions of section 171(1) of the Act.
6. Without derogating from the generality of the above, the Respondent's decision:
 - a. In the absence of evidence to the contrary, fails to address the procedural deficiency of the form of application for notice of requirement which is *ultra vires* under s 168A(1)(a) of the Act as the Proposed Works the subject of the notice of requirement are not provided for as a "public work" for which the requiring authority, the Whanganui District Council, is assuming financial responsibility as required under the Act;
 - b. Fails to adequately consider available alternative sites, routes, or methods of undertaking the Proposed Works;
 - c. Fails to acknowledge that the Proposed Works are not reasonably necessary for achieving the objectives of the Whanganui District Council as requiring authority;
 - d. In the absence of appropriate conditions fails to have particular regard to the significant adverse effect the Proposed Works will have on the Appellants' property (as an element of the environment); and
 - e. Contains conditions which are uncertain and inadequate as to the location of the Proposed Works, its timing/sequencing (having regard to the lapse period) and any requisite earthworks, so as to create 'planning blight' on the Appellants' property, the effect of which has not been avoided or remedied.

7. The Appellants seek the following relief:
 - a. Decline the notice of requirement; or
 - b. Impose further and amended conditions to meet the Appellants concerns and the purpose of the Act; and
 - c. Costs.
8. The following documents are attached to this notice:
 - a. The Appellants submission;
 - b. The relevant decision;
 - c. The Recommendation Report - Plan Change 53 – Springvale Structure Plan Notice of Requirement – Springvale Stormwater Network and Roads dated 14 February 2020, which contains the reasons for the decision; and
 - d. A list of names and addresses of persons to be served with a copy of this notice.

Dated: 12 March 2020



AFD Cameron

(Counsel for Robert O'Keeffe and Linda O'Keeffe)

THIS NOTICE OF APPEAL is filed by **ANDREW FRANK DAVID CAMERON**, solicitor for the Appellants. The address for service of the Appellants is at the offices of Brookfields Lawyers, Tower One, 9th Floor, 205 Queen Street, Auckland.

Documents for service on the Appellants may be left at the address for service or may be:

1. Posted to the solicitor at P O Box 11192, Manners Street, Wellington.
2. Emailed to the solicitor at cameron@brookfields.co.nz.
3. Transmitted to the solicitor by facsimile to (09) 379- 3224.

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if—

- (a) you made a submission on the matter of this appeal; and
- (b) within 15 working days after the period for lodging a notice of appeal ends, you 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
- (c) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

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.

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).

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