

**IN THE DISTRICT COURT
AT ROTORUA**

**I TE KŌTI-Ā-ROHE
KI TE ROTORUA-NUI-A-KAHUMATAMOMOE**

**CIV-2024-063-000364
JUDGE VIA AVL (HAMILTON)
[2024] NZDC 26661**

BETWEEN	ROTORUA DISTRICT COUNCIL Plaintiff
AND	ROKŌKĀKAHI BOARD OF CONTROL First Respondent
AND	UNKNOWN Second Respondent

Hearing: 5 November 2024

Appearances: K Cornege and C Gordon for the Plaintiff (via AVL)
S Northey and A Grant for the First Respondent (via AVL)
No appearance by or for the Second Respondent

Judgment: 6 November 2024

ORAL JUDGMENT OF JUDGE S R CLARK

[1] The Rotorua District Council (operating as the Rotorua Lakes Council “RLC”) are seeking an injunction against the Lake Rotokākahi Board of Control (“BoC”) and unnamed persons, to prevent the interference with infrastructure works proposed to be carried out along Tarawera Road.

[2] RLC seek the injunction pursuant to s 162 of the Local Government Act 2002. The proposed works are known as the Tarawera Wastewater Reticulation Scheme (“the scheme”). It envisages in part the laying of a wastewater pipeline underneath a formed portion of Tarawera Road.

[3] A major concern of BoC is that the wastewater pipeline will be placed underneath a portion of Tarawera Road which runs adjacent to the northern bank of Lake Rotokākahi. The BoC own and control the lakebed and waters of Lake Rotokākahi. Lake Rotokākahi is not only privately owned but is also considered to be tapu with no public rights of access.

[4] RLC have been concerned about interference with the scheme. They filed injunction proceedings on 16 May 2024. There have been three hearings to date.

[5] The first hearing took place on 16 July 2024. In my decision dated 17 July 2024 I did not grant an injunction. I found that the evidence relied upon by RLC about interference with the works was somewhat dated. I was not persuaded on the balance of probabilities that at that stage there was a risk of future commission of offences against s 232 of the Local Government Act 2002.¹

[6] On 1 October 2024 RLC filed a renewed application for an injunction on an ex parte basis. I did not proceed on that basis but in recognition of some urgency in the matter held a further hearing on 8 October 2024. In my decision dated 9 October 2024 I held as follows:²

- (a) Between 26 and 28 August 2024 persons unknown wilfully stopped, obstructed, or interfered with the recommencement of the infrastructure works.³
- (b) I found those actions warranted injunction orders being made, however, I delayed in doing so. I wanted further information concerning the ownership of Tarawera Road and directed the filing of further survey maps which might assist me in deciding that issue.⁴
- (c) I gave the parties until 18 October 2024 to consider whether there could be agreement on the form and scope of any injunction orders. I delayed

¹ *Rotorua District Council v Rotokākahi Board of Control* [2024] NZDC 16999 [17 July 2024].

² *Rotorua District Council v Rotokākahi Board of Control* [2024] NZDC 24369 [9 October 2024].

³ At [65](c).

⁴ At [95] and [97](a).

to give the BoC some time to consider any possible mitigation measures.⁵

[7] In both of my earlier decisions I set out a full description of the background to the scheme, the ownership, and the significance of Lake Rotokākahi, the inception of the BoC, the background to the development of the scheme and attempts at starting the infrastructure works along Tarawera Road. I also referred to incidents relied upon by RLC from January and August 2024 in support of their application. I adopt my earlier discussion of those matters.⁶

[8] Once again, the decision that I am giving is an oral one. I reiterate my earlier concerns that I regret having to do so. I say that because the issues raised including the importance of the scheme, the status of Lake Rotokākahi being a privately owned and tapu lake, along with associated tikanga issues at play all warranted a considered, reserved decision. Nevertheless, consistent with the position outlined in my two earlier decisions there is simply no room in the roster of the District Court to enable me to do so.

Recent developments

[9] On 18 October 2024 RLC filed further survey evidence from Ms Gavin. On the same day they also filed a memorandum as directed by me with reference to applicable bylaws that responded to structures having been erected or shifted on to Tarawera Road. That memorandum also outlined a proposed form of injunction orders and attempts at engagement with the BoC on mitigation measures.

[10] On the same day, the BoC filed a memorandum of counsel and a further affidavit by Mr Lee concerning Tarawera Road and its boundary with Lake Rotokākahi. In essence, Mr Lee expressed concern that as a result of a major road slip and reclamation of lands that the Tarawera Road may in fact now traverse land previously the bed of Lake Rotokākahi.

