IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CP 600/87

IN THE MATTER of the Declaratory Judgments Act 1908

BETWEEN THE HAURAKI CATCHMENT BOARD a Catchment Board constituted under the Soil Conservation and Rivers Control Act 1941, of Whittaker Street, Te Aroha

Plaintiff

A N D THE MINISTER OF WORKS of Vogel Building, Aitken Street, Thorndon, Wellington

First Defendant

A N D THE NATIONAL WATER AND SOIL CONSERVATION AUTHORITY of Vogel Building, Aitken Street, Thorndon, Wellington

Second Defendant

Hearing: 3 March 1988

Counsel: E D Morgan for plaintiff
K Robinson for first and second defendants

Judgment: 19.5.88

RESERVED JUDGMENT OF GREIG J

The plaintiff Board is one of the Boards established under the Soil Conservation and Rivers Control Act 1941 (the Soil Act), for each of the catchment districts constituted under the Act. The principal function of every Catchment Board, described in s 126 of the Act, is to minimise and prevent damage within its district by floods and by erosion and to promote soil conservation. The Act describes and grants a variety of powers, rights and privileges to the Boards, among others, to construct and maintain all such works as may be necessary or expedient for the achievements of its principal functions. For many purposes, including the borrowing of money, it is a local authority.

The defendant Authority was established under the Water & Soil Conservation Act 1967 but some of its functions and objects were set out out in the Soil Act. Among other things, the Authority had a general supervision and control of the operations of catchment boards. The defendant Minister had responsibility for the exercise of a number of functions and powers set out in the Soil Act and other legislation, which will be mentioned in the course of this judgment.

On 1 April 1988 amendments to the Acts relevant to these proceedings came into force and, among other things, abolished the Authority and transferred to the Minister of the Environment the various responsibilities, functions and powers of the first defendant. I apprehend that these amendments, though they may have effect on the future dealings of the Board and Government, do not affect the questions or issues to be decided in these proceedings.

They are about the construction of a deed dated 29 April 1982 made between the Board and the Authority which was then constituted as the Soil Conservation and River Control Council. It relates to the funding of the Waihou Valley Scheme which is a substantial work being carried out for river control and soil conservation. The Waihou Valley covers an area of some 2,250 square kilometres. It includes land within five Counties and six Boroughs, with a population in the order of 50,000. The scheme was first projected in 1965. It was then estimated to cost 6 million pounds. It commenced in 1971 and was expected to be continue over approximately 21 years. At the present time the estimate of the total cost is said to be some 136 million dollars.

River control and soil conservation has long been a concern in many parts of New Zealand and not the least in the Catchment District which is now the Board's. At least as early as 1910 a special Act, the Waihou & Ohinemuri Rivers Improvement Act 1910, was passed and under it in the 1920's

a Rivers Scheme was established and operated by central Government. The Board was constituted in 1946 and, having adopted the Piako River Scheme, took over in 1960 the management and maintenance of the Waihou scheme but the costs of maintenance were met entirely by the Crown. As it grew obsolescent, the Government sought the Board's co-operation in setting up a new Waihou Scheme. In 1965 a design report for that scheme was prepared and that is still the basis of the work now proceeding toward conclusion.

One of the powers of a Catchment Board is a power to rate those who obtain the benefit of the scheme, such as the Waihou Valley Scheme, to meet part or all of the cost of it. Because the older scheme had operated for many years at no cost to the farmers and other residents in the Valley, there was little enthusiasm for a new scheme which would provide a further rating burden upon them. There was a lengthy period of investigation and discussion in which the economic benefits and costs of the scheme and the distribution of that cost among those who might benefit was fully canvassed. It was not until 1971, however, that there was agreement reached between the Board and other local authorities and the Government under the general auspices of the Council as predecessor of the Authority. At that stage the scheme was accorded the classification of national and local importance in accordance with the Finance Act (No 3) 1944 which formed part of the Public Works Act 1928. By that statutory measure, when the Minister of Finance and the Minister of Works and Development concurred in the opinion that a work or scheme of development or reconstruction was of both national and local importance, the latter and the local authority involved might then enter into such agreement for the execution of the scheme as might be suitable. The agreement might provide for the payment by the Government of all the costs on terms under which the local authority would repay such proportion as might be required. This was inevitable in the Waihou Valley Scheme because it was impossible for the Board to raise or provide such moneys as

