IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA637/2024
[2025] NZCA 578

BETWEEN	LISEL BRITTA HAMILTON Appellant
AND	HENRY ALLAN FOX AND MARIE PATRICIA MUHL First Respondents
	NATHALIE FREDERIQUE GIRAUDON AND EMMANUEL STAUDER Second Respondents
	JONATHAN ROBERT SMITH, BEVERLEY ANN WALLS AND PETER MARK WALLS AS TRUSTEES OF THE P M & B A WALLS FAMILY TRUST Third Respondents
	MICHELLE HELEN SNAPE Fourth Respondent
	PHILIP LAURENCE LEES Fifth Respondent
	DONALD GORDON MICHAEL AND KAREN HILDA MICHAEL AS TRUSTEES OF THE K & G MICHAEL FAMILY TRUST Sixth Respondents

Hearing:	21 May 2025
Court:	Hinton, van Bohemen and Cull JJ
Counsel:	M J Tingey for Appellant J M Hanning and T C Daley for Respondents
Judgment:	31 October 2025 at 12:00 pm

JUDGMENT OF THE COURT

A The respondents' application to adduce further evidence is granted.

B The appeal is allowed to the extent that the sum awarded for compensation is increased from $10,529.74 to $50,000.

C The appeal is otherwise dismissed.

D The respondents must pay to the appellant one set of costs for a standard appeal on a band A basis, reduced by 50 per cent, together with usual disbursements.

E Costs in the High Court are to be determined by that Court in light of this judgment.

REASONS OF THE COURT

(Given by Hinton J)

[1] This appeal relates to an application for access to landlocked land under s 328 of the Property Law Act 2007 (the Act). On 30 August 2024, the High Court made orders granting access to hillside properties owned by the respondents in Wainui Main Road, French Farm, Canterbury via a driveway, that had been used by the respondents for some years and at its start passed over the lower portion of the appellant's property.[1] After the appellant purchased her property she identified that the driveway was not within easements granted by her predecessors some years before and took issue with the respondents' access. The High Court ordered access on the condition that the respondents pay the appellant the sum of $10,529.74 as compensation.[2]

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1 *Fox v Hamilton* [2024] NZHC 2479, (2024) 25 NZCPR 792 [judgment under appeal] at [57].
2 At [57(e)].

[2] By the time of the High Court hearing the appellant did not dispute either that the respondents' properties were landlocked or that the proposed right of way easements would provide reasonable access to those properties.[3] The orders sought had been opposed both in the appellant's notice of opposition and in written submissions, but the opposition was withdrawn prior to the hearing.[4] The judgment therefore focused entirely on the issue of compensation.[5]

The appeal

[3] The appellant appeals on two grounds. First, she says that the High Court had no jurisdiction to make the orders, as the easements granted in the judgment did not unlock the respondents' properties. Rather it gave them access to either private land over which the respondents have no right of access, or gave them access to a "road reserve" in front of the neighbour's property which the respondents also do not have the right to access.

[4] Alternatively, the appellant says that the compensation ordered of $10,529.74 was not reasonable. It gave no value to the improvement to the respondents' properties from having legal vehicle access. She says the compensation sum should have been at least $66,000.

Jurisdiction

[5] As follows from the above, jurisdiction was not at issue in the High Court and so has to be considered afresh.

Approach

[6] Section 328 of the Act relevantly provides:

> **328 Court may grant reasonable access to landlocked land**
>
> (1) A court, on an application under section 327, may—
>
> (a) make an order granting reasonable access to the landlocked land; and

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3 At [7]–[9].
4 At [8].
5 At [9].

(b) for that purpose, specify in the order that—

(i) any other piece of land (whether or not adjoining the landlocked land) must be vested in the owner of the landlocked land; or

(ii) an easement over that other piece of land must be granted for the benefit of the landlocked land.

