BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KOOTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

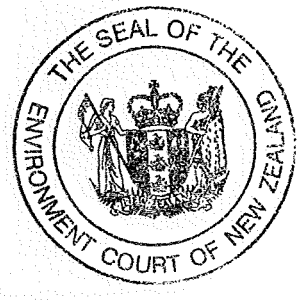
Decision No. [2020] NZEnvC 120

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under s 325 of the Act
BETWEEN	C S WEDD (ENV-2019-AKL-000093) Appellant
AND	AUCKLAND COUNCIL Respondent

Court:	Environment Judge D A Kirkpatrick Environment Commissioner A P Gysberts
Hearing:	on the papers
Date of Decision:	7 August 2020
Date of Issue:	7 August 2020

DECISION OF THE ENVIRONMENT COURT
ON COSTS

A. Under s 285 of the Resource Management Act 1991, the Environment Court makes no order as to costs.



REASONS

What this decision is about

[1] Charles Stuart Wedd (the **appellant**) unsuccessfully appealed a decision by the Auckland Council (the **respondent**) to impose an abatement notice upon certain activities relating to land at Wainui, Auckland.[1] The abatement notice had required the cessation by the appellant of all actions relating to a cleanfilling operation being carried out on the appellant's property.

[2] In particular, activities were to cease until the appellant had properly met the specific matters set out in Condition32(a) of the grant of consent. This condition, in simple terms, required provision by the appellant to the respondent of plans and drawings of the proposed accessway confirming conformity of the proposed design with the relevant matters set out in the technical design manuals identified in Condition 32(a).

[3] The respondent Council now seeks costs against the appellant. This decision determines whether there should be an award of costs and, if so, the quantum of costs.

The Council's application for costs

[4] The respondent seeks a contribution towards its legal and expert costs in the amount of **$11,581.00**. These costs comprise the external expert costs incurred by the respondent (**$9,930.00**) in successfully defending the appeal in addition to a 20% contribution towards the respondent's total legal costs (**$1,651.00**).

[5] In support of the application for costs, and contained within it, the respondent sets out a comprehensive outline of the relevant factors and events through the court proceedings that, in its mind, justifies the application and its quantum. These include the basic appropriateness for a contribution to costs to be sought by the successful party to court proceedings. In the particular circumstances of this case, it is appropriate, in the view of the respondent, that costs be sought given the appellant's conduct during the proceedings has significantly increased the costs of the

[1] *C S Wedd v Auckland Council* [2020] NZEnvC 082.

respondent.

The appellant's response

[6] The appellant was provided with an opportunity to comment and has done so. In equally extensive documentation in reply, the appellant has set out a wide-ranging response to the assertions contained in the respondent's application.

[7] To a large extent, these comments echo the case put by the appellant in the appeal proceedings themselves. The appellant averred that, basically, there were no reasonable grounds to award the Council costs in that the appeal proceedings and, ultimately, the manner in which the appeal unfolded were largely of the Council's own making.

[8] The appellant claimed that the Council was tardy, deliberately prolonging the process in an effort to secure success. Further, an incorrect technical analysis was carried out, using incorrect design manuals.

[9] In this regard, the comments were of little assistance to the Court save for the presentation of one matter of some merit. The response, in the view of the Court, correctly identified condition 32(a) of the consent as being the foundation of the appeal proceedings and, had condition32(a) been drafted with more clarity, matters could have been more simply concluded.

[10] The appellant went on to make a counterclaim for costs against the respondent. However, no quantum or rationale is advanced to support this notion. At the same time, and in view of this situation, the appellant concluded that, in all the circumstances, costs should lie where they fell.

The respondent's reply

[11] In turn, the respondent was also accorded an opportunity to comment in reply and did so. In particular, the respondent claimed that the engagement of traffic experts was necessary and the costs reasonably incurred.

[12] At the same time, the respondent acknowledged that condition 32(a) was not without ambiguity. However, this, in their view, did not derogate from the validity of the condition nor from the lawfulness of the abatement notice.

[13] The respondent particularly rejected the claims of the appellant that the decisions made in issuing and defending the abatement notice or seeking to recover some of the costs associated with that stem from any ulterior motive or obsessive need to win and recover costs.

The law

[14] Section 285 of the Act confers a broad discretion upon the Environment Court to order costs with the sole qualification being that the quantum be reasonable. As with the exercise of any judicial discretion, applications for costs are to be dealt with in a principled manner with no presumption that costs will follow a successful outcome. The most relevant principle applicable to this case is that costs are ordered in the interests of *compensation where that is just.*[2]

Evaluation

[15] The Court must consider whether it is just, in all the circumstances, to exercise the discretion and order costs in favour of the respondent. In concluding on this matter, several facts are relevant to that analysis.

[16] The appeal revolved around the interpretation and response to one pivotal matter: condition 32(a) of the consent. As canvassed in the decision on the appeal, condition 32(a) required the design of the proposed accessway to the area of cleanfilling be certified prior to the commencement of earthworks and cleanfilling. This is a not an uncommon requirement save, in this instance, for one matter: the wording of condition 32(a) is difficult to interpret.

[17] As set out in the substantive decision on the appeal, the Court was of the clear view that, while the substance of the condition as thus explained was unremarkable, *the condition itself presents a degree of complexity through the use of imprecise language and reference to two other documents. This complexity allows for different interpretations of the apparent requirement of the condition.*[3] That factor was a proper basis on which to bring the abatement notice before the Court on appeal.

[18] Assertions made in respect of delay and the deliberate prolongation by the

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[2] *Foodstuffs (Otago Southland) Properties Limited v Dunedin City Council* (1996) 2 ELRNZ 138
[3] *C S Wedd v Auckland Council* [2020] NZEnvC 082 at [26].

respondent of the proceedings remain, in the view of the Court, unproven.

Decision

[19] For the foregoing reasons the Court makes no orders as to costs.

For the Court:

D A Kirkpatrick
Environment Judge