⁵ At [97](b).

⁶ *Rotorua District Council v Rotokākahi Board of Control* [17 July 2024], above n 1, at [3]-[43]; *Rotorua District Council v Rotokākahi Board of Control* [9 October 2024], above n 2, at [1]-[38].

[11] On 23 August 2024 Mr Andrews, a surveyor, accessed what I will refer to as the Lake access area. The purpose was to enable him to complete a survey exercise on behalf of RLC, the intention being to establish the boundaries of Tarawera Road and Lake Rotokākahi. His evidence, along with various survey sheets and other exhibits was filed on 25 October 2024.

[12] On 30 October Mr Michael for RLC filed an affidavit responding to some of the issues raised in Mr Lee's affidavit of 18 October 2024.

[13] Yesterday, 5 November 2024, I received further legal submissions by counsel for RLC and BoC. I held a third hearing commencing in the afternoon of 5 November.

Legal Principles

[14] Sections 162 and 232 of the Local Government Act 2002 state:

162 Injunctions restraining commission of offences and breaches of bylaws.

- (1) The District Court may, on the application of a local authority, grant an injunction restraining a person from committing a breach of a bylaw or an offence against this Act.
- (2) An injunction may be granted under subsection (1)—
 - (a) despite anything in any other enactment:
 - (b) whether or not proceedings in relation to the breach or offence have been commenced:
 - (c) if a person is convicted of the breach or offence,—
 - (i) in substitution for, or in addition to, any other penalty;
or
 - (ii) in subsequent proceedings.

232 Damage to local authority works or property.

- (1) This section applies in relation to the following works or property that are vested in, or under the control of, the local authority:
 - (a) a protective work; or
 - (b) a waterwork; or

- (c) a water race; or
 - (d) a drainage work; or
 - (e) anything forming part of, or connected with, any works or property not referred to in paragraphs (a) to (d).
- (2) Every person commits an offence who wilfully or maliciously destroys, damages, stops, obstructs, or interferes with the works or property referred to in subsection (1) and is liable on conviction to the penalty set out in section 242(3).
- (3) Every person commits an offence who negligently destroys, damages, stops, obstructs, or interferes with the works or property referred to in subsection (1) and is liable on conviction to the penalty set out in section 242(1).

[15] In my first decision at paragraphs [59]–[62] and paragraphs [77]–[87] inclusive I discussed what I considered to be the applicable law and referenced several authorities concerning injunctions sought pursuant to these provisions. In my second decision I again referred to those sections and the relevant legal principles at paragraphs [56]–[61] inclusive. I adopt those earlier discussions.

[16] I reiterate that onus of proof for an injunction of this type is the civil onus having regard to the gravity of the consequences. Where established, a Court should grant an injunction unless special circumstances apply, or the issue should be delayed in the interests of justice.⁷

[17] For RLC to succeed I must be satisfied on the balance of probabilities that a person, or persons have:

- (a) Offended against s 232(2) of the Local Government Act 2002 by wilfully or maliciously destroying, damaging, stopping, obstructing, or interfering with any works vested in or under the control of RLC; or
- (b) Offended against s 232(3) by negligently destroying, damaging, stopping, obstructing, or interfering with any works vested in or under the control of RLC; and

⁷ *O'Sullivan v Mount Albert Borough Council* [1968] NZLR 1099; *Taranaki County Council v Hammond* [1988] DCR 109; and *Stanton v Nelson City Council* [2014] NZHC 3117 at paragraph [18].

- (c) That an injunction is required to restrain any person or persons for committing one or both of those types of offences.

Findings to Date

[18] In my previous decisions I made several findings. I was satisfied on the balance of probabilities that:

- (a) The scheme is under the control of RLC. I was also satisfied that it was taking place on land vested in RLC, namely Tarawera Road;⁸
- (b) The nature of the works to be carried out falls within the definition at s 232(1)(e) of the Local Government Act 2002, which is a catch-all provision.⁹
- (c) That between 26 and 28 August 2024 persons unknown accessed the worksite, prevented digging and drilling, interfered with the security fencing, and made threats to contractors present, so much so that a decision was made that the works had to be postponed.¹⁰
- (d) I was satisfied that persons unknown had offended against s 232(2) of the Local Government Act 2002 by wilfully stopping, obstructing, or interfering with any works vested in or under the control of RLC.¹¹

Focus of the Third Hearing - 5 November 2024

[19] The focus of the third hearing was on three issues:

- (a) Ownership/vesting of Tarawera Road.

