IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2024-485-842
[2025] NZHC 3572

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER OF	an application for judicial review
BETWEEN	WAKEFIELD GROUP HOLDINGS LIMITED Applicant
AND	KAPITI COAST DISTRICT COUNCIL Respondent

Hearing:	28 July 2025
Further memorandum from counsel:	7 August 2025
Counsel:	S J Iorns and J C Sylvester for Applicant P T Beverley and C A Easter for Respondent
Judgment:	21 November 2025

JUDGMENT OF GENDALL J

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Introduction

[1] Wakefield Group Holdings Ltd (Wakefield), is the owner and developer of a property at 33 Main Highway, Ōtaki (the Site). The Site is proposed for a large 137 lot residential subdivision (the Wakefield Development). Roading access to the development is an issue. Wakefield applies for judicial review of a crucial decision taken by the Kapiti Coast District Council (KCDC) dated 28 November 2024 (and then confirmed in a subsequent KCDC decision on 30 January 2025 both hereafter referred to as "the decision") not to dedicate a road reserve at Lot 72 (containing 248 square metres) at the end of Moy Place, Ōtaki (Lot 72)—which would otherwise have provided legal access to the entire development—as a legal road. That decision has obviously brought progress with the Wakefield Development to a halt.

[2] KCDC opposes this application for review on the basis, it says, there were no errors in the decision it made.

Background

(a) The establishment of the road reserve

[3] The existing local purpose (road) reserve at Lot 72 (the road reserve) was established in 2007 as part of a residential development at the time (referred to as the Fleming Development) that created the current residential areas of Moy Place and Sue Ave, more or less adjacent to the future Wakefield Development Site. The road reserve, it is said, was to provide access to future developments on the Site. As I have noted, Wakefield intended to create its residential subdivision Wakefield Development on the Site it seems mindful of certain matters that were detailed in the Fleming Development 2007 consent documents:

(a) From the consent application itself:

- "Two road reserves were included in the subdivision scheme [one being Lot 72] to service vacant residential land to north and south."

- "Allowance for connectivity with other roads and creation of a sensible roading network has been provided with [those] road reserves to the north and south."

- "The access leg from [the] State Highway has clearly been designed (as part of the parent title subdivision) for the purpose of providing access to the rear of the lot. The scheme submitted along with the intersection design is considered the best option not only for this site but also for the adjoining vacant residential lots."

(b) From the traffic report by Traffic Design Group supporting the Fleming Development (which is before the Court) it noted:

> Additional accesses onto the State Highway are clearly undesirable and so this subdivision has been laid out in such a manner that facilitates future road connections through adjacent land….

(c) From other documentation before the Court, it is clear also that the road reserves came about following meetings with KCDC officers and were supported by the Transit Authority on the basis again that they would "provide for (future) connections to neighbouring properties".

(d) Back in 2007, it appears to be anticipated that other road links would alleviate traffic as this area near Ōtaki was fully developed. The Fleming Development set aside the road reserve in question and gained access to the main road on the basis it would provide appropriate access for future residential development. As I have noted, this was supported by KCDC and the transit authority at the time.

(e) All this was entirely consistent with KCDC subdivision policies at the time which stated:[1]

> (iv) In designing any scheme plan, consideration shall be given to the future development of adjoining land and the Council may, as a condition of consent, require the creation of road reserve and/or the formation of roads to or near the boundary of adjoining land.

[4] All this resulted in Lot 72 being vested in KCDC as Local Purpose (road) Reserve in 2007 presumably on the basis that it was intended for the purpose of future roading.

(b) The Wakefield Development

[5] Wakefield commenced work on the Site in 2021. The New Zealand Transport Authority (NZTA) was consulted and advised that they considered Lot 72 as the most viable option for the development's roading connection. In September 2022, consultation with KCDC confirmed they too supported the proposed development using Lot 72 for its roading connection.

[6] On 16 December 2022, Wakefield applied for referral to the Minister for the Environment for the relevant resource consents for the Wakefield Development to be

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1 "Kapiti Coast District Council Subdivision and Development Principles and Requirements 2005" at "(F) Scheme Plans para (iv)".

considered under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the CRFTC Act). The Minister approved the referral application on 11 June 2023.

[7] On 14 June 2023, Wakefield requested that KCDC commence the process to dedicate Lot 72 as a legal road. KCDC confirmed on 16 July 2023 that it would commence the process.

[8] On 9 August 2023, Wakefield lodged its full resource consent application under the CRFTC Act with the Environmental Protection Authority (EPA). The following day, KCDC put on hold the process to dedicate the legal road to await the outcome of the resource consent process.

[9] In May 2024, NZTA commented on the application to the EPA and its appointed panel stating specifically that they had no concerns with the proposal, as it was "in line with the form and scale of land use that is anticipated for this site and the additional vehicle movements can be safely and efficiently accommodated by the Sue Ave/Main Highway intersection". They went on to confirm that, since the traffic generated could be accommodated entirely within the local network, any possible alternative that might be considered of a new vehicle access from the Main Highway was not supported.

[10] On 15 July 2024, after extensive consultation with traffic experts from Wakefield, NZTA, KCDC and neighbouring landowners, the EPA's Panel granted the resource consent with access using Lot 72 to connect to Moy Place. This noted that KCDC would be required to change the designation of Lot 72 from road reserve to legal road.

(c) The road dedication process

[11] On 30 July 2024, following the granting of resource consent, Wakefield requested of KCDC that the road dedication process for Lot 72 be resumed. KCDC began consultation with residents on 4 September 2024. It called a meeting on 22 October 2024 to hear from submitters ahead of the formal Council meeting to vote on the dedication proposal.

[12] Then, on 28 November 2024, KCDC convened a Council meeting to consider, among other matters, the dedication of Lot 72 as a legal road. The Council report from staff recommended that KCDC approve the dedication of Lot 72 as a legal road. It went on to state that the Chief Executive of KCDC should be authorised to take all necessary steps to give effect to this resolution. The report advised that key considerations for the Council included:

> • Section 77 – a local authority must, in the course of the decision-making process seek to identify all reasonably practicable options for the achievement of the objective of a decision; and assess the options in terms of their advantages and disadvantages.
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> • Section 78 – a local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter. Note: a local authority is not required by section 78 alone to undertake any consultation process or procedure, and this section is subject to section 79.
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> • Section 79 – a local authority must assess how to comply with sections 77 and 78 in proportion to the significance of the matter as determined by Council's Significance and Engagement Policy. In making this assessment, Council must also have regard to the matters set out in section 79(2) include[ing] the principles in section 14 of the LGA, Council resources, and the extent to which the nature of a decision or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons.
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> • Section 82 – where a local authority decides to undertake formal consultation in relation to a decision or other matter, a local authority must comply with the principles set out in this section, which sets out a process for formal consultation under the LGA. This does not preclude Council from undertaking other forms of engagement with the community that is not consultation.
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> • The principles under section 14 are various but relevant principles to note include giving effect to its identified priorities and desired outcomes in an efficient and effective manner; making itself aware of, and should have regard to, the views of all of its communities; and taking account of the diversity of the community, and the community's interests, within its district or region, the interests of future as well as current communities, and the likely impact of any decision on each aspect of well-being.

