

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 70

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under section 120 of the Act
and a notice of motion seeking an early
commencement order under section 116 of
the Act
BETWEEN JOHN COSSENS
(ENV-2017-CHC-79)
Appellant
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J R Jackson
Hearing: In Chambers at Christchurch
Date of Decision: 15 May 2018
Date of Issue: 15 May 2018

DECISION ON APPLICATION FOR STRIKE-OUT

- A: Under section 279(1) of the Resource Management Act 1991, the Environment Court refuses to strike out the cases for the Queenstown Lakes District Council (respondent) or the Upper Clutha Environmental Society Inc (section 274 party).
- B: There is no order for costs in respect of order A.



C: The court directs that the following timetable be followed for the lodgement and service of evidence:

- **1 June 2018** all evidence-in-chief for Dr Cossens must be lodged and served on the other parties;
- **22 June 2018** all evidence for the Queenstown Lakes District Council must be lodged and served;
- **29 June 2018** any evidence for UCESI is to be lodged and served;
- **6 July 2018** any rebuttal evidence for Dr Cossens is to be lodged and served.

D: Leave is reserved for any party to apply for further or other directions.

REASONS

Introduction

[1] The appellant Dr John Cossens, acting for himself, has applied to “strike out” the opposition to his proposed resolution of the appeal by the respondent, the Queenstown Lakes District Council and by a section 274 party, the Upper Clutha Environmental Society Inc.

[2] I have read the papers and come to a speedy view that the application is misconceived. I have not felt it necessary to hear from the other parties.

Background

[3] This proceeding relates to 20 hectares of land in one title at 964 Lake Hawea-Albert Town Road.

[4] In 2017 Dr Cossens applied to the Council for consent to subdivide the land into four titles. In a decision dated 15 September 2017 the approved subdivision of lots 1 and 2 but declined to subdivide lots 3 and 4 and instead required that these lots be held together. The conditions of consent included:

11. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:



- b) [sic] All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved.
- c) The following amalgamation conditions shall be shown on the Survey Plan for Stage 1 of the subdivision pursuant to section 220(1)(b)(iii) of the RMA. "That Lots 3 and 4 hereon be held in the same computer freehold register."
Note: The CSN request number is to be confirmed by LINZ.
- d) The Survey Plan shall show the location of Building Platforms on proposed Lots 1, 2 and 4, and show the location of the Core Ecological Zone on proposed Lot 3.

...

- 13. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Computer Freehold Registers by way of Consent Notice pursuant to s.221 of the Act.
 - i) There shall be no subdivision of Lot 1, Lot 2 or Lots 3 & 4.
 - ii) There shall be no buildings on Lot 3 and no building platform shall be identified on Lot 3.
 - iii) All future buildings on Lots 1, 2 and 4 shall be contained within the Building Platforms as shown on the Survey Plan.

[5] Dr Cossens lodged an appeal with the Environment Court on 9 October 2017. The appeal relates to the conditions imposed by RM170182 in respect of lot 3. In particular the appeal seeks subdivision of lots 3 and 4, but he also appeals the conditions referred to above.

[6] After mediation (not involving UCESI as I understand it) a mediated agreement was reached between Dr Cossens and the Council. That was not supported by the UCESI. When the situation was referred to the court, I would not support the mediated agreement nor the decision of the Commissioners regarding legal amalgamation of Lots 3 and 4 since they are physically isolated from each other by Lots 1 and 2.

Grounds for the application

[7] The application now before me seeks:

- The Appellant applies to the court under section 42(4) and section 279 of the RMA for a Strike-Out Judgment against the Queenstown Lakes District Council (QLDC) and Upper Clutha Environmental Society Incorporated (UCESI) in regard their desire to have the matter of the appeal of RM170182 heard before the court.



- Specifically, pursuant to section 279 of the RMA at 4(a), (c) and (c) the appellant seeks a Judgment of the court to dismiss the proposed hearing on the basis that the actions of the QLDC and UCESI have been frivolous, natural justice has not been upheld, there is no defence or where no cause of action on behalf of either the QLDC and/or UCESI can succeed.

[8] The application is supported by a brief affidavit from Dr Cossens dated 8 April 2018. In summary Dr Cossens believes that the Council “have no reasonable grounds to take this matter to a court hearing and have no reasonable defence”¹.

[9] I should record also that Dr Cossens earlier applied for an order under section 116 RMA seeking that the consent commence despite the appeal, but later asked for that to be deferred while he made the application now being considered.

Consideration

[10] The starting point is that all possible outcomes which are within jurisdiction are before the court.

[11] The point about the outcomes being within jurisdiction is especially important here because this is not an appeal against a decision totally refusing subdivision consent. That means first that Dr Cossens may well be able to withdraw his appeal if he can live with the Council’s decision of 15 September 2017: *Mullen v Parkbrook Holdings Ltd* [1999] NZRMA 23 (CA).

[12] Second, in the absence of a withdrawal the court cannot refuse consent. It is restricted to:

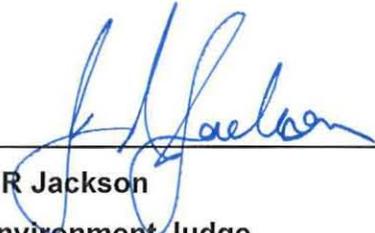
- (a) allowing the appeal and granting the relief sought;
- (b) refusing the appeal and confirming the appeal;
- (c) granting the appeal in part by cancelling one or more conditions (and adding others if it considers that is appropriate).

[13] Since the parties are not in agreement at present, I cannot make the orders that Dr Cossens seeks in the absence of evidence on the merits. Hearing the strike-out application would in practice be the same as hearing the appeal. Accordingly this

¹ J Cossens affidavit 8 May 2018 para 3.



application should be refused. Instead, a timetable should be set so the appeal can be set down for hearing.



J R Jackson
Environment Judge