⁸ *Rotorua District Council v Rotokākahi Board of Control* [17 July 2024], above n 1, at [63]; *Rotorua District Council v Rotokākahi Board of Control* [9 October 2024], above n 2, at [64]–[65].

⁹ *Rotorua District Council v Rotokākahi Board of Control* [17 July 2024], above n 1, at [63]; *Rotorua District Council v Rotokākahi Board of Control* [9 October 2024], above n 2, at [65](b).

¹⁰ *Rotorua District Council v Rotokākahi Board of Control* [9 October 2024], above n 2, at [18]–[22] and [64].

¹¹ *Rotorua District Council v Rotokākahi Board of Control* [9 October 2024], above n 2, at [65](c).

- (b) Applicable Rotorua District Council bylaws, if any.
- (c) The form and scope of the injunction orders sought.

Ownership and survey issues concerning Tarawera Road

[20] The RLC position throughout has been that the infrastructure works will occur on a public road - Tarawera Road. RLC submit that by virtue of ss 315(1)(a), 317 and 318 of the Local Government Act 1974, Tarawera Road is legally vested in RLC.

[21] At the first hearing the BoC conceded, through their counsel, that Tarawera Road was legally vested in RLC. Counsel was at pains to point out, however, that the BoC, along with Tūhourangi and Ngāti Tumatawera, maintained mana whenua status over those lands and continued to oppose the presence of any wastewater pipeline in and/or on those lands.

[22] Prior to the second hearing Mr Lee filed an affidavit on 7 October 2024. He referred to a parcels map sourced from Toitū Te Whenua (Land Information Data Service) and another map. It was Mr Lee's contention that the ownership of the road or at least part of it was not as clearcut as previously thought.

[23] At the second hearing I had available to me a spatial plan and two survey plans, being SO11874 and SO39932. In my second decision at paragraph [91](c) I noted that those two survey plans appeared to show two separate non-contiguous sections of Tarawera Road. I did not have survey plans which showed the entire length of the Tarawera Road on which it is proposed the works will be carried out. Therefore, I directed RLC to source any additional survey plans that might assist in resolving the issue.

[24] Prior to the third hearing, Mr Lee filed a further affidavit dated 18 October 2024. He referred to the various survey plans before the Court, and an additional survey plan SO4452. He also referred to road widening works, which resulted in a landslide in 1986 causing debris and soil to be pushed into Lake Rotokākahi.

[25] Mr Lee opined at paragraph [16] of his affidavit that, as a result, part of Tarawera Road, (particularly the Lake access area), might now traverse the bed of Lake Rotokākahi, thus any infrastructure works might be taking place on land owned by the BoC.

[26] As I said in my second decision, the issue of the vesting of Tarawera Road should have received greater attention in the past. Evidence should not have been placed before me in the iterative fashion that it has.

[27] Nevertheless, I now have further evidence on the issue. Reviewing that evidence I first refer to the spatial plan before me which has been sourced from Landonline.¹² The spatial plan shows that section of Tarawera Road which runs adjacent to Lake Rotokākahi.

[28] The spatial plan refers to two survey plans. One of those plans is SO11874, which is attached to the first affidavit of Mr Mostert.¹³ It is dated 18 August 1899. It refers to the Rotorua-Wairoa Road in what is known as “burnt sienna”. Moving from the north to the south the road runs alongside Lake Tikitapu then alongside the northeastern part of Lake Rotokākahi.

[29] In her affidavit of 18 October 2024 at exhibit 2CG-B Ms Gavin refers to a further survey plan, SO46297. This, too, is one of the survey plans referenced in the spatial plan. It shows a more expansive view of that portion of Tarawera Road, again set out in burnt sienna running alongside Lake Tikitapu in the north then south alongside Lake Rotokākahi.

[30] Exhibit 2CG-A to her affidavit is SO18551. On the bottom left-hand corner of that survey plan, again in burnt sienna, one can locate Tarawera Road running alongside Lake Tikitapu and then south alongside Lake Rotokākahi.

[31] I then refer to survey plan SO39932. That is attached as exhibit A to an affidavit of Ms Gavin dated 8 October 2024. It was sourced from the Land Information New

¹² *Casebook* at 369.

¹³ *Affidavit of Gerhardus Mostert* dated 11 July 2024, exhibit GM.002. This exhibit also appears in the *Casebook* at 368.

Zealand database, Landonline. The plan is dated May 1959. It shows a section of Tarawera Road again in burnt sienna, at the most southerly point of where the road and lake are adjacent to each other. In small red writing immediately above the section of road set out in burnt sienna there is reference to the following words: “Pub Rd under Native Lands Act 1886”.