[13] At the Council meeting, Wakefield made submissions and tabled speaking points from Mr Nick Taylor, who is a director of Cuttriss Consultants Limited surveyors and land consultants in Paraparaumu and Lower Hutt. He was instructed for Wakefield. In particular, speaking notes raised the point that Ōtaki faced a critical

housing shortage, and that Wakefield was ready to provide a solution that aligned with the Council's vision for sustainable growth.

[14] In his affidavit dated 16 May 2025, which is before the Court, Mr Taylor explained his advice to Council and stated at [92]:

> [92] In my professional view, no technical or planning justification existed for any decision other than dedicating Lot 72 as a road. In forming this opinion, I have considered the following:
>
> (a) Lot 72 was specifically set aside for the purpose of providing a roading connection to [the Site].
>
> (b) Sue Avenue and Moy Place were constructed to be wider than necessary, to allow for future traffic from [the Site].
>
> (c) There is a significant body of technical evidence supporting the connection to [the Site] via Lot 72, including traffic modelling which confirmed the intersections will continue to perform well.
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> (d) Access to [the Site] via Lot 72 is the safest of the access options to that site.
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> (e) The views of the neighbouring residents had been considered and taken into account by the Panel in making their decision on the resource consent.
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> (f) KCDC and NZTA are on record stating that they do not support an alternative access to the Site via Main Highway, leaving the Moy Place extension via Lot 72 as the only option supported by the two relevant road controlling authorities.
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> (g) Lot 72 has no practical utility other than as a road, given its size and location, as the reserve was set aside for road purposes.
>
> (h) The land is required for roading, as a development cannot reasonably continue without use of the road reserve for the purpose of a road.

[15] The councillors were then briefed by the KCDC's Chief Executive, Mr Darren Edwards, and by Mr Sean Mallon, Group Manager Infrastructure Services. Both recommended that the Council pass the motion dedicating Lot 72 as a legal road. Mr Mallon also went on to advise the councillors that:

(a) there was no new information that had been provided since the resource consent was approved that had not otherwise been considered when resource consent was granted;

(b) their internal advice was that Moy Place was the only viable option for traffic access to the development;

(c) access via the main road was less safe than utilising Moy Place;

(d) this was consistent with external advice, including from NZTA; and

(e) if Wakefield came to KCDC and asked for approval for the use of the main road as the traffic entry and exit point for the development, that would be declined.

[16] As an aside, it is of interest to note that in his affidavit evidence (dated 16 June 2025) before the Court, Mr Mallon deposed:

> [29] …until recently Council's convention was to require developers to vest future roading connections as local purpose reserve for roading purposes. The result of this approach was that the developer did not need to form a road all the way to the boundary, but the land was set aside as road reserve for future subdivision. This meant that where a local purpose reserve is proposed to be converted to a legal road, this is a decision for Council following the process under section 111 of the Reserves Act 1977.
>
> [30] In approximately January 2024 Council changed its approach to vesting future roading connections as part of a subdivision. Council now requires future roading connections as part of subdivision development proposals to be vested as legal road. The reasons for this change include:
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> (a) removing ambiguity, particularly among residents, around the purpose of land vesting as local purpose reserve for roading purposes; and
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> (b) allowing developers to provide access to their developments without having to apply to remove the reserve status.
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> [31] Council has applied its new approach to Lot 202 in the Wakefield subdivision and subdivision at 12 Otaihanga Road, Paraparaumu where a lot to provide a future transport connection will be vested as legal road. This consent was issued in May 2025.

[17] At the Council meeting, the designation issue went to a vote. Five councillors, including the Mayor, voted in favour of the change in designation. They noted that:

(a) There had been extensive investigation and consultation, the traffic assessments and resource consent showed it was the safest option, and if the inevitable decision was not made this would just end up at judicial review;

(b) There was an inevitability about the decision with no alternative outcome. The developers had a legal right to develop the site, and the road reserve could not be used to undo the resource consent, with any failure to pass the motion resulting in more uncertainty and cost; and

(c) This had to be looked at from the wider community perspective, Lot 72 had always been a road reserve, and it should now be used for that purpose, with reputational and financial consequences if the Council failed to make the appropriate decision.

[18] Six other councillors however voted against the change in designation, defeating the motion. Their stated reasoning, it seems, included the following points:

(a) That there was a need to consider the community and the immediate Moy Place area residents affected;

(b) That the development would result in an oversupply of housing in the area, and that it was morally wrong to disaffect an existing community for a developing one, with it also being "nonsense" to suggest that the development was a community good, as the developers were simply interested in profit; and

(c) The main road was in fact the safest option for traffic from the development, and the change in designation would also be contrary to "the Council's green belt policy" that required a green belt around developments, and all this too meant the consequences on the residents of Moy Place were "more than minor".

The judicial review application

(a) Wakefield's position

[19] Wakefield seeks that the decision not to dedicate the road reserve as a legal road be set aside. It seeks orders from the Court now that the road reserve be so dedicated, or in the alternative, the decision be returned to KCDC with a direction to make what it says is the only available lawful decision. It also seeks costs and disbursements on this proceeding.

[20] The basis of its application is that:

(a) The only lawful decision available to KCDC was to change the designation from road reserve to legal road, in light of:

- the legitimate expectation of Wakefield;
- the fact that KCDC only holds this land as a road reserve for this exact purpose;
- the expert evidence overwhelmingly supports the use of the road reserve for its intended purpose; and
- there being no other viable option.

(b) Accordingly, KCDC failed to make a decision that is fair, reasonable and lawful.

[21] The specific grounds of review set out in Wakefield's submissions are as follows:

(a) The councillors that voted against the dedication of the road reserve approached their statutory decision-making reliant on an error of law, in that they interpreted s 111 of the Reserves Act as supporting an extended discretion to base their decision on the wider community

effects of roading and allowing the interrogation of already decided resource consent matters.

(b) Some of the councillors also made significant errors of fact, namely that there was a viable alternative access based on a Traffic Management Report, and that there is a green belt recognised in the Council's Long Term Plan.

(c) The councillors who voted against the dedication decision abused their discretion under s 111 of the Reserves Act, which amounted to procedural impropriety.

(d) Two councillors in particular demonstrated pre-determination and/or bias in their decision-making.

(e) There was a clear breach of Wakefield's reasonable and legitimate expectation that KCDC would dedicate the road reserve as a legal road.