might be required for its local share from immediate revenue or other sources. It was then formally recorded in correspondence with the Board, in accordance with the Government approval, that the Government share, in any event, would be on a three to one rate of subsidy and the Scheme was declared to be one of national and local importance under the 1944 Act. That subsidy was then estimated to amount to $10.5M, based on a total estimated cost of $14M. The construction and development programme was some 20 years long with the substantial lower valley river works being completed in the first 10 years and the rest of the work relating to upper catchment control continuing over a further 10 years. By the end of 1971 all necessary approvals had been given and obtained and so, the declaration being complete, the scheme was able to proceed. Almost immediately some work was commenced and, at the same time, the Board began its lengthy and complicated procedure of classification of the land under the Soil Act which is required as the basis of rating which will be equitable as between ratepayers. The procedure of classification includes rights of appeal for those dissatisfied. Because of the wide area and the numbers involved, the classification took a long time and was subject to some 400 appeals of one kind or another, including some proceedings by way of challenge, one of which was carried through to the Court of Appeal. It was not until the end of 1981 that the classification was concluded and the Board was authorised to institute the rating and thus to receive the income from which the local share of the Board could be contributed to the total cost.

The provisions of the Finance Act 1944 (No 3) contemplate that the parties will enter into an agreement to record the arrangements made for the execution of the works and the sharing of the cost between Government and the Board. Although it was always understood that there would be such an agreement, and in the end it is the agreement later entered into which is in issue in this case, no written agreement was prepared in 1971, although the scheme work began at once and continued from

year to year. Among the reasons for delay, which appeared to be accepted by both parties, was the fact that, until the rating classification had been carried out and the terms upon which the local share could be contributed decided, it was not possible to settle the details of an agreement. Further, it was obvious that to attract the residents and potential ratepayers to approve the scheme, actual construction and the immediate benefits arising from it would be of value and support to the Board. At the end of 1979 the matter was again brought before Cabinet for consideration and further approval. By that stage the estimated cost of the scheme had increased to some $42,400,000. Committed expenditure exceeded $13M, and further additional expenditure had been approved as an interim measure, making a total approved expenditure then of $15,400,000, a sum which exceeded by more than $1M the original 1971 estimate of the total cost of the works. That money had all been paid by Government but one-quarter of it, on the basis of the three for one subsidy, was treated as an advance made in terms of the Finance Act (No 3) 1944, but without any terms being agreed or proposed for repayment or for interest or other conditions. Approval was then given to the total revised estimate as at 1979 prices for the scheme on the basis of the continuation of grants at the basic rate of three to one, and, among other things, approving the continuation of advances by way of loan, but setting out the terms upon which that was made, with capital to be recovered based on the rating to be obtained from the Board by the Board over a period from 1981 to 2001. In the meantime interest was to continue to be deferred and capitalized. Provision was made, it was noted, in the estimates for votes for the raising of the moneys through the House of Representatives in subsequent years, subject to review up to the year 1982/83.

The first written agreement in terms of the Finance Act was now prepared and settled and under date 12 June 1980 a deed was entered into between the Board which, among other things, recorded the terms which had been approved by Cabinet as to the

moneys then advanced amounting to $4,430,000. On 12 March 1981 a further deed was entered into, increasing the loan from $4,430,000 to $5,470,000, to cover further advances made by Government and calculated on the three to one subsidy basis. All the while the classification arrangements and the appeals continued, as did the actual work of construction.

There were a number of matters which continued under discussion between the Government and its officers and the Board and its officers. There had been considerable discussion on a claim by the Board that there should be a suspensory loan granted to it in respect of the sum of $5M as part of the advances being made under the declaration of local and national importance. Another important matter which continued to be discussed was the amount of the rates. The Board had claimed that the maximum level of rating should be fixed at $600,000 per annum although it was clear that that was not sufficient to allow for repayment of the scheme on the calculations made by the Government's advisors. That was, of course, an important matter locally as it affected the amount of the rates and had an influence on the appeals being made against the classifications of a number of the ratepayers. In November 1981 the Government announced that it accepted that the maximum local contribution from rates should be $600,000 per annum, to be calculated in 1980 prices. On this announcement, the remaining appeals were withdrawn. The way was now clear for an agreement to be made and so the matter was put before Cabinet. Cabinet approval was obtained and this, the Minister, notified to the Board by letter dated 9 February 1982. The terms of the approval were in these words:

"(i) the local rating level shall be $600,000 (1970 prices) per annum and that payment is to commence from the beginning of the 1983/84 rating year

(ii) the annual grant will be on the basis of a 3:1 subsidy

(iii) the target completion date of the scheme shall be 1993

(iv) advances up to the time local contributions commence, and advances to cover the shortfall in the local share shall be converted to a loan with interest suspended

(v) annual local payments shall continue until the advances referred to in paragraph (iv) above have been repaid."