…

[7] Although the appellant consented to, or at least did not oppose, the making of orders under s 328, the respondents acknowledge, and we agree, that parties cannot consent to the making of orders which are otherwise lacking jurisdiction, and that issues as to jurisdiction may be raised at any time.[6] The respondents also acknowledge that an order granting access under s 328 will be without jurisdiction if it does not, in fact, grant "reasonable access".[7]

[8] The issue as to jurisdiction is, therefore, still liable to appeal.

[9] However this does not mean the issue is at large. The respondents are not under a positive obligation to address matters which were not in dispute or which were agreed.

[10] Having raised the issue of jurisdiction, the onus is on the appellant to persuade the Court that, as they now submit:

(a) the easements granted in the judgment do not give the respondents access to a public road but to private land which the appellant refers to as RS4802; and/or

(b) the easements granted in the judgment do not give the respondents access to a public road over which the respondents have a right of access as they do not have the neighbour's consent to make use of the

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6 *New Zealand Apple and Pear Marketing Board v Apple Fields Ltd* [1989] 3 NZLR 158 (CA) at 166 per Richardson J.

7 *Squally Cove Forestry Partnership v Wagg* [2013] NZCA 463, [2013] 3 NZLR 793 at [50]–[51].

road reserve in front of the neighbour's property, as the appellant says is required by *Hajnal v Asmussen*.[8]

[11] We agree with the respondents that enquiries into whether or not there is any defect in jurisdiction must be conducted on the face of the record of the court below.[9] In *Westminster Bank Ltd v Edwards*, an appeal was allowed by the House of Lords on the basis that "there were no sufficient materials before the Court of Appeal to support the ruling that [the Court below lacked jurisdiction]".[10] Lord Wright then went on to say that:[11]

> … Even if the Court of Appeal were disposed to think that the admission may have been to some extent based on a particular construction of the statutory definition which in their judgment was not justified, the court could not act on that view without more. The facts would need to be investigated on that footing and the whole matter reopened, but, as things stand, such a course would not be admissible. The objection to the jurisdiction could not be taken unless it was patent or apparent on the face of the record. …

[12] The appellant bears the onus of satisfying us that the High Court was wrong.[12] If we are unable to make up our minds, then the decision must stand.[13]

Analysis

[13] First and foremost, the suggested lack of jurisdiction is not apparent on the face of the High Court record.

[14] The key document showing the relevant parcels of land and the shared driveway is a Site Survey Plan (the Survus Plan) prepared by Frizzell & Associates Ltd trading as Survus Consultants. The Survus Plan is attached as an appendix. DP61586 (the title plan which includes the appellant's property) shows the area to the north east of the fourth respondent's property, which includes the light blue hatched triangle, is not private property.[14] Rather, it is a part of Wainui Main Road. On the

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8 *Hajnal v Asmussen* [2010] NZCA 410, (2010) 12 NZCPR 169 at [31].

9 *Westminster Bank Ltd v Edwards* [1942] AC 529 (HL) at 539 per Lord Wright. In this case we have also allowed additional evidence from the respondents.

10 At 533 per Viscount Simon LC.

11 At 539 per Lord Wright.

12 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [4].

13 *Shotover Gorge Jet Boats Ltd v Jamieson* [1987] 1 NZLR 437 (CA) at 440 per Cooke P.

14 The fourth respondent's property is Lot 1, DP15502. The driveway passed over a very small portion of the fourth respondent's title, with no easement, but she consented to the application.

face of the Survus Plan the registered easements do provide access from the respondents' properties to the road and do, as a result, unlock their land.

[15] The appellant says this is incorrect. In terms of her first argument (set out at [10(a)] above) she says that there is a discrepancy between the boundary of RS4802 as depicted on DP61586, and the boundary of that parcel of land depicted on the Survus Plan, such that the easements actually cross part of RS4802, which is private property, not owned by a party to this case.