(f) If it is found that KCDC was entitled to consider the wider community effects and to investigate matters already decided by the EPA, then KCDC breached its natural justice requirements, since Wakefield approached the dedication decision itself on the basis that resource consent matters had already been determined and were outside the scope of KCDC's discretion.

(g) The KCDC decision was irrational and unreasonable.

(b) KCDC's position

[22] KCDC opposes all aspects of Wakefield's judicial review application.

[23] KCDC addresses first an initial submission from Wakefield that s 111 of the Reserves Act is to be narrowly interpreted and involves only a 'simple question of fact' as to whether the land in question, Lot 72 is required for a road. That

interpretation KCDC argues is not supported by the text of s 111 and would render the statutory discretion redundant.

[24] Turning to Wakefield's assertion that the decision is 'plainly wrong' and that there is only one decision effectively available to the KCDC (i.e. to dedicate the land as road), this Court cannot be asked to reconsider the merits of the decision, nor can it be expected to fetter the KCDC's discretion by directing that there is only one decision available.

[25] While the practical effect of the decision is that Wakefield is unable to implement its resource consents in their current form, that was a risk that it accepted through the condition it proffered in the resource consent process (that the implementation of the subdivision consent was contingent on the KCDC exercising its discretion to dedicate the land as road).

[26] The decision in any event was a lawful one. Wakefield in this case has misinterpreted the requirements in s 111. KCDC maintains it is not constrained to a simple question of fact as to whether the land is required for road. It did not make the decision for an improper purpose, consider irrelevant matters or make an error of fact.

[27] The decision KCDC says was also a fair one. It did not predetermine the decision and there was no breach of natural justice. There was also no breach of any legitimate expectation here (there being no evidence before the Court supporting past practice and further, the KCDC made no guarantee or promise that the road reserve would be dedicated as road).

[28] The KCDC decision was reasonable and was not 'plainly wrong'. While Wakefield and others may have preferred a different decision, that is not the test in judicial review. KCDC concludes here that the decision falls a long way short of reaching the very high threshold for unreasonableness in judicial review.

The statutory framework for the KCDC decision

[29] The Reserves Act empowers KCDC as a local government authority to dedicate a road reserve as a legal road. Section 111 relevantly provides that:

> **111 Road Reserve may be dedicated as a road**
>
> (1) Where any land is vested in the Crown or in any local authority for the purposes of a road reserve, and the land is required for the purposes of a road, the land may be dedicated as a road by notice under the hand of the Minister or, as the case may be, by resolution of the local authority, and lodged with the Registrar-General of Land.
>
> (2) For the purposes of this section the term **road** includes any road, street, access way, or service lane; and the expression **road reserve** has a corresponding meaning.

[30] Section 111 is contained within Part 5 of the Reserves Act, which is titled "Miscellaneous provisions". It includes provisions on offences, bylaws, mining, and "general provisions", the latter of which being the category that s 111 falls under.

[31] There are no specific processes under the Reserves Act for resolving to dedicate a road reserve as road. Instead, the ordinary procedural rules under the Local Government Act 2022 (LGA) apply.[2] Section 76 of the LGA states that every decision made by a local authority must be made in accordance with such provisions of ss 77, 78, 80, 81 and 82 as are applicable.

[32] Section 77 provides that a local authority must, in the course of the decision-making process, seek to identify all reasonably practicable options for the achievement of the objective of a decision, assess the options in terms of their advantages and disadvantages, and as to significant decisions relating to land or water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

[33] Section 78 stipulates that subject to s 79 a local authority must, in the course of its decision-making process, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

[34] As to s 79, it is the responsibility of a local authority in exercising its discretion to make judgments about how to achieve compliance with ss 77 and 78 that are largely

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[2] Local Government Act 2002, s 76(5).

in proportion to the significance of the matters affected by the decision, and about, in particular:[3]

(a) the extent to which different options are to be identified and assessed;

(b) the degree to which benefits and costs are to be quantified;

(c) the extent and detail of the information to be considered; and

(d) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.

[35] In making such judgments, a local authority must have regard to the significance of all relevant matters and, in addition, to the principles set out in s 14 of the LGA, the extent of the local authority's resources, and the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons.[4]

[36] The Reserves Act does not set out any relevant definitions or requirements for a local purpose reserve to be a road reserve, and its purpose section provides limited directions for considering road reserves. The general purpose of the Reserves Act is for the "preservation and management" of areas possessing certain qualities "for the benefit and enjoyment of the public". Those qualities include recreational use or potential, whether active or passive, and "other special features or value".

[37] Section 14 of the Reserves Act provides that any local authority may by resolution declare any land vested in it to be a reserve within the meaning of the Reserves Act subject to any conditions specified in the resolution, to be held for any of the purposes specified in ss 17 to 23. A local purpose reserve, which is what Lot 72 is classified as, is defined as a reserve created "for the purpose of providing and

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3 Section 79.
4 Section 79(2).

retaining areas *for such local purpose or purposes as are specified in any classification of the reserve*".[5] [emphasis added]

[38] The functions of an "administering body" (in this case KCDC) in relation to administering a reserve are set out in s 40(1) of the Reserves Act. It provides:

> The administering body shall be charged with the duty of administering, managing, and controlling the reserve under its control and management in accordance with the appropriate provisions of this Act and in terms of its appointment and the means at its disposal, so as to ensure the use, enjoyment, development, maintenance, protection, and preservation, as the case may require, of the reserve *for the purpose for which it is classified*.
>
> [emphasis added]

General principles of judicial review

[39] The orthodox principles of judicial review apply to the review of local authority decisions. Rather than a merits appeal from the decision in question, judicial review is a review of the manner in which the decisions were made.[6] It is not for the Court to interfere with the way a decision-maker exercised the powers given to it by an Act, simply on the basis that the Court considers the decision should have been different.[7] As the Court of Appeal recognised in *Winton Property Investments Ltd v Minister of Finance*:[8]

> …in the exercise of its review jurisdiction, the Court confines its enquiry to the legality of the decision maker's determination. Judicial review is mainly concerned with errors of process which go to the jurisdiction of the decision maker and with errors made on the face of the record of the decision. Errors which go only to the merits or wisdom of the challenged decision, are generally not susceptible to judicial review (although, in practice, the distinction between legality and merits has proved to be elastic).
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> [citations omitted]

[40] In judicial reviews of the decisions of local authorities, the Court must decide whether a duly elected authority lawfully exercised powers given to it by legislation.[9] The Court is not entitled to interfere with the way members of a local authority

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5 Reserves Act 1977, s 23.
6 *Winton Property Investments Ltd v Minister of Finance* [2023] NZCA 368 at [82]–[83].
7 *Norman v Tūpua Maunga o Tāmaki Makaurau Authority* [2020] NZHC 3425 at [17].
8 *Winton Property Investments Ltd v Minister of Finance*, above n 6, at [83].
9 *Evans v Clutha District Council* [2018] NZHC 3355 at [3].

exercise powers given to it by statute, simply on the basis the Court considers a decision made by the local authority was wrong or should have been different.[10] Proper respect must be given to the roles and responsibilities of the democratically elected council, in acknowledgement of their considerable capacity to choose between alternative courses of action, and, as elected bodies, to respond to the wishes of their constituency.[11]

Grounds for judicial review

[41] I turn now to Wakefield's grounds advanced for judicial review as outlined at [21] above. To repeat these are error of law, errors of fact, procedural impropriety, pre-determination and/or bias, breach of legitimate expectation, breach of natural justice and irrationality/unreasonableness. I will consider each of these in turn.