[32] The significance of the references to the colour “burnt sienna” is that it is a colour that was used to demarcate public roads on imperial survey plans.¹⁴

[33] In addition to those survey plans, Mr Lee, as exhibit E to his affidavit of 18 October 2024, produced a survey plan which is SO4452. At the extreme left-hand side of that plan again in burnt sienna one can locate Tarawera Road adjoining the southern part of Lake Rotokākahi.

[34] In contrast to the previous information gap, I now have five SO plans along with the spatial plan that I have referred to earlier. They all show a continuous path of Tarawera Road running from Lake Tikitapu to the north then south adjacent to and past of Lake Rotokākahi.

[35] In addition, I now have the survey evidence of Mr Paul Andrews. Mr Andrews is a surveyor who was instructed to survey the boundaries of Tarawera Road and Lake Rotokākahi by RLC. He carried out field survey work on 30 August 2024, and on 16 and 23 October 2024. In his evidence he has referred to various survey and spatial plans. He has examined title records and the sketch plan which supports the title for Lake Rotokākahi.

[36] At exhibit PA-A to his affidavit dated 25 October 2024 he produces 14 survey sheets. With reference to page 1 of the first survey sheet, the eastern boundary of Tarawera Road is marked in red. That boundary is on the landward side of Tarawera Road. That survey sheet is an aerial shot encompassing an area known as the Lake Tikitapu lookout or turnaround area.

¹⁴ *Affidavit of Christine Gavin* dated 18 October 2024 at [4](a).

[37] In the 13 survey sheets which follow Mr Andrews has proceeded in a southerly direction plotting the boundaries of Tarawera Road. On the eastern/landward side he has been able to do so based on title plans of adjoining blocks, historic survey plans, and field work. In each of those survey sheets that boundary is marked in red.

[38] On the western boundary (or lakeward side) of Tarawera Road he has been able to do that in part which can be seen at survey sheets 1, 9 in part, 10 in part and 11 through to 14 inclusive. He has been able to do that where he has been able to draw on existing survey plans for joining land blocks.

[39] However, Mr Andrews could not complete that exercise for all the lakeside boundary. Examples of that can be seen at survey sheets PA-A 2-8 inclusive. The reason is that there is no survey plan defining the boundary of the lake. The diagram used to support the title for the lake is not a survey plan but rather a sketch plan. Mr Andrews referred to the same survey plans I canvassed earlier. He noted that in all cases they depict a natural boundary, being the lake edge, rather than a mathematical or surveyed one.

[40] Mr Andrews goes on to explain his efforts using survey plans SO16005 and SO39932 to estimate the boundary of Lake Rotokākahi particularly in the Lake access area. That area has significance in this case because it is in that area that BoC trustees access Lake Rotokākahi. It is an area which has been occupied by BoC supporters, it is an area on which some structures have been placed or moved to recently.

[41] Mr Andrews' efforts to estimate that boundary area was complicated by what he considered were mathematical errors in the survey plans that he had access too. Nevertheless, both at paragraph [14] of his affidavit and at exhibit PA-A (survey sheet page 9) and exhibit PA-E he attempted to identify the southeastern edge of the lake in the Lake access area. He is at pains to point out, however, that is not the same as identifying a legal boundary.

[42] The short point is that based on Mr Andrews' evidence there is a possibility, and I can say it is no more than that, that the Lake access area, which was previously

assumed to be encompassed within the Tarawera Road, may be within the southern edge of Lake Rotokākahi.

[43] RLC maintain the position that the boundary between Lake Rotokākahi and Tarawera Road is more likely than not to be the natural boundary, ie the lake edge even allowing for possible movement of that over time. RLC have also indicated that there has simply not been time to investigate Mr Lee's claims as to a change in the shoreline caused by either reclamation works or accretion.

[44] For the BoC Ms Northey has urged me to avoid making any definitive decisions about the boundary between the lake and the road. I do record that yesterday she did concede that based on the new evidence to hand that Tarawera Road is most likely vested in RLC. What she urges me, though, is not to attempt to identify the boundary of the lakeward side of Tarawera Road.

[45] Based on the evidence now before me I continue to be satisfied on the balance of probabilities that there is a public road, Tarawera Road, which has been set aside and is vested in RLC.

[46] It is possible, perhaps even probable, that when considering the hierarchy of plans and survey information before me that the boundary between Lake Rotokākahi and Tarawera Road is the natural boundary or the current water's edge.¹⁵ However, as urged by RLC and the BoC I am not going to attempt to define that in this decision based on the evidence that I have, in fact nor could I.