[16] The respondents submit that the appellant's reliance on RS4802 is misplaced as the land parcel described as RS4802 no longer exists, and did not exist at the date the proceedings were filed.

[17] The respondents sought leave to adduce further evidence by way of an affidavit of Mr Christopher Benns, a survey operations manager at Survus Consultants, annexing records from the land titles register showing that RS4802 no longer exists and that the relevant parcel of land to which the appellant refers is now legally described as Lot 2, DP416191.[15] Surprisingly, the application for leave was opposed by the appellant. However, in the circumstances of a new ground being raised, it is clearly appropriate to admit the evidence.

[18] We agree with the respondents that the appellant's submissions on this point are misconceived.

[19] The land parcel RS4802 no longer exists and was in fact subdivided around 2009. The relevant part of that parcel of land is included in the land that is now legally described as DP416191. And, when comparing DP416191 and DP61586, it becomes clear that the situation is as depicted in the Survus Plan. The light blue triangle is not private property.

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[15] Court of Appeal (Civil) Rules 2005, r 45. We note also that, on the Survus Plan, it depicts Lot 2, "DP419191", rather than Lot 2, DP416191. From other documents filed, it seems clear that this was a mistake.

[20] We agree with the respondents that the discrepancy appears to be contrived. Simply put, the appellant's submissions are at odds with the contemporary records of title and rely on an instrument that no longer exists.

[21] The appellant has therefore failed to satisfy us that, on the basis set out at [10(a)], the High Court's jurisdiction to make the orders should be impugned.

[22] Further, *Squally Cove Forestry Partnership v Wagg*, relied on by the appellant, can be distinguished on its facts because in that case there was unequivocal evidence before the Court which proved that the order made in the High Court did not in fact grant reasonable access.[16] This Court was able to reach that conclusion on the face of the record, notwithstanding that lack of jurisdiction was not an issue on appeal. That is not the case here. As we have said, on the face of the record the easements granted do not give the respondents access to private land under RS4802, but rather give access to a public road.

[23] In terms of the appellant's alternative argument, set out at [10(b)] above, we are not clear what is meant by "road reserve" in the context of this case, but in any event, we have not been provided with any evidence that the area to the north east of the fourth respondent's property is a "road reserve". The appellant has therefore not satisfied us to that effect.

[24] Further, we do not agree that *Hajnal* creates an obligation in respect of the use of a "road reserve". As the respondents submit, the comment from the Court of Appeal in that case that "[i]n circumstances where a neighbour is seeking to make use of the road reserve in front of another property, the owner of that other property must consent" was peculiar to that case.[17] In the High Court a roading engineer had given evidence that the Nelson City Council advised him it required the consent of the neighbouring owner where access passed across the frontage of their property over a road reserve.[18] But there is no such evidence in this case and the relevant territorial authority is not the Nelson City Council, but rather the Christchurch City Council. For

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16 *Squally Cove Forestry Partnership v Wagg*, above n 7.

17 *Hajnal v Asmussen*, above n 8, at [31].

18 *Asmussen v Hajnal* (2005) 6 NZCPR 208 (HC) at [47(f)]. This was at an initial hearing in the proceedings: see *Hajnal v Asmussen* (2010) 12 NZCPR 169 (HC) at [5].

practical and legal purposes the light blue triangle appears to be a part of the public road.

[25] The appellant has not satisfied us that the easements granted in the judgment do not give the respondents access to a public road. On the face of the evidence provided to the High Court, and adduced in this Court, we are satisfied the easements do unlock the respondents' land.

[26] As a result, we find that the Court had jurisdiction to make the orders under s 328.