Error of law

[42] In support of this ground, Mr Iorns, for Wakefield, submits that the councillors who voted against the dedication of the road reserve committed an error of law as:

(a) The duties on an administering body of a reserve are narrowly limited for the purpose for which it is classified, meaning the administering body must exercise a power under the Reserves Act to fulfil the purpose of the reserve.

(b) The purpose of the reserve at Lot 72 was based on a convention of KCDC to require developers to provide future road access, with Lot 72 intended to become a road to serve future development.

(c) The question that remained for KCDC was a simple question of fact, namely whether Lot 72 was required for the purpose of a road. The comments of the councillors who voted against the dedication decision highlight that they accepted that Lot 72 *was* required for the purpose of a road, but they disagreed with whether it *should* be a road.

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10 At [24].
11 *Waitakere City Council v Lovelock* [1997] 2 NZLR 385 (CA) at 397.

(d) The context here of the resource consent itself and both KCDC traffic advice and the NZTA not approving of a connection to the main highway, along with the historical decision to dedicate Lot 72 as a road reserve had already determined the question of whether it *should* be a road. Accordingly, the basis of the councillors' decision was not centred in any way on the issue they were required to consider.

[43] In response, Mr Beverley, for KCDC, contends that there is no error of law, as:

(a) While KCDC accepts Wakefield requires the road reserve for the purpose of a road, the fact remains that KCDC retains a discretion whether or not to dedicate the road reserve as a road. In exercising that discretion, KCDC must be able to consider a range of factors beyond whether the road reserve is required for a road.

(b) Wakefield's interpretation is not supported by the text of s 111, given it specifies that the local authority "may" dedicate the road reserve as a road. Wakefield's interpretation would render the s 111 discretion redundant.

(c) In exercising its discretion, it must have been open to KCDC to consider not only Wakefield's need for the road, but other factors including the views of the community on the appropriateness of the proposal.

(d) The decision as to dedication was not determined by the resource consent process, with the fast-track consent panel clear it had no jurisdiction under the Reserves Act.

(e) Section 111 is less about the administration of a reserve and more akin to other binary decisions in the Reserves Act such as in relation to the revocation of reserves or the change of reserve classifications or purposes in ss 24 and 24A. Accordingly, ss 3, 23 and 40 of the Act have more limited application. While a reserve must be administered in

accordance with its classification, this has less direct bearing on decisions such as revocation or change in classification.

[44] The dispute in this case relates to the extent of discretion available to KCDC under s 111 of the Reserves Act. The contention that this Court must resolve is what considerations the Council must have had regard to in deciding, as it did, not to resolve to dedicate Lot 72 as a road here.

[45] Turning to s 111 itself, which I outline at [29] above, it is also important to consider s 111(2) which again states:

> (2) for the purposes of this section the term **road** includes any road, street, access way or service lane; and the expression **road reserve** has a corresponding meaning.

[46] And, to repeat, in terms of s 111(1), where land is vested in a local authority for the purposes of a road reserve, and the land is required for the purposes of a road, the land may be dedicated as a road by resolution of the local authority. That dedication clearly, as s 111(2) sets out, may be for the road reserve to be dedicated as a road itself but also it may be dedicated as a street, access way, or service lane. Obviously some discretion exists with that particular decision choice.

[47] Further, it does not seem that Parliament has provided any significant comment or assistance to infer fully the purpose of this s 111.

[48] Mr Iorns, for Wakefield, accordingly, suggests that Parliament's silence here highlights the mundaneness of s 111. He suggests that local authorities are expected to dedicate road reserves as roads in the ordinary course of their responsibilities, typically by way of an uncontroversial decision made when the appropriate need arises.

[49] On this aspect, Mr Iorns suggests too that the matter before the Court now is unusual only because the KCDC was not the resource consenting authority for Wakefield's main subdivision application for resource consent. Rather, Wakefield was granted a resource consent by the EPA under the CFTCA.

[50] Also, I need to note that it does not seem that s 111 has received specific judicial attention in the past.

[51] What is clear however, is that s 111 can only be triggered if a road reserve exists. The Reserves Act has many references to requirements to observe the purposes for which a local purpose reserve is created.[12] In the present case, there can be no question that the purpose of roading is the reason Lot 72 was initially vested as a road reserve.

[52] With this in mind, I am satisfied that given the inherent connection and nexus between s 111 and the stated purpose of this established road reserve, the discretionary power (with the use of the words "the land *may* be dedicated as a road") must be a constrained discretion within the purposes of the Reserves Act.

[53] There can be no question that the Reserves Act is designed to reinforce the requirement that administrating bodies like the KCDC here must carry out their powers relating to local purpose reserves for the specific purpose for which that reserve is classified. In relation to a road reserve, in my view, the essential question for the Council, as decision-maker, must relate to whether the land is required and can appropriately in the circumstances of the case be used for a road or accessway or service lane, as the purpose for which it is held. Otherwise, ss 24 and 24A of the Reserves Act provide the ability to change the classification or purpose of a reserve such as the road reserve here by way of a separate notice to meet any genuinely altered view a Council may have related to that land. Clearly, that issue is not relevant in the present circumstances here.

[54] Before me, Mr Iorns, for Wakefield, suggested that the Reserves Act effectively establishes a system of statutory trusts to hold and deal with land for specific purposes, and it did not empower local authorities as decision-makers to treat the land as their own for whatever purposes that they saw fit. I agree. Those discretions and powers, he suggested too, were limited by the stated purpose for the

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[12] In the Reserves Act by way of example, ss 14, 16, 23, 26, 26A and 40, all refer to the "particular purpose for which a reserve is classified" and some such as s 16(8) that the reserve is to be held for use and development etc for that purpose "and no other".

reserve, and this is clear from those many references in the Reserves Act to the use of local purpose reserves for their purpose and in accordance with their specified classification when they were created as I have noted above. Again, I agree.

[55] Having said that, I accept fully that in a case such as the present, proper respect must be given to the roles, responsibilities and decisions of a democratically elected Council but of course this must be limited in situations where, like here, they have discretions available to them to be properly exercised under relevant legislation.