[47] Practically what that will mean is that any injunction orders that will be made will exclude that area.

[48] A definitive finding as to the western/lakeward side of the Tarawera Road boundary is not needed to dispose of this point. I say that because the evidence that has been put before me has emphasised throughout that the works to be undertaken, will be on the landward side of the Tarawera Road that is furthest away from the lake

¹⁵ *Chief Executive Land Information New Zealand v Te Whanau o Rangiwakaahu Hapu Charitable Trust* [2013] NZCA 33.

edge, thus avoiding any possible chance of being included on land that may be Lake Rotokākahi land.

[49] It is unlikely, based on the on the evidence I have, that the active construction zone would be included within the southern edge of Lake Rotokākahi.

Works – s 232 of the Local Government Act 2002

[50] Alternatively, it has been submitted by RLC that an offence under s 232 does not require proof that RLC own the land on which the works have been carried out.

[51] The opening words to s 232(1) are clear that they apply to works or property vested in or under the control of a local authority. Therefore, on the face of s 232(1) there are two possible pathways open. One is that RLC, which I have discussed, could rely upon the fact that Tarawera Road is vested in it.

[52] The other pathway does not require proof of ownership, rather evidence that the works are under the control of the territorial authority. In terms of the commissioning, funding of, oversight and planning, the works in that sense are clearly under the control of RLC.

[53] Essentially, what was being said is that the works could extend to those on private land. I was unaware of any authority on point. Ms Cornege indicated yesterday she was also unaware of any case authority. However, she did point me to s 181 of the Local Government Act 2002.

[54] I have looked at that provision, it provides for a situation in which a local authority is carrying out construction of works such as water, drainage, waste disposal, sewage or stormwater on private land.

[55] However, it does not assist RLC in this situation because s 181(3) provides that the territorial or local authority must have prior written consent of the landowner or have complied with Schedule 12 to the Act. I do not have any evidence before me that either of those matters have occurred so that does not assist in this case.

Applicable Rotorua District Council bylaws

[56] At paragraph [62] of my second decision I referred to several structures built in what I described as a semi-permanent encampment at the Lake access area. Immediately opposite that area I also referred to two structures overlooking the works which were covered by blue tarpaulin. I was informed from the bar yesterday by Ms Northey that those two structures have been removed.

[57] At paragraph [66] of my second decision I noted that, although not relied upon in the application, I was of the tentative view that the structures were more likely than not to constitute an offence against or be in breach of a local authority bylaw. I called for further information on that issue.

[58] At paragraph [63] of the same decision I referred to several cars and vans parked on the side of Tarawera Road which were said to be contrary to traffic management measures which had been attempted by RLC. The concern that I expressed was that cars were parked in designated no parking areas, along a very narrow stretch of road, where no berm exists, whilst infrastructure works are being contemplated close by. That could constitute a safety issue.

[59] These two issues had not been the focus of the previous two hearings, rather the spotlight during those hearings was on allegations of interference with the works. Therefore, I called for some further submissions and asked for counsel to refer me to any statutory provisions or bylaws which responded to those two matters.

Bylaws

[60] I have been referred to the Rotorua District Council Traffic Bylaw 2018 and a Rotorua District Council General Bylaw 2017.

[61] Ms Cornege both in a memorandum dated 18 October and in her submissions of 5 November 2024 referred me to various provisions set out in those bylaws.

[62] Turning to the issue of structures I consider that cl 20.1 of the Rotorua District Council Traffic Bylaw 2018 applies in this situation. It reads as follows.

No person shall place or cause to be placed a shipping container or other structure/s on any road without the prior written consent of Council. Such consent may at any time be varied or revoked in writing by Council.

road has the same meaning as in the Land Transport (Road User) Rule 2004.¹⁶

structure means something made up or constructed of a number of parts that are held or put together in a particular way.

[63] I consider that bylaw to apply to the two structures opposite the Lake access area (if they are still in place) and any other structures that might get placed or erected on Tarawera Road.

[64] As I discussed earlier there is some uncertainty about the lake and Tarawera Road boundary. Therefore, without conceding the point RLC did not seek an injunction for the removal of the structures or carparking in the Lake access area.

[65] They do, however, seek an order for the removal of all other structures and to prevent future erection or placement of such structures on Tarawera Road.

[66] Turning to the question of the issue of parking of cars. First, I referred to the Rotorua District Council Bylaw 2018. Not surprisingly it sets out various powers to set aside and restrict parking areas, examples of which are cls 4–7 inclusive. However, I do not consider those to be directly on point as they require in all instances that RLC have first made a resolution setting out those various areas. There is no such resolution before me. What is relied upon is a traffic management plan which seeks to designate certain no parking areas alongside Tarawera Road.