Compensation

Principles

[27] Once satisfied it is appropriate to grant reasonable access to landlocked land under s 328 of the Act, the Court has a discretion under s 330 to impose conditions. Relevantly, s 330(1) provides:

> **330 Court may impose conditions in making order for reasonable access**
>
> (1) In making an order under section 328, a court may impose any conditions it thinks fit, including conditions relating to the following:
>
> (a) the payment of reasonable compensation by the applicant to any other person:
>
> …

[28] Like its predecessor, s 330 has the general object of striking a reasonable compromise between property owners who cannot agree.[19] This is by allowing land (or a right of way) to be taken, but in exchange for compensation. Section 330 does not, however, contain any statement about the manner in which compensation is to be assessed. What has to be discovered is the value of the interest to the defendant with all of its existing advantages, possibilities and potentialities. This is the market value, being the price at which a willing seller would sell, and a willing buyer would buy.[20]

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19 *Jacobsen Holdings Ltd v Drexel* [1986] 1 NZLR 324 (CA) at 333 per Somers J.

20 At 333–334 per Somers J, 328–329 per Cooke P and 335 per Casey J.

[29] The leading authority on compensation is this Court's decision in *Jacobsen Holdings Ltd v Drexel*,[21] already referred to above. The key propositions were helpfully summarised by Mallon J in *Dooley v Sturgess Consulting Ltd*:[22]

> (a) Compensation need not always be ordered (it is discretionary).
>
> (b) However it will ordinarily be fair to order compensation, because the defendant (the provider of access) is required by the Court to provide something of value to the plaintiff (the owner of the landlocked land) and potentially to the detriment of the defendant.
>
> (c) The amount of compensation is the fair consideration which a willing buyer and willing seller would agree to in a friendly negotiation.
>
> (d) In ordering compensation it is relevant to consider both the benefits and detriments to either side in providing the access because they are factors a willing seller and a willing buyer would take into account.
>
> (e) But the amount ordered must be "reasonable" in the circumstances and not an amount which is forced to "unreasonable heights by necessity".

[30] We note, with regard to the first and second propositions above, that there appear to have been very few cases in which compensation has been declined.[23]

[31] In *Dooley*, Mallon J also concluded, having reviewed various examples from the case law, that the following will ordinarily need to be paid by the plaintiff by way of compensation:[24]

> (a) The costs associated with obtaining legal access. This will include the cost of constructing or upgrading the access and legal costs directly associated in granting the legal access. Legal costs up to the issue of proceedings are also potentially recoverable.
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> (b) All of the diminution in the value of the defendant's land attributable to granting legal access to the plaintiff, if there is any such diminution properly proven on the evidence.

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21 *Jacobsen Holdings Ltd v Drexel*, above n 19. As is suggested, this decision has been applied in various other cases: see, for example, *Cleveland v Roberts* [1993] 2 NZLR 17 (CA) at 27; *Brankin v MacLean* [2003] 2 NZLR 687 (CA) at [103]–[111]; *Wratt v Harnett* (2003) 5 NZCPR 179 (HC) at [236]–[238]; and *JT Jamieson & Co Ltd v Inland Road Ltd* [2013] NZHC 3313, (2013) 16 NZCPR 237 at [89]–[90].

22 *Dooley v Sturgess Consulting Ltd* [2016] NZHC 1905, (2016) 18 NZCPR 400 at [20] (footnote omitted).

23 In *Reikorangi Forest Ltd v Charman* HC Wellington CIV-2004-485-1255, 15 October 2007 at [75] the Court declined compensation because nothing was required to be given up. Unusually, the defendant in that case sought to block access to the plaintiff, but did not seek to do so with respect to five other landowners.

24 *Dooley v Sturgess Consulting Ltd*, above n 22, at [38] (footnote omitted).

(c) Around 20–36 per cent of the increased value of their land from obtaining legal access.

[32] That being said, it is neither possible nor desirable to lay down any absolute rules.[25] The assessment is not an exact science.[26] Valuation issues, themselves not an exact science, are only one consideration. Overall, the Court is seeking to arrive at a fair price for the legal access in the particular circumstances of the case.