[56] A core question must be what considerations the KCDC councillors were required to have regard to in deciding whether to grant or refuse the resolution sought to dedicate the road reserve as a road. All parties, it seems, have accepted that a road of some sort was *required* to provide access to Wakefield's proposed subdivision development. Those councillors however, who voted against a dedication of Lot 72 as a road, clearly considered they had the discretion to weigh into their deliberation factors which seem to be disconnected with the Reserves Act. It is suggested too that these included their desired outcome on resource consenting issues for the Site. This had already been fully addressed however.

[57] This is not a case where the Court is entitled to substitute its assessment of the merits of the dedication refusal decision for that of the KCDC. Rather, it is a situation where the Court must consider the limits of the Council's discretion.

[58] I accept in this case that, in general terms, councils may need to have some discretion in considering when and how to use road reserves for the purposes of a road. By way of example, such situations may arise, as suggested by Mr Iorns, where a council is considering a proposal to expand the number of lanes on one of their roads into a road reserve and this might involve extensive consideration as to whether that road is required as part of the wider assessment of a roading option. Clearly councils have discretion under the Local Government Act 1974 to control, upgrade and develop their roading network so some degree of discretion over how they might use road reserves under their control is obviously a natural fit within this system.

[59] Further, discretions might arise too in appropriate circumstances over whether a road reserve, instead of being vested as a road, could be dedicated as an accessway or service lane in terms of s 111(2).

[60] In the current situation however, it is abundantly clear from the evidence that all of the KCDC Council officers, the road controlling authority NZTA, and almost all of the expert advisors who provided evidence before the Council, recommended the use of Moy Place and Lot 72 to provide access to Wakefield's proposed subdivision, and went further to suggest that any request to connect the subdivision to the Main Highway directly would be dangerous and inevitably denied by the relevant authorities. All this, as I see it, reflects the earlier recommendation at the time of the 2007 Fleming Development to design Moy Place with a greater access width and other road features for this exact future purpose.

[61] It is also clear to me that the KCDC and its councillors here, as the administering body of the road reserve, held that land at Lot 72 specifically for its intended purpose, a road reserve. The discretion Council had in terms of s 111 of the Reserves Act was to an extent limited by the vesting of the reserve for future connection to any later residential or other development in this particular area.

[62] I am satisfied in terms of the Reserves Act that the purpose of the particular road reserve here, to an extent, must constrain and limit the local authority as a decision-maker in respect of that reserve.

[63] There is no doubt, as I see it, that the specific purpose or classification of a local purpose reserve has been given major prominence by the courts in considering various disputes over other provisions of the Reserves Act. References abound throughout the Reserves Act to a reserve being strictly held for the purposes for "which it is classified". Again, I express my agreement with the suggestion that this reflects the nature of reserves under the Reserves Act as a system of statutory trusts that enable land to be held for specific named purposes.

[64] In the present case, I conclude that despite formal directions given to them, councillors did not correctly direct themselves to the law relating to s 111. From the

evidence, it is clear they actively considered matters (that I will more fully address below) that were not related to the Council's function as the administering body of the reserve. Whilst the views of some members of the community (particularly those living nearby) can be relevant, it is always for the Council to make its decision and exercise any discretion it has in accordance with the purpose for which the reserve is held. It seems to me that this test was not one the KCDC applied here, and as such, an error of law occurred.

[65] Orders are to follow setting aside the 28 November 2024 decision of the KCDC (confirmed on 30 January 2025) and a direction made that the KCDC is to reconsider its decisions under s 111 in accordance with the terms of this judgment.

[66] Effectively, this disposes of the present review application which succeeds. Notwithstanding that, I will briefly consider the other grounds advanced by Wakefield which I now do.

Errors of fact

[67] Under this ground for review, Wakefield alleges that Councillors Wilson and Kofoed made significant errors of fact in the debate and discussions on 28 November 2024 preceding the Council's dedication decision:

(a) that there was a viable alternative access option; and

(b) that the KCDC had a green belt policy.

[68] Errors of facts are not necessarily unlawful. To establish an error of fact as a ground of review, an applicant must demonstrate that the error was material to the decision. Recently, the Court of Appeal has determined that a material error of fact may be sufficient to establish a ground of review if:[13]

(a) there is an error in respect of an established fact which affects the legality of the decision and warrants the court to exercise its direction,

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13 *Health and Disability Commissioner v S* [2025] NZCA 190 at [29]–[31] and [143].

for instance an error of fact in respect of a mandatory relevant consideration; or

(b) the 'error of law' threshold from *Bryson v Three Foot Six Ltd* is met, which overlaps with the unreasonableness ground of judicial review.

[69] It is clearly a high threshold for an applicant to meet to establish a material error of fact. In particular, Mr Beverley, for KCDC, maintains here that the alleged errors of fact are based simply on comments made during a wide-ranging discussion among the councillors. Many different matters were raised and discussed, and he suggests care is needed to ensure the focus is not only on certain extracts from those discussions.

[70] In response, Mr Iorns, for Wakefield, suggested however, that these mistakes of fact in the councillors' decision-making process were from repeated assertions that were completely untenable on the available information. The councillors were seeking to declare facts as true that were not. In particular, he noted:

(a) The green belt policy or open space strategy – the comments raised by residents and relied on by Councillor Kofoed were that the use of the reserve was contrary to this policy. The policy does not exist, however. Even if it is meant to be a reference to the open space strategy, this Lot 72 reserve is not included in that strategy. The matters raised in the discussion were not accurate nor relevant.

(b) The alternative main highway access – it seems Councillor Wilson discussed this at length. It received significant focus in the debate despite being realistically impossible. The inconvenient disapproval from the NZTA as road controlling authority and the clear disapproval also from KCDC's traffic regulators, it seems did not stop some councillors from centring on the viability of this alternative in their consideration.

[71] That all this was ostensibly taken into account, especially by the councillors who voted against the dedication, according to Mr Iorns, provided the foundation of their position which was in error.

[72] In reply, none of this, according to Mr Beverley, meets the threshold for a material error of fact. There is no evidence, he claims, that any of the comments had

a material impact on the decision of the councillors more generally, and in any event, the final Council decision reflected the exercise of their overall discretion.

[73] I need to say here that I am not entirely convinced by those arguments Mr Beverley advances. I do, however, accept the high threshold that exists to be met by Wakefield to establish a material error of fact.

[74] Notwithstanding that, it does appear to be the position in this case, that both councillors have ignored or disregarded the overwhelming weight of factual and technical evidence before the Council on these matters. Arguably too they may well have exacted quite some influence on other councillors over these issues.

[75] Suffice to say that it does seem here that erroneous and repeated assertions were advanced by these councillors. They purported to be deliberate findings about the circumstances which had no evidential basis, were wrong, and they were integral to the decision ultimately made by the councillors. Those wrong assertions of fact on the evidence before me clearly played a material part in the final Council decision and the reasoning employed to get there.[14] Despite the high threshold required here, I tend to the initial view that there is enough on the evidence before the Court to show that a material error of fact has been established here.