[67] Clause 18.1 of the Rotorua District Council Traffic Bylaw 2018 appears to be applicable to any cars parked in designated no car parking areas pursuant to any traffic management plan. It provides as follows:

18.1 Any enforcement officer or authorised officer may have a vehicle moved or moved to some other position, including any appropriate premises designated by council or police, if the vehicle:

18.1.1 Is left unattended in any public place so as to cause a nuisance or obstruction...

¹⁶ That includes, inter alia, a street.

The form and scope of the injunction orders

[68] What has been sought in terms of the scope of the injunction orders has changed as the case has progressed and as the evidence has become progressively available. I record that I also expressed by way of guidance several comments in my second decision at paragraphs [98]–[101] inclusive about the form and scope of the injunction orders then sought which I thought were too broad.

[69] Yesterday during submissions, I again discussed the scope of what was proposed. Ms Northey for the BoC also expressed concern about ensuring her clients' on-going access to the lake. She submitted that this is heightened in this case as they are the owners of the lake, and there is a lack of specificity about how that could be maintained and enhanced.

[70] Shortly I will outline the scope of the injunction orders that I intend to make. Before doing so I just make the following comments.

[71] Clause 4(b) of the current draft reflects concerns I expressed in my second decision at paragraph [98] about the ability of the BoC, trustees and beneficiaries to access the Lake access area. What is now before the Court is clearly an improvement from the previous iteration.

[72] For it to work, however, will clearly require the input of the BoC. There is evidence before the Court, which is that they control, from amongst their beneficiaries who may access the lake, its waters, and islands. As I understand it, the position is that the beneficiaries cannot access the lake whenever they wish to.¹⁷ The clause allows the BoC to maintain access and a measure of control over who is visiting the Lake.

[73] Without attempting to be prescriptive, what I would urge is the BoC to consider providing RLC with a list of persons who are authorised to access the Lake access area. Of course, that may need to change from time to time. It should not be beyond the capabilities of all, and by that, I mean RLC and the BoC, to develop a

¹⁷ *Affidavit of Wally Lee* dated 10 July 2024 at paragraph [8].

system or mechanism as to how this can practically work. The situation requires this because the people on the ground responsible for controlling traffic, who are likely to be Fulton Hogan employees or contractors, will need to know who is authorised to visit that area.

[74] If no list of authorised persons is provided or no mechanism developed for how that can work, what I can see happening is that RLC will come back to Court and will seek to amend the clause, possibly seeking to prevent all access during the active construction. Obviously, that is a situation which should be avoided.

[75] I record that I have tweaked the wording of that clause to ensure that the directions provided by traffic management personnel are in relation to the control and flow of traffic only.

[76] I have deleted cl 5. I am concerned that by virtue of an injunction order RLC seek to bypass the warning provisions provided for in ss 3 and 4 of the Trespass Act 1980. Those provisions set out criminal liability for those who do not heed warnings. I am not prepared to circumvent the warning provisions required under that legislation by virtue of this injunction order.

[77] I have deleted cl 12 of the current order. It is not necessary. It says no more than that RLC may exercise whatever other legal powers it has which of course is self-evident, I would have thought.

Summary

[78] On the balance of probabilities, I am satisfied of the following matters:

- (a) The Tarawera wastewater reticulation scheme is under the control of RLC. Tarawera Road is vested in RLC. To the extent that any doubt exists the Lake access area is excluded from the scope of the injunction.
- (b) The nature of works to be carried out falls within the definition in s 232(1)(e) of the Local Government Act 2002 which is a catch-all provision.

- (c) Between 26 and 28 August 2024 persons unknown accessed the worksite, prevented digging and drilling, interfered with the security fencing, and made threats to contractors present, so much so that a decision was made that the works had to be postponed.
- (d) In so acting those persons offended against s 232(2) of the Local Government Act 2002 by wilfully stopping, obstructing, or interfering with any works vested in or under the control of RLC.
- (e) Any structures built or placed on Tarawera Road (now or in the future) will breach the Rotorua District Council Traffic Bylaw 2018, namely cl 20.1.
- (f) Any cars parked in designated no parking areas pursuant to a traffic management plan which will be put in place will be in breach of cl 18.1 of the RDC Traffic Bylaw 2018.

[79] Whilst acknowledging the unique ownership, control, and status of Lake Rotokākahi I do not consider that there are any special circumstances in existence which warrant a delay in issuing any injunction pursuant to the interests of justice.

