

IN THE ENVIRONMENT COURT
AT WELLINGTON

I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

Decision [2023] NZEnvC 199

IN THE MATTER

of an application under s 87G of the
Resource Management Act 1991 for a
direct referral of an application for
resource consent for the construction of
a building and associated earthworks at
110 Jervois Quay, Wellington Central

BY

MFC DEVELOPMENT LIMITED
PARTNERSHIP

(ENV-2023-WLG-000002)

Applicant

Court: Environment Judge L J Semple sitting alone under s 279(1) of
the Act

Hearing: In chambers at Wellington

Last Case Event: 18 August 2023

Date of Decision: 25 September 2023
(On the papers)

Date of Issue: 25 September 2023

DECISION OF THE ENVIRONMENT COURT

A: An order for costs is made in favour of the Crown against MFC Development
Limited Partnership for the sum of \$7,412.61 (including GST).



RE MFC DEVELOPMENT LIMITED PARTNERSHIP - COSTS

REASONS

Introduction

[1] MFC Development Limited Partnership (MFC) applied to the Court under s 87G for direct referral of an application for resource consent for the construction of a building and associated earthworks at 110 Jervois Quay, Wellington Central.

[2] A preliminary issue was raised concerning the adequacy of notification of the application by Wellington City Council. On 20 June 2023, the Court issued a decision determining that the public notice by Wellington City Council failed to appropriately describe the location of the activity for which consent was sought. As a result, in circumstances where an application should have been publicly notified and was not, the Court was unable to grant consent under s 104(3) of the Act.

[3] I reserved the issue of costs.

The issue of costs

[4] Section 285(3) of the Act provides that the Court may order any party to proceedings before it to pay to the Crown all or any part of the Court's costs and expenses. In respect of those applications directly referred to the Court under s 87G for determination, the Court must apply a presumption that such costs are to be ordered against the applicant. When deciding on the amount of any order it decides to make, the Court must have regard to the fact that the proceedings are at first instance. The relevant provisions state:

285 Awarding costs

- (1) The Environment Court may order any party to proceedings before it to pay to any other party the costs and expenses (including witness expenses) incurred by the other party that the court considers reasonable.

...



- (3) The Environment Court may order any party to proceedings before it to pay to the Crown all or any part of the court's costs and expenses.

...

- (5) In proceedings under section 87G, ... the Environment Court must, -
- (a) when deciding whether to make an order under subsection (1) or (3), -
 - (i) apply a presumption that costs under subsections (1) and (3) are not to be ordered against a person who is a party under section 274(1); and
 - (ii) apply a presumption that costs under subsection (3) are to be ordered against the applicant; and
 - (b) when deciding on the amount of any order it decides to make, have regard to the fact that the proceedings are at first instance.

[5] In accordance with those provisions, the Registrar on behalf of the Court and counsel for MFC have agreed that a sum of \$6,445.75 (exclusive of GST) is an appropriate amount to be paid in relation to the expenses incurred by the Court in this matter.

[6] Accordingly, the Registrar and MFC have requested that an order for costs be made in favour of the Crown against MFC of \$7,412.61 (inclusive of GST) and that a GST invoice from the Court be issued with the decision on costs.

Costs

[7] I have not reviewed the basis of the agreement between the Registrar and MFC and make the order as sought, by consent, on the basis that I am satisfied that the Registrar and counsel have acted properly in reaching an agreement on costs.



[8] The Court orders, by consent, that MFC Development Limited Partnership pay the Environment Court's costs in the sum of \$7,412.61 (inclusive of GST) to the Crown.



LJ Semple
Environment Judge