[76] I have addressed this error of fact argument only briefly. In my view however, it does provide a degree of support for the conclusion I have reached as noted at [64] above that Wakefield's review application here is to succeed.

Procedural impropriety

[77] Under this head, Wakefield argues that the six councillors who voted against the dedication decision abused their discretion under s 111 of the Reserves Act. It is said that in the 28 November 2025 Council meeting, Mayor Holborow repeatedly warned that several of these councillors were wrongly "debating the reasons for the consent", and stressed to all councillors that:

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14 *ANZ Sky Tours Ltd v New Zealand Tourism Board* [2019] NZHC 925.

> It's not up to us today to go back over the resource consent process and question elements of that. That's not what we're here to do today. That's been through a process, through a panel, and it's reached a conclusion, which is where we sit today.

[78] Mr Iorns, for Wakefield, argues that those six councillors had one primary purpose which was simply to oppose the Wakefield Development generally and also to prevent the development from having access via Moy Place. The councillors' statements in evidence before me, he says, illustrate clearly that these were their main considerations. He contends all this is evidenced by their emphasis on alternative access via the main highway and comments on the merits and need, or otherwise, of Wakefield's development.

[79] All this meant, he argues, that those councillors failed to make a decision that was fair. He says too they acted throughout for an improper purpose, considered irrelevant considerations and failed to consider relevant considerations. Many of these matters relate to that error of law head of judicial review I have addressed from [42] above, but it is useful here to also refer to them with respect to this ground of review.

[80] On that procedural impropriety ground, Mr Iorns does note that, even if a territorial authority's discretionary assessment extends to whether it is appropriate for a road to be dedicated, that assessment must be limited and subject to the overarching purpose of the reserve. The appropriateness assessment cannot be separated from the purpose of the Reserves Act and the focused construction throughout the legislation on giving effect to the *purpose of the reserve*. Any assessment of the appropriateness of the dedication must be assessed against that particular classification of the reserve in question.

[81] Mr Iorns then went on to note the Court of Appeal decision in *Ireland* which he argues reinforces the point that an administering body like the KCDC cannot act for purposes that conflict with the purpose of the reserve.[15]

[82] Finally on this ground, Mr Iorns argued that, as the material before the Court confirms, the six councillors concerned were essentially transparent in their views that

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15 *Attorney-General v Ireland* [2002] 2 NZLR 220 (CA).

they were simply wanting to force a change to Wakefield's already consented development. They were not directed to the proper question before them as to whether the road reserve was required and intended to be properly used for its purpose.

[83] Ultimately Mr Iorns concluded there was procedural impropriety here turning on a proper interpretation of s 111. A "tolerant eye" as argued by Mr Beverley, he stressed, could not justify councillors making decisions that were not based on a proper exercise of the powers of the statute they were called upon to apply. While there is a democratic interest in appropriate cases in allowing a significant discretion, he maintains, and I accept, that factor cannot erode Parliament's sovereign role to set the parameters for local authorities to operate within.

[84] In response, Mr Beverley, for KCDC, noting the importance of the s 111 discretion here, suggested that the reality with local authorities in a situation like the present, is that there must be some latitude (and a "tolerant eye") for broader discussions around the needs of the community and residents when any particular decision is being made. In the end, he argues, the focus here was on both Wakefield's needs (although I have some doubt as to that claim) and the residents' concerns. He maintains too it was after considering both those matters that the Council decision was made not to dedicate the land as road. That was a decision, he suggests, that was open to the Council.

[85] Whilst there may be possible merit in aspects of that argument in certain cases, generally in the circumstances of the case before me, I reject it. What seems to me to be the position in this case, is that the majority of KCDC councillors here did not approach the s 111 decision before them as a decision about a road reserve, but they determined it was a decision about other matters including perhaps the general need for development and how it should occur in Ōtaki. I am clear that the question and decision they were required to address (whether or not this road reserve should be dedicated a road), was not the appropriate forum for that type of decision. That was a decision about other matters that had already been made by KCDC in their District Plan and the EPA in granting the resource consent.

[86] Again, my preliminary view is that this procedural impropriety ground, following very much my conclusions on the error of law ground, is made out. In my view, it would also provide some support to that earlier conclusion that Wakefield's review application here should succeed.

Pre-determination and/or bias

[87] Wakefield's position here in particular is that the decisions of Councillor Warwick and Councillor Kofoed to vote against dedicating the road reserve as legal road were pre-determined and they came to their decisions with a closed mind.

[88] According to Mr Iorns, both councillors throughout had displayed opposition to the Wakefield development proceeding on the basis of the access via Moy Place. Councillor Warwick made submissions to the fast-track consenting panel in opposition. Councillor Kofoed consistently suggested the designation was contrary to a "green belt" policy which did not exist. Mr Iorns adds that many councillors appeared swayed too by this along with the persistent lobbying of the residents of the Moy Place area, and they entered the decision-making process determined to oppose.

[89] Recently, this Court has reiterated the test from the leading Court of Appeal decision on pre-determination. It summarised the law on pre-determination in this way:[16]

> [82] The legal test for pre-determination is the "closed mind" test – that is, whether the mind of the decision-maker was "not open to persuasion" and whether the decision-maker "simply went through the motions" in addressing the statutory criteria for making the decision. What may amount to pre-determination clearly varies. Whether there is pre-determination is a factual question to be established on the evidence and in light of the particular legislative setting.
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> [83] The threshold for establishing pre-determination is a high one. The relevant question to be asked is whether, at the time the decision was made, the decision-maker genuinely addressed themselves to the statutory criteria. Evidence that a decision-maker may have done various things such as holding meetings to discuss issues, requesting further information and spending time reviewing documents is inconsistent with a closed mind and suggests that no pre-determination has occurred in a particular case where these have occurred.

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16 *MKD v Minister of Health* [2022] NZHC 1997 at [82]–83].

[90] On this aspect, several arguments were advanced for Wakefield:

(a) While it is agreed that the resource consent process was a separate statutory process, the councillors who failed to succeed in their opposition in that process, it is suggested, have used their limited power here to achieve their intended outcome. Ultimately, as a question of fact, Wakefield says it does show there was pre-determination. There was a concerted opposition from councillors leading to their road dedication decision here.

(b) KCDC in its submissions, Mr Iorns says, highlights that Councillor Warwick declared she had an open mind in the January 2005 second decision meeting. The mere statement of an open mind does not mean that it existed. Her actions, Mr Iorns suggests, indicate that she had formed her view earlier and had directed herself against the development despite her pending role as a decision-maker. She did not exercise care to approach it with an open mind. He notes too that her colleagues commended her "for going into bat for the residents" right up to the end. It is apparent from the transcript, he maintains, that nothing would change her mind. In any event, it is noted too that, while she made the declaration of an open mind, other councillors did not.

