

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

Decision No. [2019] NZEnvC 121

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s120 of the Act
BETWEEN SOCIETY FOR THE PROTECTION OF
WESTERN SPRINGS FOREST
INCORPORATED 2736092

G J BALDOCK

(ENV-2019-AKL-104)

Appellant

AND AUCKLAND COUNCIL

Respondent

AND AUCKLAND COUNCIL COMMUNITY
FACILITIES

Applicant

Court: Before Judge J A Smith sitting alone under s279 of the Act

To: G K Chappell/D Manning for the Society for the Protection of
Western Springs Forest Incorporated 2736092 (**the Society**)
M Allan for Auckland Council as Respondent
D Hartley/A Buchanan for Auckland Council Community Facilities as
Applicant

Date of Decision: 16 July 2019

Date of Issue: 16 JUL 2019

DECISION AND DIRECTIONS OF THE ENVIRONMENT COURT

A: The Court makes an order under s2A of the resource Management Act that the Society for the Protection of Western Springs Forest Incorporated 2736092 is the successor to the submitters to the Auckland Council.

B: It is unclear whether Ms G Baldock was in fact one of those submitters or a separate party. Ms Baldock is to advise in due course whether if she wishes to sustain an

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independent role as an appellant.

- C: The matter is referred for mediation. A mediator, Mr J Hodges, is available in the weeks commencing **22 and 29 July** and a mediation coordinator will be in contact with the parties to arrange a suitable time for mediation.
- D: A report is to be provided back to the Court by **16 August** as to the progress of that mediation. If unsuccessful the matter will proceed to a PHC to be set down for hearing.
- E: The Court makes no direction at this stage towards expert conferencing and this is a matter that may be addressed by the mediator if they consider it necessary as a result of the mediation. To that end the Court authorises the mediator to undertake up to two mediations/caucusing by conferencing i.e. two occasions and the Auckland Council as respondent is to provide a report as to the progress of this process by **16 August**.

REASONS

Introduction

[1] The Auckland Council through its Auckland Council Community Facilities, I assume a Council department, applied for consent for the removal of some 200 trees from the Te Wai Orea Western Springs Lakeside Park, Auckland.

[2] These trees are particularly tall and the Council appears to hold some concerns as to them constituting a danger to the public.

[3] The application was notified and submissions made. The Council issued a decision in favour of the application which has been appealed to this Court.

Successors

[4] Section 2A of the Resource Management Act provides that the successor shall include a body or persons which is corporate and composed of substantially the same members. The Society has filed a memorandum saying that it complies with the subsection and both applicant and respondent agree that the Society is the successor to the



submitters.

[5] There is no particular clarity about the role of Ms G J Baldock but she is still included until the issue of succession is resolved.

[6] Given that the application is not opposed I accept the submissions of all three parties that the Society represents the original submitters with the possible exception of Ms Baldock. Accordingly, Ms Baldock is to advise the Court within **five working days** of this decision whether she wishes to continue to be separately involved in this matter or as part of the Society.

Conditions and succession

[7] The applicant has advised:

We are instructed that the applicants position on the standing of the Society is without prejudice to any future costs applications should the appeal proceed to hearing.

[8] It is very unclear what counsel means by this remark which appears to have been relayed on instructions from the client. Here the same party is the respondent to these proceedings given that there is no legal distinction between the groups. It appears to be a suggestion that an application for costs is likely to be successful in such a case where the Council is obtaining a consent from itself.

[9] It is also unclear as to whether it is the Society that is referred to by this matter or the individuals who made submissions.

[10] Quite clearly, as a matter of law, the original submitters cannot be subject to costs when they are not parties to the appeal. The Society is the appellant and is now the successor to those parties and therefore has status under the Act.

[11] Accordingly, the statement is unclear and I have disregarded it entirely for current purposes. If it is a suggestion that the Council can seek costs against the individual submitters even though they did not file the appeal (with the possible exception if Ms G J Baldock continues to have a role), then that application should be filed within **five working days**. The application will need to substantiate detailed costs separate to those



of the respondent but also a detailed legal argument as to how much an award could be made given that the parties were not appellants.

[12] Any reply has to be filed within a further **10 working days** after that and a final reply, if any, **five working days** after that.

[13] At this stage it appears to me that the submission is misconceived. If the suggestion is simply that the parties may seek costs against the Society in due course, then that is no more than a statement of fact. However, given the history of matters involving the Council seeking consents from themselves, I am not aware there has been any case when such costs have been awarded. However, that is a matter that will be addressed in due course if necessary.

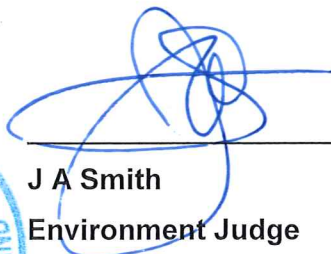
Mediation

[14] Finally, the applicant has asked for urgent mediation. On this basis I have ascertained that Mr Hodges would be available for mediation on one or two occasions in the weeks of **22 and 29 July** on dates to be arranged. I ask if the mediation coordinator can contact the parties with a view to setting up such mediation.

[15] In order that the Court can decide what future course of action should be adopted, I require a report from the Council as respondent to the Court updating as to the progress of the matter by **16 August** at which time the Court will make a decision as to what further steps to undertake.

[16] I note the request for expert conferencing and a request for delay while each of the trees are examined by the appellant's experts. Neither course is appropriate at this stage. If the parties are unable to agree to mediation or resolve matters by **16 August**, the Court will move to list the matter for hearing on the next available date.

For the court:



J A Smith
Environment Judge