There followed some correspondence between the Minister and the Board in clarification of some points and a deed was prepared for execution before 31 March 1982. In the meantime approval was sought by the Minister of Works and Development from the Minister of Finance in terms of s 30 (2) of the Soil Act for the approval of a loan to the Board. That approval was given for a sum of $7,914,500 (in 1980 terms) with interest suspended for a term of 25 years from 1 April 1983. The request for that approval in the form of a recommendation from the Minister of Works and Development, was prefaced by the reference to the Cabinet approval early in February 1982, "to meet advances of the local share up to the time that rating commences in 1983/84 and the short-falls that would occur until completion of the scheme in 1993".

That deed prepared on behalf of the Crown was executed by the Board on 31 March 1982 but, subject to a late change, which was agreed to by the Minister. The deed was originally drafted on the basis that the amount of rates and the repayments in the money of 1980 was to be calculated against the Ministry of Works and Development construction cost index but it was agreed in the end that the Consumer Price Index would be used instead. The deed was amended by simply changing the reference to the index but it was then apparent that the basis of the

deed in that respect being altered, the deed itself created severe distortions, as noted by the Ministry officers, affecting both the amount of the loan which had now been approved and the method and scheduling of the repayment. The advice to the Minister was that the document, as amended, was impracticable to administer. It was therefore necessary to redraft the agreement and the deed ended up in the form of the deed of
29 April 1982 which was in due course executed by the Board and by the Council on behalf of Her Majesty the Queen.

The deed commences with a series of recitals beginning with reference to the Waihou and Ohinemuri Rivers Scheme, the 1965 proposals for the present scheme, the 1971 Government approval to that, and its consent to the grant to the Board at the rate of $3 for every $1 provided by the Board (the three to one subsidy), the declaration of the national and local importance of the scheme under the Finance Act (No 3) 1944, the revised approval and the agreements in 1980 and 1981 for the repayments of loans and the further increase of these in 1982. Then there is a recital of six matters determined by Government in 1982, namely, the rating level of $600,000, that it would be updated in terms of the Government Statistician's Consumer Price Index, the reiteration of the annual grant on a three to one basis, the target completion date being 1993, and, as number (5):

> "That advances up to the time local contributions commence and advances to cover the shortfall in the local share for the approved programme shall be converted to a loan with interest suspended;"

Item (6) recites that local payments would continue until those advances were repaid. Then it is recited that the Minister of Finance, pursuant to s 30 (2) of the Soil Act, had approved a loan "estimated to be sufficient to meet the indebtedness for the local share of the approved cost of construction of the

scheme" on a repayment term of 25 years. That is stated as being "to enable the Board to construct the scheme".

The testatum of the deed then proceeds by revoking the deeds of 1980 and 1981, both of which were annexed to the deed. Clause (2) provides:

> "That the Council shall loan to the Board for the purposes of constructing the Scheme a sum of money to the amount and on the terms and conditions hereinafter set forth."

No specific sum of money is mentioned in the deed but cl (3), immediately following, then says:

> "That the loan shall be for one quarter of the approved costs of constructing the Scheme which shall include all advances paid towards the cost of the Scheme since December 1971."

The next provision, cl (4), is that drawings may continue up to the target date for completion of the Scheme "which is 31 March 1993". Then follow clauses dealing with the term of the loan, that is to say, the period of 25 years from 1 April 1983 to 31 March 2008, the suspension of interest, the minimum local rating level of $600,000 based on 1980 prices, calculated on the formula of the Government Statistician's Consumer Price Index. Then follows provision for the repayment of the loan in varying amounts, in 1980 prices based on the Consumer Price Index, up to 1 April 2003, that is to say, for the first 20 years of the repayment period, the remaining amount outstanding being repaid in five equal instalments between 2003 and 2008. Finally, two clauses allow the Board to repay in advance of the due time and the Council to recover as a debt due any annual instalments the Board fails to pay.

