

# **Award of costs – Environment Court decision, Lake View Estate – 183 Devich Road, Mangawhai**

**Meeting:** Kaipara District Council  
**Date of meeting:** 26 February 2025  
**Reporting officer:** Lloyd Barton, Manager Resource Consents

## **Purpose | Ngā whāinga**

To inform Council of the Environment Court's decision to award costs in favour of Council.

## **Executive summary | Whakarāpopototanga**

The Council's decision to approve an application for resource consent (being a 67 lot rural residential subdivision) in 2021, at Lake View Estate, 183 Devich Road, Mangawhai was appealed to the Environment Court by a group of residents from the Estate (who lodged submissions on the application). Council successfully defended the appeal against its decision, with the Environment Court ruling in favour of Council and the applicant on 21 June 2024.

On 31 July 2024, Council approved an application being made to the Environment Court to seek an award of costs from the appellants, to the value of 66 per cent of the Council's actual costs (legal submissions and planning witness).

On 23 December 2024, the Environment Court awarded the Council the costs it had applied for, amounting to \$54,590. Council staff are currently pursuing payment from the appellants.

Costs have also been awarded to the applicant.

## **Recommendation | Ngā tūtohunga**

That the Kaipara District Council:

- a) Notes the award of costs (amounting to \$54,590) from the Environment Court in favour of Council in relation to the Environment Court appeal for a development at Lake View Estate, 183 Devich Road, Mangawhai.

## **Context | Horopaki**

At its meeting on 31 July 2024 (public excluded), Council:

- Noted the decision of the Environment Court dismissing the appeal against the Council's decision to grant the application for a 67 lot subdivision on the balance lot at Lake View Estate, 183 Devich Road, Mangawhai; and
- Approved an application being made to the Environment Court seeking an award of costs from the appellants to recover 66 per cent of the actual costs of Council incurred in defending the decision

This report updates Council on the decision of the Environment Court, issued on 23 December 2024, to award costs to Council.

## Discussion | Ngā kōrerorero

Following a notified hearing in 2021, for a 67 lot rural residential subdivision at Lake View Estate, 183 Devich Road, Mangawhai, the Independent Hearings Commissioner appointed by the Council granted consent. The decision was appealed by “Team at the Lake”, made up of a group of residents within the existing gated community, who had lodged submissions in opposition to the application. Mangawhai Developments Ltd also joined the Court proceedings, as a party under section 274 of the RMA, in opposition to the granting of consent.

Mediation was unsuccessful and following a hearing in August 2023, with Council being represented by a planning consultant and KDC’s Legal Counsel, the Environment Court ruled in favour of the Council and the applicant (with an interim decision, followed by a full decision on 21 June 2024).

Following Council’s approval on 31 July 2024, our Legal Counsel filed an application seeking that the Environment Court award costs from the appellants to recover 66 per cent of Council’s actual costs was filed. The decision to seek the recovery of 66% of the Council’s actual costs was based on legal advice that awards of costs in the Environment Court are discretionary. Usually, the amount of costs awarded is in the range of 25-33% of a party’s actual costs. However, it was considered there were factors present in terms of the way in which the appellants’ conducted their appeal (as outlined in the Environment Court’s Practice Note and case law) upon which the Environment Court might decide, at its discretion, to make an award of costs in favour of the Council of up to 66% of its actual costs.

It is pleasing that on 23 December 2024, the Environment Court awarded Council \$54,590, being 66 per cent of the Council’s actual costs incurred, against the applicant. A copy of the decision is at **Attachment A**.

The details of Council’s reasons for seeking costs are set out on pages 9 to 12 of the decision. Essentially the appellant advanced arguments with little merit or support from expert witnesses, with the planning witnesses from all parties being mostly aligned. Further, settlement options or refining the appeal to seeking amendments (rather than it being declined) were not explored in a meaningful way, meaning that Council and the applicant had to bear the cost of presenting full evidence to support all aspects of the proposal, rather than a narrower focus.

These arguments were accepted by the Court, in deciding that an award of costs should be awarded and in determining the quantum of the award (refer pages 21 to 25 of the decision).

### Financial implications

The award means that a significant portion of Council costs will not have to be borne by unbudgeted ratepayer funding.

### Next steps | E whaiake nei

Following legal protocols, Counsel has written to the appellants’ solicitor, seeking payment. Should difficulties in recovery be encountered, the award is enforceable in the District Court.

### Attachments | Ngā tapiritanga

	Title
A	Decision of the Environment Court as to costs, Decision [2024] NZEnvC 355