Analysis

[33] The Judge was satisfied that compensation should be paid. He found that the best evidence of what "a willing buyer and a willing seller would agree to in a friendly negotiation" was the sum of $10,529.74 "reached by the parties in their settlement agreement in August 2023", and calculated directly from the area of the appellant's land affected by the extended easement.[27]

[34] The appellant submits that the Judge did not correctly or fairly assess quantum as he took no account of the increased value of the respondents' land from obtaining legal access. The appellant says the Judge also improperly limited the evidence she could adduce with regard to the increased value of the respondents' land.

[35] Despite leave having been reserved as an indulgence to enable the appellant to file valuation evidence as to the respondents' properties, none was filed. In February 2024, some three months before the hearing, the appellant sought to adduce, amongst other evidence, the 2022 rating valuations of the respondents' properties by way of a list of figures only, these totalling some $5,660,000. The Judge declined to allow her to do so.[28]

[36] While we can understand the Judge's frustration, in the circumstances of this case we consider that he should have allowed the rating valuations to be adduced and could have required print outs from the Council website, rather than the list of figures

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25 *Reynolds (as trustees of the F & J Reynolds Trust) v Parklands Properties Ltd* [2021] NZCA 394, (2021) 22 NZCPR 516 at [163].

26 *Dooley v Sturgess Consulting Ltd*, above n 22, at [40].

27 Judgment under appeal, above n 1, at [55(a)–(b)].

28 *Fox v Hamilton* HC Christchurch CIV-2023-409-123, 14 February 2024 (Minute of Osborne J) at [8].

taken from it by the appellant. Although disadvantageous to the respondents, admission of this evidence was not unfair. The evidence was publicly available, credible and cogent, at least as a rough indication of value, or proportionate value. The respondents were also calling expert evidence from Mr Mark McSkimming, registered valuer, as to the value of the appellant's property. He had looked at a number of properties in the area and would have been in a position to provide a broad comment on the rating valuations generally.

[37] We note that Mr McSkimming's report assessed the value of the appellant's property (which was land only), as at 31 July 2023 at $200,000. He noted that the rating valuation for the property was $220,000 in late 2020 and $340,000 as at 1 August 2022. He also said that the peak of the market was in the early part of 2022.

[38] As it was, although questioned by both the appellant and the Judge, Mr McSkimming avoided answering questions as to the effect of the legal easement on the value of the respondents' properties. His most generous acknowledgment was that "potentially someone would pay a little more because of [access] — got that [assurance] of access". He said "[s]ome new purchaser might think there's possibly an impact on the value".

[39] However, it was abundantly plain from the evidence of the respondents themselves that without the easement sought, there would be a very significant impact on their properties. Without the easement, not only would they have no vehicular access, but even pedestrian access would be extremely difficult, involving parking a car near the main road and walking some 700 metres along the narrow verge. Most significantly, the case on appeal included an affidavit of Mr Henry Fox, one of the first respondents, filed in support of an application for an interim injunction to prevent the appellant blocking access over the land not included in the existing easement. The affidavit annexed an email written by the appellant's husband dated 17 March 2023, quoting an email from the respondents' solicitor as follows:

> We note that our clients will suffer significant losses in terms of lost market value, and lost amenity, should you obstruct the equitable easement to their

> properties. Lost market value alone could exceed 20% for each of our clients. …

[40] The appellant was disallowed from cross-examining Mr McSkimming about that evidence following an objection by counsel for the respondents. The transcript does not record the argument or the reason the cross-examination was disallowed, but it appears to have been based on a claim of privilege.

[41] The email does not appear to be privileged as the solicitor is recorded as saying it will be provided to the Court if the injunction application is required, in support of indemnity costs. Nor does it appear to fall within the category of a Calderbank offer. Further, it appears to us that any claim to privilege was waived under s 65 of the Evidence Act 2006 when Mr Hamilton's email was relied on in support of the interim injunction application. The respondents cannot be allowed to "have [their] cake and eat it" — they cannot rely on particular evidence for their application and, at the same time, claim that such evidence is privileged when the opposing party seeks to rely on it.[29] We therefore consider that the appellant's cross-examination should have been allowed.

