

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

Decision No. [2018] NZEnvC 141

IN THE MATTER of the Resource Management Act 1991  
AND of applications under s 320 and s 314 of  
the Act  
BETWEEN AUCKLAND COUNCIL  
(ENV-2017-AKL-000042)  
(ENV-2017-AKL-000067)  
(ENV-2017-AKL-000068)  
(ENV-2017-AKL-000069)  
(ENV-2017-AKL-000070)  
(ENV-2017-AKL-000071)  
(ENV-2017-AKL-000117)  
Applicant  
AND EE KUOH LAU (AUGUSTINE LAU)  
YINGQUI ZHANG  
YINGYUE ZHANG  
QIUFEN LU  
MEIJUAN CHEN  
JESUS (2016) COMPANY LTD  
CINDY PROPERTY MANAGEMENT  
LTD  
LIANSEN MAO  
Respondents

Court: Environment Judge B P Dwyer sitting alone under s 279 of the Act  
Hearing: In Chambers  
Date of Decision: 20 August 2018  
Date of Issue: 20 August 2018



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## COSTS DECISION OF THE ENVIRONMENT COURT

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A: Costs to be awarded

### REASONS

#### Introduction

[1] Auckland Council (the Council) seeks costs against the above-named Respondents relating to seven decisions made by the Court in respect of enforcement proceedings regarding unlawful and unpermitted works undertaken at various properties in Auckland.

[2] The properties involved in these proceedings were:

- 436 Paremoremo Road, Paremoremo in respect of which the Court made an interim enforcement order on 28 March 2017;
- Again, the property at 436 Paremoremo Road, Paremoremo, in respect of which the Court made an enforcement order on 27 September 2017;
- 56 Albany Highway, Greenhithe, in respect of which the Court made an enforcement order on 27 September 2017;
- 32 Weranui Road, Waiwera, in respect of which the Court made an enforcement order on 27 September 2017;
- 676 Mt Albert Road, Royal Oak, in respect of which the Court made an enforcement order on 27 September 2017;
- 41A Candia Road, Swanson, in respect of which the Court made an enforcement order on 27 September 2017; and
- 13 Memorial Avenue, Mt Roskill, in respect of which the Court made an enforcement order on 27 September 2017.

[3] The interim enforcement order and enforcement orders made by the Court required the termination of a range of unlawful activities undertaken on the properties. The primary unlawful activity could be described as establishing multiple residential units on the properties without having obtained necessary resource consents and/or building permits. In its decision on the main body of enforcement



orders,<sup>1</sup> the Court described the situation of the buildings as “unpermitted and frequently unsafe, overcrowded and unsanitary”.<sup>2</sup> In addition to the unlawful establishment of buildings, the enforcement orders addressed a number of other illegal aspects of the works undertaken on them, including inadequate treatment of wastewater and removal of vegetation from a significant ecological area.

[4] Speaking of the properties collectively, the Court observed that:<sup>3</sup>

... having regard to the serious adverse effects in terms of diminution of amenity and creation of sometimes dangerous and unsanitary conditions brought about by the various Respondents’ activities, I am satisfied that those activities are noxious, dangerous, offensive or objectionable as defined by the Court in the *Tasman Action Group* case so as to constitute an adverse effect on the environment (which I note includes amenity values, people and communities).

[5] The illegal works addressed in the enforcement proceedings were blatant and deliberate. They were undertaken by the Respondents with no regard whatever to legal requirements as to resource consents or building permits. The prime mover in this process (Augustine Lau) deliberately sought to mislead Council staff, obfuscate and delay proceedings. I consider that this situation is as bad case of deliberate disregard of legal requirements as it is possible to envisage. I do not set out the factual background any further. It is more than adequately addressed in the decision cited above.

[6] The responsibility of the various Respondents for this situation is as follows:

- Mr Lau acted as property developer and manager in respect of all of the properties;
- Jesus (2016) Company Ltd was a corporate vehicle for Mr Lau’s activities. He was its sole director and shareholder;
- Cindy Property Management Ltd was used to manage tenancies at the illegal dwellings. Mr Lau had been its director for a period and was its sole shareholder;
- The remaining Respondents are registered proprietors of the properties in question who permitted and profited from Mr Lau’s mismanagement of



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*Auckland Council v Lau* [2017] NZEnvC 160.  
*Auckland Council v Lau* at [12].  
*Auckland Council v Lau* at [73].

their properties. They took no steps to ensure compliance with legal obligations in respect of the properties.

### The Council application

[7] The Council seeks full costs awards against the Respondents on a joint and several basis but apportioned as between the various properties according to calculations made by the Council as to the expenses which could properly be attributed to each property. The Council costs application is made up as follows:

|                        |              |
|------------------------|--------------|
| • Legal costs          | \$176,894.44 |
| • Expert witness fees  | \$9,002.37   |
| • Council officer time | \$49,347.30  |
|                        | <hr/>        |
|                        | \$235,244.11 |

The Council application identified four factors which it contended were relevant to the amount to be awarded.