Orders

[80] I make an injunction order pursuant to s 162 of the Local Government Act 2002. The full extent and scope of the order is set out in the attached appendix 1.

Leave

[81] Either party, that is both RLC and BoC, are granted leave to seek a variation of the injunction orders. Such application for variation should, given that I have some knowledge of the background, come to me.

ADDENDUM

[82] At the conclusion of delivering my oral decision I had a discussion with Ms Cornege, counsel for RLC about the map to be attached to the orders which sets out in yellow hatched lines the Lake access area to be excluded from the scope of the injunction. I directed her to take instructions and file an updated map which she did so.

[83] After that I also received a map from the BoC. Superimposed over the same map is an area circled in red which they suggest should also be excluded from the injunction order. I understand they say it is an area where their members park their cars when accessing that area and parking spaces are at a premium.

[84] I note:

- (a) I did not ask for a response from the BoC.
- (b) The area that is excluded (the area set out in yellow hatched lines) does not include the area where cars have been parked. They have been parked on a narrow berm area, see for example the plan attached and marked A to the injunction order. Although Mr Lee has suggested it, there is no evidence that persuades me that this is an area of reclaimed or accreted land owned by the BoC.
- (c) Land could be freed up for parking by removal of one or more of the structures within the area set out in yellow hatched lines. That is a decision, however, for the BoC.

Judge SR Clark

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 19/11/2024

APPENDIX 1: INJUNCTION ORDERS

Definitions

Defined terms in these orders are in bold text and defined below.

Obstruction

No person may stop, obstruct, or interfere with the **works** whether directly or indirectly.

No person may stop or obstruct personnel, vehicles, or construction machinery authorised by **Rotorua Lakes Council** from accessing the **work zone** during the **construction period**.

Access to work zone

No person may enter or remain in the **work zone** at any time during the **active construction period** without authorisation from **Rotorua Lakes Council**, except that:

traffic may pass through the open traffic lane in accordance with directions from traffic management personnel; and

persons authorised by the Rotokākahi Board of Control may turn across the work zone to access the boat ramp area (shaded in yellow on attached Plan A). Authorised persons must comply with directions from traffic management personnel as they concern access to and egress from the boat ramp area.

Vehicles

No person may park any vehicle in **the work zone** or in any areas identified by signage as no-parking areas as part of any traffic management plan in relation to the **works** at any time during the **active construction period** without authorisation from **Rotorua Lakes Council**.

Any vehicle parked in breach of paragraph 5 shall be considered to be unattended in a public place so as to cause a nuisance or obstruction for the purpose of clause 18.1 of the Rotorua District Council Traffic Bylaw 2018 and may be towed by **Rotorua Lakes Council**.

Structures

No person may erect, place, or allow to remain any **structure** in the **work zone** without authorisation from **Rotorua Lakes Council** at any time during the **construction period**.

If any **structure** in breach of paragraph 7 is not removed within 24 hours of service of these orders, **Rotorua Lakes Council** is entitled to demolish and remove any **structure**. Any **structure** demolished and removed is to be the subject of an inventory and taken to Blue Lake Park to be available for collection without charge, and if not collected within seven days may be disposed of by **Rotorua Lakes Council**.

Service

Service of the above orders is to be effected by:

using reasonable endeavours to display a copy of the orders at either end of the **work zone** and on security fences within the **work zone**.

posting a copy of the orders on Rotorua Lakes Council's website and Facebook page.

giving public notice on at least two occasions in a newspaper circulating in the Rotorua District; and

emailing a copy of the orders to solicitors for the Rotokākahi Board of Control at the address for service provided in this proceeding.

Variation

Rotorua Lakes Council may apply to the District Court for a variation of these orders.

Defined terms

The **active construction period** is the period starting from the day that Council or its contractors re-commence the **works**, including by bringing (or attempting to bring) machinery, fencing and/or temporary traffic management equipment to the worksite and ending on the day that the **works** are completed.

The **construction period** is the period starting from the date this order is made and ending on the day that the **works** are completed.

Rotorua Lakes Council includes officers of Rotorua Lakes Council and its contractors.

Structure means any building, shed, fence or other obstacle of any kind.