[42] Strictly speaking, before taking the further evidence into account, the respondents should have an opportunity to respond to it in terms of evidence and submissions. However, in these circumstances we do not consider that necessary. The extract from the email is written on behalf of the respondents. The rating valuations are official records (albeit not presented in that form) and there is strong evidence of significant impact on value. Mr McSkimming had an opportunity to comment on the impact on the respondents' land if the easements were not granted and in effect avoided doing so. Further, impact on value is only one factor to be taken into account.

[43] While recognising the need to be cautious in considering the above evidence, we see no reason to give that evidence no weight whatsoever. If the value of the respondents' properties were $5,660,000, the lost value absent relief could be in the region of $1,100,000 based on the respondents' solicitor's email. Twenty per cent of

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[29] As it was put in *Drive NZ Classic Ltd v Low Volume Vehicle Technical Assoc Inc* [2020] NZHC 396, (2020) 25 PRNZ 389 at [47]. See also *Houghton v Saunders [Privilege]* (2009) 19 PRNZ 476 (HC) at [55].

that figure, being the bottom of the range described by Mallon J in *Dooley*,[30] would result in over $220,000 as compensation potentially payable to the appellant on the basis of the benefit to the respondents alone.

[44] Even if the value of the respondents' properties were *half* the sum of $5,660,000 — in recognition of the disparity between the rating valuation of the appellant's property at August 2022 and the registered valuation at July 2023 — the compensation potentially payable on account of the benefit to the respondents alone, would still be about $110,000. Viewing the evidence overall, that would appear to be a very conservative assessment and still far in excess of the sum awarded by the Judge.

[45] We also do not agree with the Judge that the appellant should be limited to the sum that was apparently agreed but she then declined to commit to in a formal agreement, which it appears was required before the parties were bound. The sum of $10,529.74 was based solely on the potential minimum detriment to her. Taking Mr McSkimming's valuation, the respondents calculated a per square metre value of the appellant's land at $102.93 and multiplied that by the affected area of land, being some 102.3 square metres, to reach the sum of $10,529.74. The respondents did not seek to enforce the agreement, no doubt for good reason, and in fact argued in the High Court that no compensation should be paid.[31]

[46] Importantly, applying the valuation principles set out above, the sum of $10,529.74 was not one that would be accepted by a willing, but not "anxious", seller.[32] This Court has consistently held that compensation must be assessed on the basis of a willing buyer and willing seller.[33] At the time of the informal agreement, the appellant was already in a situation where the cost of the dispute and the threat or risk of costs orders would have left little option but to accede to granting the respondents access, especially if she were to continue with legal representation. We note also that the respondents had a distinct litigation advantage — and therefore

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30 *Dooley v Sturgess Consulting Ltd*, above n 22, at [38(c)]. We are not relying on any actual calculation, but rather treating the figures as indicative.

31 Judgment under appeal, above n 1, at [20].

32 *Jacobsen Holdings Ltd v Drexel*, above n 19, at 335 per Casey J.

33 See, for example, *Hajnal v Asmussen*, above n 8, at [42]; *Lowe v Brankin* (2005) 6 NZCPR 607 (CA) at [38]; and *Jacobsen Holdings Ltd v Drexel*, above n 19, at 328–329 per Cooke P, 333–334 per Somers J and 335 per Casey J.

negotiation advantage — over her. Their properties (or at least some of them) appear to be materially more valuable than hers and they were sharing costs, including valuation costs, between six of them. Just as the amount of compensation is not to be an amount that is forced to "unreasonable heights by necessity",[34] so too must it not be an amount that is forced to unreasonable lows by necessity.[35] As it is, the appellant elected to continue on a self-represented basis, with all of the disadvantages that brought to herself and to the Court, but which made continuing on with the proceeding feasible for her.

