

Judicial review - Claim for costs

Urgent decision-making during Christmas-New Year period

Date of report: 14 January 2025
Reporting officer: Jason Marris, Chief Executive

Purpose | Ngā whāinga

To decide whether to pursue costs from the applicant in the recent judicial review proceedings brought against Council by Te Runanga o Ngāti Whātua (TRONW).

Executive summary | Whakarāpopototanga

On 18 December 2024, Justice Campbell released his decision on the application by TRONW for judicial review of Council's decision to disestablish its Māori ward, Te Moananui o Kaipara, at the 2025 local government election. The application for judicial review was declined by the Judge.

The unbudgeted cost of defending the judicial review application was in the order of \$160,000 (GST excl), made up largely of council's legal fees. It is open for Council, having successfully defended the claim, to seek some recompense for the financial burden incurred in defending the application. The starting point for the costs payable to the Council is a schedule in the High Court rules that allocates an amount for each stage of the Court process.

It is proposed that Council's legal advisors seek costs from the applicant. Note that the estimate of the maximum amount claimable (including disbursements) would be \$24,768.97, which could also be discounted by the Court (refer **Attachment A**). Therefore, even if the Court awards costs in the Council's favour, most of the cost to defend the judicial review will be borne by the Council.

The cost of pursuing a costs award is between \$1,000 and \$3,000 (GST excl), depending on whether agreement as to costs can be reached with the applicant, or a formal application instead needs to be filed.

Recommendations | Ngā tūhonga

That the Kaipara District Council:

- a) Notes that the High Court declined the application from Te Runanga o Ngāti Whātua for judicial review on 18 December 2024;
- b) Notes that the associated paperwork and judgement will be reported to the February Council meeting for transparency;
- c) Notes that defending the application for judicial review cost Council approximately \$160,000 (GST excl) in unbudgeted funds;
- d) Approves that the Chief Executive seeks costs from Te Runanga o Ngāti Whātua in accordance with the High Court Rules 2016;
- e) Delegates the Mayor and Chief Executive the authority to approve any offer of costs from Te Runanga o Ngāti Whātua (if one is made);
- f) Notes that the final outcome of any application for costs (if made) will also be reported to Council to a future meeting.

Discussion | Ngā kōrerorero

It is open for Council to seek some recompense for the costs incurred to defend the application for judicial review by TRONW. If the Council and TRONW are not able to reach an agreement

between themselves as to the costs to be paid to the Council, the Council will be required to make an application to the Court seeking costs.

There is no timeframe regarding any application for costs in the judgement of Justice Campbell. Council's legal advice is that any application should therefore be filed within a reasonable time period, which is considered to be 20 working days. 20 working days from the judgement being released would be 27 January 2025.

The following process would apply;

1. KDC's legal advisors calculate the Council's costs under [Schedules 2 and 3](#) of the High Court Rules 2016. The amount that could be claimed is \$24,768.97 (**Attachment A**).
2. TRONW's legal advisor's will then be contacted to see if an amount can be agreed.
3. If agreement is not reached, an application for costs will be filed with the Court by 27 January 2025.

For this process to occur ahead of the 27 January date, an urgent decision of the Council is required to be made. The urgent decision-making delegations agreed by Council at its November Council meeting will be used. This decision will be reported to Council at the February Council meeting for transparency.

There is an Extraordinary Council meeting scheduled for 29 January, however, given the timeframes/process for any application for costs, that meeting will not provide sufficient time for the process to be concluded.

If the Council and TRONW are not able to reach agreement as to costs and an application for costs needs to be made, the Court will have significant discretion over any amount awarded to the Council. While it is possible that the Court would award Council the costs it claims in accordance with the High Court schedules, i.e. \$ 24,768.97, the Court could also award costs on a reduced basis, by making a percentage discount to the costs sought by the Council. The reasons for a discount, which could be 50% or more, could include that the proceedings concerned a matter of public interest. We also understand that TRONW was represented by Mai Chen pro bono.