It is relevant to note that in the two earlier deeds,

then revoked, the loan was of the fixed sum, as approved under s 30 by the Minister of Finance, namely in 1980, of $4.43M and in 1981 by an increase to $5.47M.

The dispute that has arisen centres on the extent of the Crown's obligation to provide a loan and it is the amount of the loan, rather than the terms, which is in issue. It is the plaintiff's contention that the amount of the loan is one quarter of the cost of the work of constructing the scheme as approved from time to time during the period of construction, based on a target that the works are to be completed by 1993 which provides the justification for the benefits on which the land has been classified and rated. It is also the plaintiff's contention that the Crown is obliged, on the amount of continuing and increasing cost of the work, to provide a Government grant on the basis of a ratio of three to one; that is, to pay three quarters of the whole of the ultimate approved cost of the Scheme.

The Crown's contention is that the amount of the loan is limited to the quarter of the total cost as approved in 1982, that is to say, the sum of $7.91M in 1980 dollars already approved. It is also the Crown's contention that, while 1993 is a date upon which the parties aim for completion, it is not a fixed and definite date, although it is conceded that the target date of 1993 was a major factor in the calculation of benefits arising from the scheme, so long as that date is treated merely as a desirable date, subject to the practical experience of the construction of the scheme and the constraints that might develop in the Government area upon the availability of funds in light of the national and local importance of the scheme. As to the grant that, so the Crown contends, like the loan is limited to the cost approved in 1982.

In questions of construction of contracts it is frequently said, in one form of words or another, that the case is one simply of construction and that that should provide no

real difficulty. The principles are well known and are well rehearsed and there is little need to have a lengthy recital of citations of or quotations from the authorities. It is the application of the principles which may be difficult and which, I think, is often enough a matter of impression of the use and meaning of the language, rather than a matter of rational deduction from the effect on each other of particular words and phrases. It is fundamental that the whole of the contract should be considered and, in light of the surrounding circumstances, what is sometimes described as the matrix, as that word was used by Lord Wilberforce in Prenn v Simmonds [1971] 3 All ER 237, and in Reardon Smith Lines v Hansen-Tangen [1976] 1 WLR 989. In that latter case, there is a passage which I think is useful to quote as a reminder of the nature of the inquiry, at p 996, where His Lordship said:

> "It is often said that, in order to be admissible in aid of construction, these extrinsic facts must be within the knowledge of both parties to the contract, but this requirement should not be stated in too narrow a sense. When one speaks of the intention of the parties to the contract, one is speaking objectively - the parties cannot themselves give direct evidence of what their intention was - and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly, when one is speaking of aim, or object, or commercial purpose, one is speaking objectively of what reasonable persons would have in mind in the situation of the parties."

I would refer also to the decision of the High Court of Australia in Codelfa Construction Proprietary Ltd v State Rail Authority of NSW [1982] 149 CLR 337, and, in particular, the judgment of Mason J, especially in a passage at p 352, in which he stresses what he states to be the true rule, that the surrounding circumstances assist when the language is ambiguous

but are not to be used to contradict the plain meaning. So neither extrinsic evidence nor intrinsic evidence of the surrounding circumstances can vary or contradict the ordinary, unambiguous meaning of the contract considered as a whole. If the words or phrases may in ordinary language have more than one meaning, then it may be necessary to refer to the surrounding circumstances to extract the true intention of the parties and the true meaning intended by them. It is to be said again that evidence of negotiations, evidence of the past actions of the parties, the drafts of documents and evidence of what the parties or the officers of the parties may have thought was intended are all inadmissible.