[47] We consider all of the following are relevant:

(a) The detriment to the appellant, which is tied up in this case with the informal settlement sum of $10,529.74, calculated from the square meterage lost from the appellant's property. We consider that this is a minimum allowance for detriment. Although the Judge rejected the appellant's submissions about not being able to locate a second dwelling on her preferred platform,[36] there remains a possibility of her options being impacted by the loss of a material proportion of her land. It can be reasonably assumed that granting access to the respondents could cause future detriment to the appellant that goes beyond the bare square metre rate.

(b) An allowance for the potential increase in value of the respondents' properties. Even on a very conservative basis, that allowance could be approximately $110,000.[37]

(c) That six properties are gaining the benefit of legal access.

(d) That there were existing easements which, due to an historical error when they were first registered around 1952, did not fully align with

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34 *Jacobsen Holdings Ltd v Drexel*, above n 19, at 334 per Somers J.

35 The settlement sum is not, in this case, good evidence of what a willing seller would be prepared to sell for. That fact distinguishes this case from *Hajnal v Asmussen*, above n 8, at [50].

36 Judgment under appeal, above n 1, at [50].

37 *Dooley v Sturgess Consulting Ltd*, above n 22, at [38(c)].

the shared driveway. However, the appellant had not historically proceeded on that basis.

(e) That the appellant gained a minor benefit herself from the easement in that there would be legal, rather than informal, access over the existing driveway, in terms of the very minor infringement across the fourth respondent's property.

(f) The respondents undertook to meet the associated costs for registering the easements.[38]

(g) The value of the appellant's property is not high, assuming it to be worth approximately $200,000. Just as the compensation ordered should not be an amount imposed by the respondents, it should also not be a windfall for the appellant. Neither side can notionally hold the other to ransom.[39]

[48] Taking all these factors into account, and bearing in mind that the assessment is not an exact science, we conclude that a total sum of $50,000 in compensation is fair. In the particular circumstances of this case there is a need to be conservative, and the sum of $50,000 represents a payment of only some $8,333 on average per respondent. It will be a matter for the respondents how the order is met.

Costs

[49] The appellant has succeeded. The quantum of compensation to which she is entitled — which was the sole issue before the High Court — has increased materially. On that basis, she is entitled to costs.[40] However, in the circumstances, we consider it appropriate to reduce the appellant's entitlement to costs by 50 per cent.[41] We have particular regard to the fact she was unsuccessful in respect of the jurisdiction ground, that this occupied some time during the hearing, inevitably increasing the costs for the

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38 Judgment under appeal, above n 1, at [6].
39 *Jacobsen Holdings Ltd v Drexel*, above n 19, at 334 per Somers J.
40 Court of Appeal (Civil) Rules, r 53A(1)(a).
41 In *Taylor v Roper* [2019] NZHC 16, (2019) 24 PRNZ 373 at [17] the costs analysis was similarly concluded. See also *Weaver v Auckland Council* [2017] NZCA 330, (2017) 24 PRNZ 379 at [26].

respondents, and that this ground of appeal also prompted the respondents' application to admit further evidence.[42]

[50] Costs in the High Court should be determined by that Court in light of this judgment.

Result

[51] The respondents' application to adduce further evidence is granted.

[52] The appeal is allowed to the extent that the sum awarded for compensation is increased from $10,529.74 to $50,000.

[53] The appeal is otherwise dismissed.

[54] The respondents must pay to the appellant one set of costs for a standard appeal on a band A basis, reduced by 50 per cent, together with usual disbursements.

[55] Costs in the High Court are to be determined by that Court in light of this judgment.

