

Unpaid Consent Fees To Enforce Or Not To Enforce?

In a recent decision of the Environment Court, *Taupo District Council v Corletts Cove Limited*, the Court determined that a Council could not use the enforcement provisions of the Resource Management Act 1991 to enforce payment of outstanding charges.

It was held that an administrative charge for processing resource consents does not come within the scope of section 314 because it does not involve a cost or expense a person has incurred or is likely to incur in avoiding, remedying or mitigating an adverse effect on the environment.

In arriving at this decision the Environment Court cited **Auckland City Council v Sulenta*** which held that four elements need to be established for an order to be made under section 314(1)(d), namely that:

- "(a) There is an adverse effect on the environment; and
- (b) The person against whom the order is sought has failed to comply with a rule in a plan or proposed plan, or a resource consent; and
- (c) The amount required to be paid represents costs and expenses which the person to whom payment is made has incurred or is likely to incur in avoiding, remedying, or mitigating the adverse effect on the environment; and
- (d) The costs and expenses are actual and reasonable (within the extended meaning of that phrase in subs (2))."

While section 314(3) states an enforcement order can include payment of any administrative charge under section 36 this is still in the context of the Court making an enforcement order for costs and expenses incurred avoiding, remedying and mitigating adverse effects on the environment.

The Environment Court held that an administrative charge for processing a resource consent is a debt due to the Council. The correct avenue for the applicant to recover the debt is under the civil jurisdiction of the District Court.

For us, the question remains of whether action could still be taken using section 314 to enforce compliance with a condition which states that all processing fees must be paid before work is undertaken in reliance on the consent. While it would not lead to immediate recovery of the fees, it might assist in that recovery.

* *Decision A06/94*

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