[8] The first factor was described as the *Bielby*<sup>4</sup> factors, namely that:

- The process of the Court was abused;
- The Respondents failed to comply with procedural requirements or directions of the Court.

With regard to above matters, the Council referred to the actions of Mr Lau in failing to engage with the proceedings, seeking to delay and failing to provide evidence.

[9] The second factor pointed to by the Council was its public duty to enforce obligations under RMA, the cost of which is borne by the ratepayers of Auckland. The Council submitted that:

. . . the pattern of the Respondents' conduct at the properties has been one of obstinate and wilful non-compliance. The only means available to the Council to bring about compliance and address the associated adverse environmental effects has been to obtain enforcement orders. Moreover, the Council has felt compelled to seek consent under s315 due to its apprehension that the Respondents will disregard the orders.

The Council contended that the above factors compelled it to fulfill its public duty by



<sup>4</sup> *Development Finance Corporation of NZ Ltd v Bielby* [1991] 1 NZLR 587 (HC).

seeking the orders which it did.

[10] The third factor identified by the Council was that the outcome of the proceedings was entirely against the Respondents. The Council contended that there was no genuinely arguable dispute about the facts, the law or the provisions of its District Plan. It contended that the Respondents knew they were in the wrong and had no defence but were determined to continue offending until they were compelled to stop. The Council submitted that it should never have had to make the applications in the first place.

[11] The fourth factor identified by the Council was what it described as “flagrant disregard for legal requirements”. It pointed to the fact that it had raised compliance issues on these properties with the Respondents (Mr Lau in particular) prior to applying for enforcement orders and that no genuine efforts to comply with the requirements of RMA or the District Plan were made. The Council contended that there was a complete disregard for the RMA regime and the authority of the Court.

### **Discussion**

[12] My discussion on the merits of the Council application is brief. I concur with the Council’s submission in all respects as to the four factors which it has identified. It is indisputable that the actions of the various Respondents were undertaken in blatant and ongoing breach of legal requirements under both RMA and the Building Act. The number of properties, the number of buildings, the number of breaches of RMA and provisions of the District Plan and the openly defiant manner in which Mr Lau undertook these activities combine to make this a case where it is overwhelmingly appropriate that an indemnity order be made. That is not for the purpose of punishing the Respondents but to mark the fact that the Council had to go to extraordinary lengths to make the Respondents comply with their legal obligations and should not have had to do so.

[13] The only matter in respect of which I had reservations relates to the award for Council officers’ costs. Normally, there is a hesitation on the part of the Court in awarding costs for Council officer time and certainly a hesitation in awarding costs at the charge out rate which is claimed. However, in this case I have no such hesitation. The factors which I have identified above as making it appropriate for there to be an indemnity award, combine in my view to also make it appropriate to that award to cover the full costs claimed by the Council in this case. The



Respondents actions put the Council into a position where it had to undertake an exhaustive investigation of the activities orchestrated by Mr Lau. The extensive and sustained pattern of illegal development required the Council to commit staff resources towards dealing with it to an unprecedented degree. This went well beyond the normal routine of compliance checking which local authority officers undertake as part of their duties and might be regarded as akin to a criminal investigation. Under these circumstances it is appropriate that there be full reimbursement to the Council at the rate claimed for officer time.

[14] I am satisfied that in calculating its staff time, in this case the Council has taken a conservative approach. In light of the unusual circumstances in this particular case, I have determined to award the Council costs for staff time at the rate claimed.

[15] For all of these reasons, costs are awarded to the Council as sought.

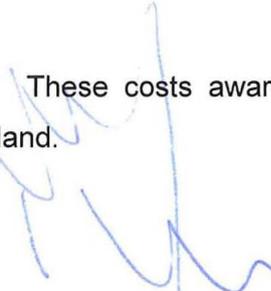
### **Outcome**

[16] Costs are awarded in the following amounts:

- In respect of 436 Paremoro Road, Paremoro - \$60,001.08 jointly and severally against Yingqiu Zhang, Augustine Lau, Jesus (2016) Company Ltd and Cindy Property Management Ltd;
- In respect of 56 Albany Highway, Greenhithe - \$47,374.26 jointly and severally against Yingyue Zhang, Augustine Lau, Jesus (2016) Company Ltd and Cindy Property Management Ltd;
- In respect of 32 Weranui Road, Waiwera - \$30,603.63 jointly and severally against Qiufen Lu, Augustine Lau and Jesus (2016) Company Ltd;
- In respect of 676 Mount Albert Road, Royal Oak - \$26,953.33 jointly and severally against Meijuan Chen, Augustine Lau, Jesus (2016) Company Ltd and Cindy Property Management Ltd;
- In respect of 41A Candia Road, Swanson - \$24,098.48 jointly and severally against Qiufen Lu and Augustine Lau;
- In respect of 13 Memorial Avenue, Mount Roskill - \$46,213.33 jointly and severally against Liansen Mao, Augustine Lau, Jesus (2016) Company Ltd and Cindy Property Management Ltd.



[17] These costs awards to be enforced (if need be) in the District Court at Auckland.

  
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**B P Dwyer**  
**Environment Judge**

