

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

Decision No. [2019] NZEnvC 10

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14(1) of the First
Schedule of the Act
BETWEEN DARBY PLANNING LIMITED
(ENV-2018-CHC-150)
UPPER CLUTHA ENVIRONMENTAL
SOCIETY INCORPORATED
(ENV-2018-CHC-56)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J R Jackson
(Sitting alone under section 279(1) of the Act)
Hearing: At Queenstown on 20 December 2018
Appearances: Dr J Cossens for himself (section 274 party)
No appearances from UCESI
M Baker-Galloway for Darby Planning Limited
K Hockly for Queenstown Lakes District Council
Date of Decision: 25 January 2019
Date of Issue: 25 January 2019

PROCEDURAL DECISION

- A: Under section 279(1) of the Resource Management Act 1991 the application by Dr Cossens that the Environment Court appoint an expert witness is refused.
- B: There is no order for costs.



REASONS

[1] On 13 September 2018 Dr Cossens applied to the court to appoint an expert witness(es) to “undertake and report back to the court on a Landscape Viewer Sensitivity, attitude and Perception Study, the outcome of which would be a ‘values based’ overlay of QLDC Proposed District Plan landscape maps”¹.

[2] In its record of the pre-hearing conference held on 17 September 2018 the court stated²:

The court has doubts about both the legality and practicality of this approach. Leaving aside any legal difficulties, questions arise of who the experts should be and who will pay for it. But the single biggest practical issue is that the court and parties need such a report now rather than at some remote future date. I reserve leave for Dr Cossens to renew his application if he can overcome those difficulties.

[3] On 5 December 2018, in reliance on that leave, Dr Cossens applied again. The main ground for his renewed application is that the parties for Topic 2 (broadly, landscape and other general rural objectives) have now received some of the landscape evidence. Having read that Dr Cossens has cited numerous reference to the need for further information.

[4] The application is opposed by the Council. As for the appellant Darby Planning Limited (“DPL”) while it endorses the principles behind the application it opposes the application if any order would delay the Topic 2 hearings set down to commence in April 2019. For DPL Ms Baker-Galloway also submitted that the court may lack power to order the Council to commission a report. In her succinct but helpful submissions she pointed out that the court can commission a report (under section 278(1) RMA) or may order another party to produce an (existing) report (section 276 RMA) but it cannot direct a third party to prepare one.

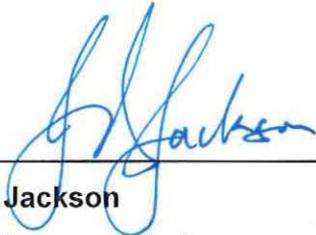
[5] I accept there may be jurisdictional difficulties. However, I do not have to determine them. I consider the application should be declined on the grounds of time and cost. Even if the court was to commission a report itself it would probably take too

¹ J Cossens, application for court appointed expert witness, ENV-2018-CHC-150, 13 September 2018, 1.1.

² Record of pre-hearing conference, ENV-2018-CHC-053, [3.5].



long to prepare (given the hearings are scheduled to start in April 2019). Cost is also an important factor, and Dr Cossens made no attempt to say how the costs of commissioning a report could be met.



J R Jackson
Environment Judge