It ought to be said that ambiguity or susceptibility of a phrase or term to have more than one meaning does not exist solely because counsel argues that. The Court has to be satisfied that there is a real ambiguity, a real doubt as to the true meaning of the words or phrases, before one can call in aid the other material. And, equally, the sub-rule, if it be such, encapsulated in the phrase contra proferentem is not to be used to displace the primary meaning or to create ambiguity. In this case there was a rule relied on by the defendant that, in the construction of grants from the Crown, as it were a pro proferentem rule applied and so the grant is to be construed most strictly against the grantee and most beneficially for the Crown so that nothing will pass to the grantee but by clear and express words. Those are the words of Viscount Birkenhead LC in Viscountess Rhondda's Claim [1922] 2 AC 339, at 353. I was referred also in this regard to Howell v Falmouth Board Construction Ltd [1951] AC 837, and Earl of Lonsdale v Attorney General [1982] 3 All ER 579. But that rule, in my opinion, does not mean that ordinary words to which can be attached only their plain meaning are to be construed, or perhaps misconstrued, to the benefit of the Crown in every document to which the Crown is a party. In the Earl of Lonsdale's case, Slade J, in giving the judgment, at p 590, referred to two other rules, or principles, which were that:

> "...if the wording of a grant by the Crown is clear and unequivocal, the grantee is entitled to rely on it as much as if the grantor had been any other subject of the Crown; if, on the other hand, the wording is obscure or equivocal, the court must lean towards the construction more favourable to the Crown, unless satisfied that another interpretation of the relevant words in their context is the true one."

And, as a third principle:

> "...if a particular word employed in a written instrument bears an 'ordinary sense', the burden of displacing this ordinary sense will fall on any person who seeks to assert that, in a particular context, the word does not bear such meaning..."

To the extent that the background is relevant in that matter, and encompasses the history of the dealings between the Board and the Crown, a fundamental matter is the common decision as to the necessity and the utility of the Waihou Valley Scheme. It was early and thereafter continually realised that this was a very large expense, to be undertaken over a long construction period, in the vicinity of 20 years. It was early realised, and never altered, that the expense was far beyond the means of the Board and that there was some special difficulty in levying the local inhabitants by way of rates for repayment. The decision was made, therefore, to declare this construction work a matter of national and local importance and, with that, a decision to support it from the public purse, on the basis of a grant of three to one, and that the one should be advanced to the Board for a lengthy period on advantageous interest arrangements. Advances were made accordingly and payments were progressively made on those terms. As the construction proceeded and the cost increased, from time to time amendments were made to the arrangements by

adding or increasing the amounts but without varying the substantive decisions and the bases upon which these were made. After classification was settled and the terms upon which the repayment of Crown advances would be made, inasmuch as the maximum amount of the rates were fixed, it then became possible to settle the terms of the agreement between the parties finally. The deed was drafted and redrafted and finally accepted.

The recitals in the deed of 1982 are consistent with the background, as I have explained, and merely record and reflect that. Then the deed recites what is in effect the Cabinet approval and agreement as clarified in the exchange of correspondence between the Minister and the Board in February 1982.

The effective part of the deed, the testatum, begins by revoking the earlier deed, thus asserting and emphasizing that this was a new arrangement. Then, although the amount of the loan begins as if it were to be a sum of money, cl (3) in plain words makes this an open-ended amount based on approved costs, to be drawn down on or before 31 March 1993, which is the target date for completion of the scheme. That, I think, in particular, is consistent with the recital as to the Minister of Finance's approval, which was "a loan estimated to be sufficient to meet the indebtedness for the local share of the approved cost of construction". That is, in my view, the plain meaning of the phrase in the context of the whole agreement and is intended to provide, once and for all, an agreement to cover the continuing and anticipated costs, anticipated to increase no doubt, but subject to the continuing and recurring approval of those costs. This is a sensible, commonsense arrangement, consistent with the continued and repeated dealings in the past, but to provide for a definite arrangement without the necessity of repeated and varied deeds for each time. There still is a control over the amount because the expenditure on the contract and the costs of the construction have to be

approved. It is an open-ended agreement but not a blank cheque to be written by the Board.

The defendants say that the sum of the loan, the principal sum, is not approved beyond the particular amount of $7.9M and, that being the case, the Crown cannot be held by the acts of its officers or agents in entering into a scheme and entering into an agreement. Reference is made to the Falmouth case as authority for that. I think, however, that the facts do not support that. Looked at from the overall view, it is clear that Cabinet in February approved the whole arrangement, both as to the fixed amount on the basis of the current estimates, but for the future as well. It must be remembered, I think, that the Prime Minister and the Minister of Finance at that time were one. But, even then, the Minister of Finance's approval, given formally and later under s 30 (2) of the Soil Act, although formally adopting a recommendation in a fixed sum, is couched in terms which give approval in light of the previous whole Cabinet approval to the whole arrangement.