(c) Mr Iorns suggests the councillors concerned did not approach the decision with a preliminary or 'in principle' view on the decision. Rather, he says, they approached it as advocates for particular community interests only (and in particular for the specific Moy Place group rather than the broader Kapiti community interests). They adopted this function despite their role as a decision-maker and so pre-determined how they would vote. In addition, one councillor's expressed focus on "being re-elected" highlights too that they were prioritising their careers over considering the purpose of the decision they were required to make.

(d) And finally, while Mr Iorns said Wakefield appreciates that local politicians will often be advocates of causes, they have a duty to take care when they are decision-makers on particular issues not to close their mind.

[91] In response, Mr Beverley, for KCDC, noted that decision-makers like the councillors here can have pre-existing views,[17] and in any event, to succeed on this ground Wakefield also needs to show *actual* pre-determination from the Council and not just the *appearance* of pre-determination.[18]

[92] Mr Beverley goes on to address the question as to whether the councillors could be seen here to be open minded. He says that in this case, even if there were any pre-disposed views, the question still remained whether the councillors concerned were honestly prepared to change their minds, despite those views. Pre-determination, he suggested, was therefore a different concept to bias and was focused on whether the decision-maker had a closed mind, as opposed to perceptions of neutrality.

[93] On these issues, I accept there is nothing wrong with elected members of Councils forming preliminary or in principle views. The question is whether in this case the councillors approached the decision they were to make with an open mind. Mr Beverley maintains there is no evidence here to support the allegation of closed minds or conduct that would meet the requisite high standard for pre-determination.

[94] Whilst on the basis of all the material before the Court, a possible interpretation of events in this case might support a notion that some of the councillors did approach matters with a pre-determined view as advocates for the suggested "community interest", as I see it, this is not enough here to meet the high threshold test for establishing pre-determination.

[95] Although, given my decisions outlined above, this is not entirely necessary, I express a preliminary view here that there is not enough definitive material before me to establish pre-determination/bias in this case.

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17 *CRREDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA) at 214.
18 *Travis Holdings Ltd v Christchurch City Council* [1993] 3 NZLR 32 HC at 47.

Breach of legitimate expectation

[96] On this ground, Wakefield alleges that, in light of its legitimate expectation, the only lawful decision available to the KCDC here was to dedicate the Lot 72 road reserve as legal road. In particular, Wakefield contends that it reasonably relied throughout on the KCDC's longstanding practice to have road reserves dedicated as legal roads as and when they became available.

[97] Legitimate expectation in administrative law reflects the principle that public authorities should act fairly and reasonably. For such a claim to succeed, the following dual requirements must be met:[19]

(a) an expectation based on an unambiguous promise or past practice; and

(b) factual and reasonable reliance on that promise or practice.

[98] As to the issue of KCDC's "longstanding practice" noted at [96] above, some 14 days after the hearing of this matter, and following a minute I had issued post-hearing on 29 July 2025, counsel filed a joint memorandum dated 7 August 2025 attaching "material" as evidence for this proceeding now admitted by agreement pursuant to s 9(1) of the Evidence Act 2006. That "material" represented a response from KCDC to a Local Government Official Information and Meetings Act 1987 request from parties associated with Wakefield (the OIA Response).

[99] The OIA Response in its Appendix A outlined 17 occasions between 7 September 2001 and 9 December 2009 as the only instances (other than the present Wakefield Development) where the KCDC in the last 15 years had previously considered and in *all* cases dedicated a road reserve as a legal road under s 111 of the Reserves Act. The OIA Response confirms also that, other than the present Moy Place road reserve application (in which, as noted, the KCDC has declined dedication) there have been *no* instances over that 15-year period (for which records are held) where KCDC has declined a request pursuant to s 111 of the Reserves Act to dedicate a road reserve as legal road.

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19 *Comptroller of Customs v Terminals (NZ) Ltd* [2012] NZCA 598 at 125–126.

[100] In support of its breach of legitimate expectation argument here, Mr Iorns contended that Wakefield had relied on that longstanding KCDC practice simply to have road reserves dedicated as legal roads as and when they became available. The operational arm of KCDC too had supported Wakefield Development here, and Council staff had indicated to councillors there was no other feasible access option in this case but to use Lot 72. The 100 per cent successful recent history of s 111 applications made to the KCDC (as confirmed in the OIA Response) is no doubt advanced in support of Wakefield's legitimate expectation argument here.

[101] Although Wakefield's contention is that there is a breach of its reasonable and legitimate expectation here, Mr Iorns does accept that the law in New Zealand on this point is not settled. He notes too there are a number of cases in similar scenarios the application of which he thought might not assist here. In his submissions he conceded too that it may be that, in this case, the Court, in any event, need not delve into this head of claim too much, due to the "overwhelming nature" of the Council errors in other matters he claims were detailed already.

[102] Turning briefly to the detail in this particular ground, I need to say at the outset that I am not satisfied here there was an ambiguous promise from KCDC to Wakefield to justify the expectation said to be relied on. It is clear the past practice of KCDC identified in instances similar to this (as noted above), was always to dedicate a road reserve as a legal road under s 111 of the Reserves Act when presented with that issue. That Wakefield might have hoped that this particular outcome would be one achieved for it in this case, seems clear, but what is also apparent is that alternatives were discussed.

[103] The fast-track consenting Panel of the EPA was also firm in its decision that the road reserve dedication was a separate statutory process outside the Panel's jurisdiction, and a reasonable argument must follow that Wakefield necessarily bore any risk if that road reserve was not so dedicated as road.

[104] My brief conclusion on this aspect is that, again, given my other conclusions above, a decision on this ground therefore is not necessarily required, but in any event

on the material before me, I find this breach of legitimate expectation ground for Wakefield's claim is not made out here.

Breach of natural justice

[105] This ground is an alternative argument advanced by Wakefield which, in light of my above conclusions on the other grounds, does not necessarily arise. Notwithstanding this, for completeness, I will address a few short remarks to this aspect.

[106] As I note at [64] above, I have concluded that despite directions to them, KCDC councillors in this case, did not direct themselves properly to the law relating to s 111 of the Reserves Act, and an error of law occurred. Accordingly, at [65], I signalled that an order was to follow requiring that KCDC be directed to reconsider its decision under that section in accordance with the terms of this judgment.

[107] Notwithstanding that conclusion, Mr Iorns, for Wakefield, contended that in any event KCDC breached natural justice requirements here in that, due to resource consent matters for its proposed subdivision having been considered and granted earlier, it provided no evidence to the Council about subdivision matters or to assist or make the case for or against any alternative main highway road access to that envisaged through the Moy Place road reserve. Mr Iorns maintains that Wakefield approached the dedication decision with KCDC on the basis those matters had already been determined and were outside the scope of the discretion of the Council. And, indeed he notes too that the KCDC Mayor at the Council meeting also attempted to restrict questions that went beyond the issue of dedicating the road. This attempt, it seems, proved entirely unsuccessful however.