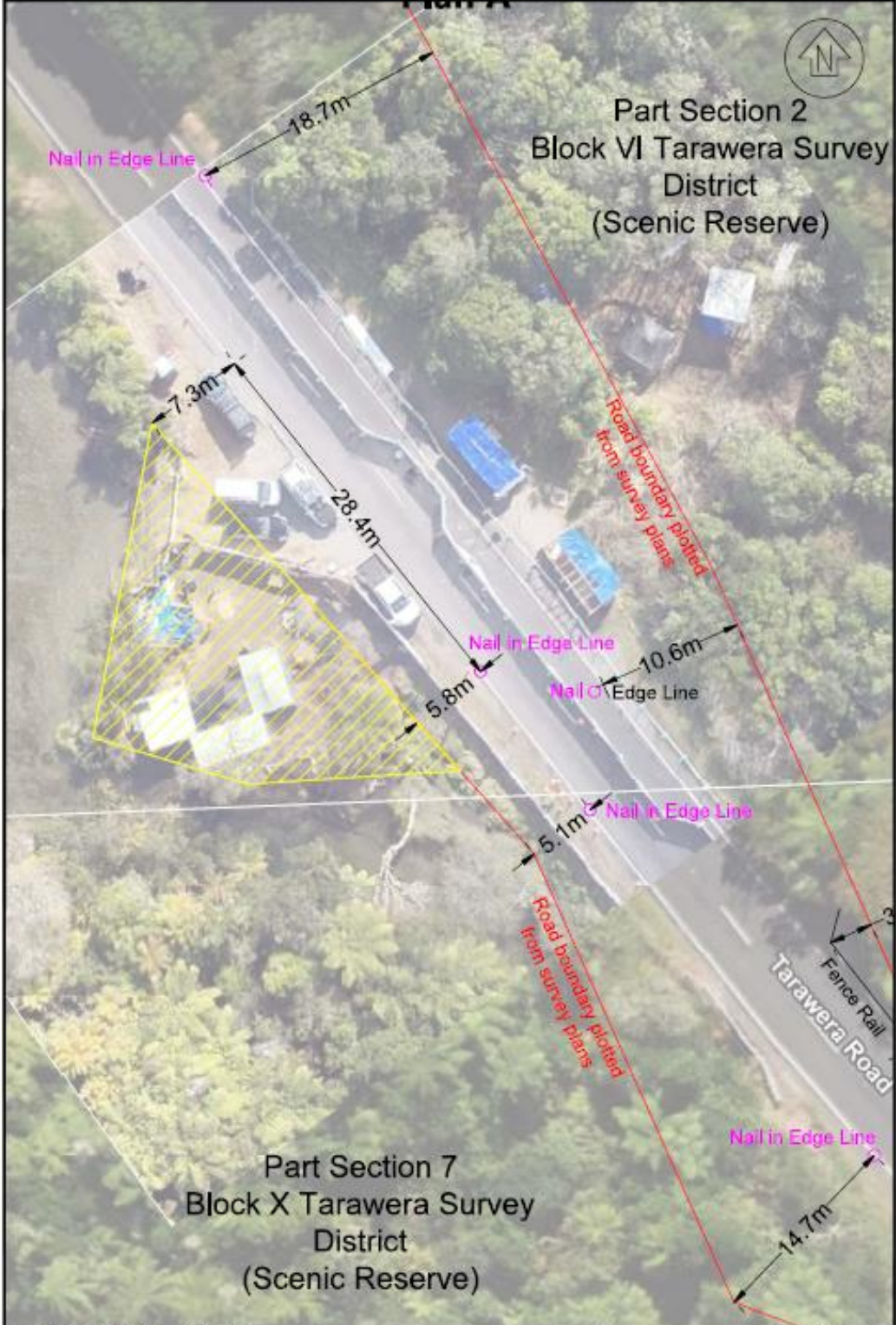
The **works** are:

- (a) the installation of the pipeline along Tarawera Road as part of Stage One of the Tarawera Wastewater Reticulation Scheme, including associated works such as drilling, valve assemblies, earthworks, and site reinstatement; and
- (b) associated traffic management measures including traffic signals, cones, security fencing, and lighting.

The **work zone** means:

- (a) The section of Tarawera Road between the temporary traffic lights forming part of the traffic management plan located to the north and south, including:
 - (i) any area being used by Rotorua Lakes Council as an active work site from time to time.
 - (ii) any open traffic lane; and
 - (iii) the road reserve, to be identified by tape or otherwise at any location where the boundary of the road reserve is not the edge of Lake Rotokākahi but excluding the boat ramp area (shaded in yellow on attached Plan A).
- (b) Fulton Hogan's construction yard on Spencer Road, Rotorua.

Plan A



	<p>Jetty Area Tarawera Road</p>	<p>Rotorua Lakes Council</p>	<p>PROJECT NO. 2252-5 DRAWING NO. 2252-5 SCALE 1:250</p>
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