I think, moreover, that the terms of the relevant legislation do not require the Ministerial approval to the principal sum.

Section 30 of the Soil Act gave the jurisdiction and power to the Authority to make grants or loans to any person or body for the purposes there set out. Subsection (3) provides that any grant or loan under the section may be paid directly by the Authority to a Catchment Board, with or without security, as the Authority thinks fit, and on other arrangements which are clearly left to the Authority for decision. Subsection (4) provides that "Notwithstanding anything to the contrary in any Act or rule of Law," the Catchment Board, as well as other authorities, shall have power to accept the loan and to agree with the Authority for the repayment of the amount thereof. Subsection (2) provides as follows:

> "Any grant or loan made under this section shall be made upon or subject to such terms and conditions as the Authority thinks fit:
>
> Provided that any loan to a local authority within the meaning of the Local Authorities Loans Act 1956 shall be made only upon and subject to such terms and conditions as the Minister of Finance thinks fit."

It is under that proviso that the matter was referred to the Minister of Finance and it is in respect of that proviso that the recital is made in the deed. That, I think, is a provision for approval of the Minister of Finance to the terms and conditions other than the principal amount. That I think is consistent with the appropriate meaning of the word, when one refers to the Oxford English Dictionary, and is in accordance with the ordinary usage of the phrase "in relation to a loan". "Term" may include money or money's-worth but it would be, I think, to strain the meaning to suggest that it was ordinarily used to include the principal sum of a loan or advance. In relation to a loan or advance it ordinarily means or includes, and is limited to the other arrangements, covenants and provisions, particularly as to repayment and interest, but not to the principal sum. Furthermore, this arrangement, although in terms given approval under the Soil Act, really is a matter which has been approved under what was then the Finance Act. Those provisions, which I have noted were part of the Public Works Act, are now contained in s 224 of the Public Works Act 1981 and no doubt it was under those provisions that the agreement was entered into by the Authority acting as if the Authority were the Minister of Works and Development: see subs (18). The agreement to be made in terms of s 224 is made by the Minister of Works and Development and the agreement may provide, among other things, for the maintenance of the undertaking and the contribution of the parties to the agreement towards it, for the apportionment or allocation of the cost of the undertaking between the parties, for the

payment by any party of its share, either in one sum or by instalments, over any year, as to the amount of interest and the rate thereof as the Minister of Finance approves, and upon such other terms as may be mutually agreed. Subsection (5) of s 224 provides:

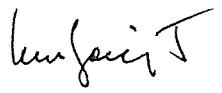
> "Where the money to be paid by any local authority under any agreement entered into under this section is not all to be payable within the financial year in which the agreement is entered into, that money, or so much of it as consists of principal or the capital value of any instalments, shall be paid upon and subject to such terms and conditions as the Minister of Finance thinks fit."

Subsection (6) provides that the local authority may borrow money by way of special loans without taking the steps prescribed under the Local Authorities Loans Act 1956, and the Minister of Finance, under subs (7), "may, out of money appropriated by Parliament for the purpose of the undertaking, advance to any local authority the amount of any money required to be paid or expended...under any agreement entered into under this section". Those provisions are in somewhat similar terms to the provisions of s 30 of the Soil Act, but seem to me to leave more explicitly the agreement and the approval of the Minister of Finance to the terms other than the amount of the money. It seems, too, that the Minister of Finance need not give approval for the purposes of individual appropriation by Parliament for the loan so long as there is an appropriation for the purpose of the undertaking itself.

In my opinion the arrangements that have been made in this case follow the terms and are made under the terms of s 224 of the Public Works Act, and there is clear approval by the parties, including the Minister of Works and the Minister of Finance, to all the arrangements made and to the overall arrangements, the open-ended arrangement and nature of it.

In my judgment the plain meaning and construction of the Deed is that the party of the second part has covenanted and agreed to loan to the Board one quarter of the cost of constructing the Scheme as may be approved from time to time and that the construction of the Scheme, its costing and the approvals thereto are all to be done on the basis of completion by 31 March 1993. It follows, therefore, that the three to one subsidy ought to continue to be paid on the same bases. There is nothing in law or reason which countervails that plain meaning and so the Board is entitled to a declaration accordingly.

Leave is reserved to apply, if necessary, to settle the form of any formal order and to deal with costs.



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