[108] Wakefield's position is that, if it is the case that wider considerations which the six councillors who voted against dedication seem to have taken into account were within the scope permitted by the Reserves Act, then it was not given sufficient or any opportunity either before or at that hearing to address those matters including the viability of any alternative access point or arrangements. Mr Iorns says too that Wakefield relied here (it appears to its detriment) on representations made to it by

Council officers about what was relevant information for the councillors to consider in making their decision.

[109] The extraneous factors referenced by councillors voting against the dedication Mr Iorns complains, were matters that he maintains Wakefield was not allowed to comment on, to provide expert evidence about, or for which it could fully address impacts.

[110] Accordingly, Mr Iorns contends KCDC failed to fulfil its obligations here under s 77 of the LGA requiring the identification of all reasonably practicable options to be considered for the objective of the decision, and an assessment of these options in terms of advantages and disadvantages. His complaint is that did not occur here.

[111] Reports from Council officers for the meetings on 28 November 2024 and 30 January 2025 were also claimed to be narrowly constrained to issues over whether the access connection through the road reserve was required for the Wakefield development in accordance with the purpose of that Lot 72 reserve.

[112] Mr Iorns concludes that, although the KCDC decision here required an assessment of matters provided for in the Reserves Act, the decision the councillors sought to make was akin to a consenting decision under the Resource Management Act. This, he maintains, was not appropriate here.

[113] References throughout the material before the Court from the councillors concerned relating to the broader moral choices they were making for residents in their decisions, and even noting their ability to be re-elected at forthcoming elections, according to Mr Iorns, must indicate that those councillors were making a decision in the nature of a political one, and not one based on the wording of the Reserves Act or based on other predictable considerations that Wakefield here could rely upon.

[114] Accordingly, Wakefield's position is that the requirements of natural justice, requiring it to have an opportunity to respond to all those other ancillary matters, were not met here. In response, Mr Beverley simply denies that KCDC breached the

principles of natural justice, noting that Wakefield was given the opportunity throughout to be heard before the Council before the decision was made.

[115] Notwithstanding this, I need to say that, in my view, there is some merit here in the arguments advanced for Wakefield relating to this natural justice requirement. I say nothing more than that at this point however. For the reasons I have outlined above, no definitive decision on this ground is required.

Irrationality/unreasonableness

[116] At [38](b) of Wakefield's statement of claim, it is pleaded that:

> [38] The respondent (KCDC) failed to make a decision that is:
>
> …
>
> (b) …Reasonable.

[117] And, in Mr Iorns' submissions to me, he broadly contended that, in refusing the dedication, KCDC here failed to make a decision that is reasonable, and accordingly, it is "plainly wrong".

[118] On these aspects, as I note at [24] above, so far as the "plainly wrong" assertion is concerned, it is useful to repeat that:

> …This Court cannot be asked to reconsider the merits of the decision, nor can it be expected to fetter the KCDC's discretion by directing that there is only one decision available.

[119] Notwithstanding this, authorities have noted that "unreasonableness" may be addressed in appropriate cases, but, in considering whether or not a decision was "unreasonable" in judicial review, the threshold to be met is a very high one. The notion has developed of "Wednesbury unreasonableness". This has resulted from the English Court of Appeal decision in *Associated Provincial Picture Houses Ltd v Wednesbury Corp*,[20] which at [229] states that a decision is unreasonable only if it is:

> …so absurd that no sensible person could even dream that it lay within the powers of the authority.

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[20] *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1KB223 (CA).

[120] Importantly however, as Joseph on Constitutional and Administrative Law notes at [24.2]:[21]

> Variable intensity review disabused the notion of a monolithic standard of unreasonableness but it also suffers from several imperfections. It is seldom successfully pleaded in its own right. The ground typically comes into play only after other reviewable errors in the decision-making are uncovered. A finding that a decision was unreasonable is typically a surrogate finding based on reviewable errors established under illegality or procedural impropriety. A court might add unreasonableness to its findings to denounce the decision-making and mark the court's disapproval.
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> [citations omitted]

[121] In this case, Wakefield's position is essentially that the unreasonableness of the KCDC decision lies in a suggested reality that outsiders would not expect a statutory authority such as the Council to use its power to "cohest" a change councillors wanted in an established resort consent for an approved subdivision even, if this was not possible in all the circumstances. Mr Iorns contends in this case, there was an active disregard by KCDC councillors first, for the roading authorities' refusal to allow access to the Wakefield subdivision off the Main Highway and secondly, to properly consider traffic safety issues that had necessitated the use of Moy Place, and this must highlight that the Council decision was unreasonable. He argues that the evidence of the Council meetings concerned showed that councillors were not opposing the roading itself but rather they were opposing the subdivision development, the developer and the use of the land, and therefore attempting to use some general power to "control what people do in their district", a power that Parliament had not given them.

[122] Whilst I accept there is something in those arguments advanced for Wakefield, it is true here that the option to decline to dedicate the road reserve as road was one included in Council reports (although not recommended). The benefits and risks of each option were discussed and ultimately it was the non-recommended Option B that was taken by the councillors in their majority decision.

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[21] Philip A Joseph: Joseph on Constitutional and Administrative Law, 5th ed, Thomas Reuters New Zealand Limited.

[123] Overall, however, it does seem to me by way of a preliminary observation that, although the actions of the councillors here must be open to some question, the high threshold for Wednesbury unreasonableness has not been met in this case.

Result and orders

[124] For the reasons I have set out in this judgement:

(a) Wakefield's application for judicial review is granted on the basis that Wakefield has succeeded on its first cause of action that an error of law has occurred here (assisted to some extent by my tentative conclusions that the second cause of action—errors of fact—and the third cause of action—procedural impropriety—would also provide some support to that conclusion). Orders are appropriately made here.

(b) There are, accordingly, orders:

- setting aside the decisions of the KCDC of 28 November 2024 confirmed on 30 January 2025 not to dedicate the Lot 72 road reserve as a legal road; and

- directing the KCDC to reconsider the decisions in accordance with the terms of this judgment, including the requirement to take into account, as a critical factor under the Reserves Act, the purposes for which the road reserve was created.

Costs

[125] My preliminary but non-binding view on costs is that Wakefield as the successful party overall should be entitled to an award of costs here, perhaps on a scale costs basis.

[126] I encourage the parties and their counsel to liaise to agree any question of costs. If they cannot be agreed then memoranda on costs (five pages maximum) may be filed and served sequentially within 30 working days of this judgment. The Court will thereafter determine costs on the papers.

Gendall J

Solicitors:
Upper Hutt Law Limited, Upper Hutt for Applicant
Buddle Findlay, Wellington for Respondent