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

Decision No: [2018] NZEnvC 114
ENV-2016-WLG-000081

IN THE MATTER	of an appeal under clause 14 of the First Schedule of the Resource Management Act 1991
BETWEEN	THE NEW ZEALAND HEAVY HAULAGE ASSOCIATION INC (HOUSE MOVERS SECTION) Appellant
AND	SOUTH TARANAKI DISTRICT COUNCIL Respondent

DECISION ON COSTS

Decision Issued:
- 9 JUL 2018

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Introduction

[1] In a decision dated 28 May 2018 ([2018] NZEnvC 80), the Court declined the appeal lodged by the Heavy Haulage Association against provisions of the Respondent's District Plan relating to relocatable buildings. The Council has since lodged an application for costs under s285 of the RMA.

[2] Unsurprisingly, the Heavy Haulage Association opposes the making of any such orders.

[3] It is well traversed ground that s285 does not contain any presumption that costs will be awarded to a successful party. What is required is for the Court to reach a decision in each case as to whether it would be fair and reasonable to award costs at all and, if so, the quantum of such an award. There is no scale of costs in the Environment Court's jurisdiction.

[4] In the Court's Practice Note of 2014, the notes at Part 6.6 set out what the Court regards as its usual practice in matters of costs under the RMA. Those matters are largely reflective of the points made in the well-known decision in *DFC NZ Ltd v Bielby* [1991] 1 NZLR 587 (HC) and include the further note, particular to appeals against proposed plan provisions (as opposed to appeals on resource consent decisions) that

> ... Where an appeal against a proposed ... plan or plan change under Schedule 1 to the RMA has proceeded to a hearing, costs will not normally be awarded to any party.

[5] In considering whether to award costs, issues such as whether arguments were advanced that were without substance, or that the case was conducted in a way that unnecessary lengthened the hearing, are among the important factors to be considered.

The Council's position

[6] In support of its application, the Council reminds the Court that it has been held in many cases that a party who has been unsuccessful at first instance, as well as on appeal, may be more vulnerable to an order for costs – see eg *McCain Foods (NZ) Ltd v Hawke's Bay Regional Council* [2017] NZEnvC 15 at 5. It points out too, that while it is relatively rare for costs to be awarded on Plan appeals, such orders may certainly be made if, for instance, the Appellant has advanced unreasonable arguments or has failed to agree on issues that need not have been in contention.

[7] Here the Council argues that the Association was unsuccessful in the first instance hearing and pursued arguments before the Court that, in its submission, were ultimately shown to be without merit or substance. It argues that the appeal raised essentially the same matters as has been dealt with at first instance, and that the Court recorded in its decision that it has reached the same decision as the Council and for essentially the same reasons.

[8] The Council also argues that the Association put the Council to additional costs in reviewing and responding to late-filed evidence. While that is so, the evidence was lodged with the agreement of the Court and we would not regard that as being a significant factor on its own.

[9] The Council advises that it was put to a total cost of $102,538.78 for legal and expert witness costs incurred between 2 November 2017 and the conclusion of the hearing on 10 May 2018, and seeks an award of at least two thirds of those costs. It notes that it does not claim for costs of its officers in preparing their evidence.

The appellant's position

[10] In essence, the Association rebuffs each of the Council's points, arguing that the point was an important one for its membership, that its arguments were addressed to the grounds of appeal, and that while unsuccessful, the arguments put forward were not devoid of merit or otherwise amounting to an abuse of process.

Discussion

[11] The members of the Court accept that the appeal was brought in good faith to address an issue of concern in the plan provisions to the Association and its membership. That it was unsuccessful does not, as already pointed out, mean that it should be regarded as raising an unarguable point, or as having been pursued in an unreasonable way.

[12] In short, we find ourselves of the same view as the Court in *TKC Holdings v Western Bay of Plenty DC* [2015] NZEnvC 146 at [14], where Judge Smith said:

> There is nothing about the conduct of the hearing that I could suggest took this matter beyond the ordinary cut and thrust of litigation to an extent where witnesses or issues were pursued to an unreasonable degree.

[13] We accept of course that the Council has been put to considerable expense in maintaining its position but that, of itself, is not of itself a reason to require an appellant to contribute to that expense.

[14] For those reasons, we do not see justification for going beyond the general position that for plan appeals, costs will be borne by the parties who or which incurred them, unless there are quite *out of the ordinary* circumstances.

Result

[15] We decline the Council's application for costs.

Dated at Wellington this 9th day of July 2018
For the Court

C J Thompson
Environment Judge