The legal costs if the Council wishes to seek costs will be between \$1,000 and \$3,000 (GST excl), depending on whether agreement as to costs can be reached with the applicant, or a formal application needs to be filed instead.

Options

Option 1 – to seek recompense for some of the costs of defending the application lodged by TRONW.

Council has a responsibility to try and recover some of the costs incurred on behalf of the ratepayer to defend the application, and this is therefore the recommended option. The cost to Council to defend the proceedings was around \$160,000 (GST excl). Therefore, any award for costs would recover only a small portion of the overall amount.

A disadvantage of this option is that TRONW is likely to oppose making any payment, and may not have the funds to pay any award of costs. Seeking costs may also make it more difficult for the Council to re-establish a relationship with TRONW, and the iwi and hapu that comprise it, now that the proceedings that have concluded.

Option 2 - Not seek recompense for the costs of defending the application lodged by TRONW.

This would mean that no costs will be recovered on behalf of the ratepayer. However, this option would mean that the Council avoids any further expense associated with seeking costs from TRONW. This option may also make it easier for the Council to re-establish a relationship with TRONW, and the iwi and hapu that comprise it, now that the proceedings that have concluded.

Impacts on Māori

The first step in the High Court process is for our legal advisors to write to the lawyers for TRONW seeking costs. If the parties are not able to reach an agreement on the amount payable, and the Court makes an award of costs in the Council's favour, this will require TRONW to pay any amount awarded to Council.

Significance and engagement | Hirahira me ngā whakapāpā

The decisions or matters of this report are considered to have a low degree of significance in accordance with Council's Significance and Engagement Policy. No consultation is required, and the public will be informed of Council's decision via the agenda and minutes publication of this meeting, on the website and through other channels if appropriate.

Next steps | E whaiake nei


Our legal advisors will be engaged if the decision is to seek costs from the applicant for defending the judicial review application.

Attachments | Ngā tapiritanga

	Title
A	Estimated claim for costs


Recommendations approved by:

Craig Jepson, Mayor

Signature: 

Date: 15 January 2025

Jonathan Larsen, Deputy Mayor

Signature: 

Date: 15 January 2025

CIV-2024-448-70: TE RŪNANGA O NGĀTI WHĀTUA V KAIPARA DISTRICT COUNCIL

Schedule of costs¹

STEP	TIME	COST
<i>Commencement</i>		
2	Commencement of defence by respondent	2 \$4,780.00
<i>Other pleadings and notices</i>		
9	Pleading in response to amended pleading	0.6 \$1,434.00
<i>Case management</i>		
11	Filing joint memorandum for first case management conference (9 August 2024)	0.4 \$956.00
11	Filing joint memorandum for subsequent case management conference (9 August 2024)	0.4 \$956.00
10	Preparation for first case management conference	0.4 \$956.00
13	Appearance at first case management conference (21 August 2024)	0.3 \$717.00
<i>Interlocutory applications</i>		
23	Filing opposition to interlocutory application to amend the pleadings (19 August 2024)	0.6 \$1,434.00
<i>Preparing for affidavit hearing</i>		
30	Preparation of affidavits, list of issues or authorities, and agreeing common bundle	2 \$4,780.00
32	Preparation for hearing	2 \$4,780.00
<i>Appearances at affidavit hearing or witness hearing and other steps</i>		
34	Appearance at hearing for sole or principal counsel	1 \$2,390.00
35	Appearance at hearing for second counsel	0.5 \$1,195.00
	SUB-TOTAL	\$24,378.00
DISBURSEMENTS		
	Notice of opposition filing fee (19 August 2024) – Ministry of Justice	\$124.35
	Statement of defence filing fee (19 August 2024) – Ministry of Justice	\$124.35

1 In the judgment, Justice Campbell does not set out the applicable category for costs. We have calculated costs on a category 2B basis.

Statement of defence to amended statement of claim filing fee (22 August 2024) – Ministry of Justice \$124.35

Courier fees for filing Court documents \$17.92

SUB-TOTAL \$390.97

TOTAL \$24,768.97