Solicitors:
Helmores, Rangiora for Appellant
Anthony Harper, Christchurch for Respondents

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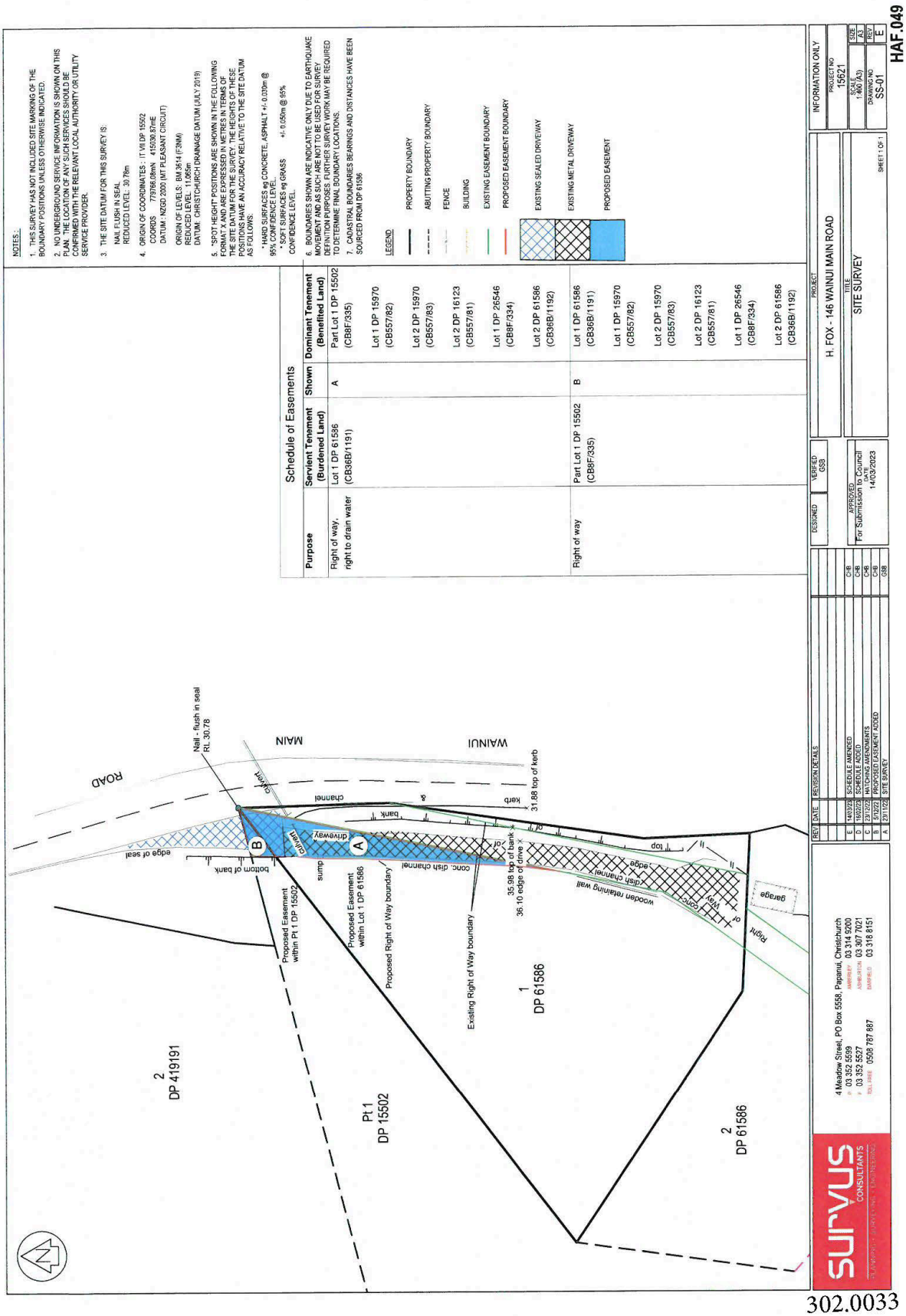
[42] Based on the 50 per cent reduction, we consider it unnecessary to award costs on the application to adduce further evidence.

APPENDIX



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