

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision No. [2024] NZEnvC 009

IN THE MATTER

of an application for an interim
enforcement order or enforcement
order under ss 316 and 320 of the
Resource Management Act 1991

BETWEEN

PUKETOTARA LODGE LIMITED

(ENV-2022-AKL-113)

Applicant

AND

BLUEGUM GOSPEL HALL TRUST

Respondent

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

Hearing: In chambers on the papers

Last case event: 24 January 2024

Date of Decision: 5 February 2024

Date of Issue: 5 February 2024

DECISION OF THE ENVIRONMENT COURT

- A. The application by the Respondent for a stay of the determination of costs is
granted pending resolution of the High Court appeal.



REASONS

[1] By Memoranda of Counsel dated 19 December 2023, Bluegum Gospel Hall Trust (Bluegum) sought indemnity costs against Puketotara Lodge Ltd in the amount of \$292,940.72 including GST (being \$105,753.52 for the first enforcement order sought (the interim order) and \$187,187.20 for the second enforcement order sought (the second order)), together with damages in the amount of \$112,561.08 which it alleges it sustained as a direct result of the operation of the interim order.

[2] Puketotara opposes the application for damages,¹ seeks costs against Bluegum in respect of the interim enforcement order (in the sum of \$41,540.04) and submits that costs in respect of the second order should be limited to 50 per cent of Bluegum's reasonable costs which it calculates to be \$42,710.30 (50 per cent being \$21,355.15).

[3] By way of application dated 24 January 2024, Puketotara further seeks that the court determine any costs order but exercise its discretion to stay the enforcement of any such order pending resolution of its appeal to the High Court (dated 17 January 2024).

[4] In response and by Memorandum dated 30 January 2024, Bluegum seeks that the Court exercise its discretion to stay the determination of any costs order until resolution of the High Court appeal. In the alternative Bluegum seeks further time to respond to Puketotara's notice of opposition and application.

[5] At the request of the Registry, Puketotara indicated by email dated 1 February 2024, that it had no objection to Bluegum's requested deferral of a determination on the costs application.

[6] Bluegum does not set out in its application the grounds on which it seeks that the determination of costs be deferred. In support of its original position for a stay on enforcement of any costs order, Puketotara submitted that in the interests of fairness a party should not be "penalised" should the point on appeal be upheld, and

¹ Notice of opposition dated 24 January 2024.

the decision of the court overturned or reversed”.

[7] It is common ground that the Court has a discretion as to whether it determines an application for costs now or awaits the outcome of an appeal to the High Court. That discretion forms part of its general power to award costs under s 285(1) of the RMA and, in this case, by virtue of the operation of Rule 20.10(2) of the High Court rules where the High Court or a decision maker (in this case the Environment Court) may grant a stay in respect of proceedings under appeal.

[8] As set out in *Ngati Kahu ki Whangaroa Co-operative Society Ltd v Northland Regional Council*,² and the cases following³, while the Court generally prefers to determine costs applications while the hearing remains “fresh in the court’s mind” in circumstances where the relief sought in the appeal bears directly on the grounds advanced in the costs application, the Court may exercise its discretion to defer its determination.

[9] As Her Honour stated in *Clutha District Council v Otago Regional Council*:

... were the appeal successful, the parties may wish to alter their submission regarding the application for costs as the outcome might ultimately affect any award the Environment Court may make.

[10] Puketotara’s appeal seeks that the decision of this Court is reversed with the resultant effect that the second enforcement order is granted. That matter bears directly on the basis upon which the costs application is advanced. Moreover, as set out in the opening paragraphs of this decision, there is dispute between the parties as to who was the successful party in respect to the interim enforcement order and the implication of that for the damages claim. In these circumstances, I find that if Puketotara is successful in the High Court that will likely alter any submissions both it and Bluegum wishes to make on the costs application and might ultimately affect any award this Court might make. I also accept that the parties will be put to additional, potentially significant expense in progressing the costs applications and the

² *Ngati Kahu ki Whangaroa Co-operative Society Ltd v Northland Regional Council* A118/2000, 4 October 2000.

³ See for example *Waitakere Resource Consents Ltd v Waitakere City Council* A120/2008, 31 October 2008 and *Clutha District Council v Otago Regional Council* [2021] NZEnvC 16.

damages claim (which on my initial assessment may require some hearing time) which may be rendered nugatory in the event of a successful outcome for Puketotara in the High Court.

[11] I consider that on balance these factors outweigh the usual preference to determine questions of costs soon after issue of the substantive decision. I am therefore satisfied that it is appropriate to defer determination of the costs application until the High Court has resolved the outstanding appeal.

[12] Parties are to notify the Court within 10 working days of the release of the High Court decision and seek directions as appropriate.



L J Semple
Environment Judge

