

**IN THE DISTRICT COURT  
AT INVERCARGILL  
I TE KŌTI-Ā-ROHE  
KI WAIHŌPAI**

**[2023] NZDC 7438**

**CRI-2021-025-477**

**CRI-2022-025-901**

**SOUTHLAND DISTRICT COUNCIL**

Prosecutor

v

**CHARLES EDWARD FRANCIS KIDD**

Defendant

Hearing: In Chambers at Christchurch

Judgment: 20 April 2023

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**RESERVED JUDGMENT OF JUDGE P A STEVEN**

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[1] This decision relates to an application made by Southland District Council (the Council) in relation to the following charges brought against Mr Kidd:<sup>1</sup>

- (a) one charge being CRN ending 0156, brought under s322(1) and s338(2)(d) of the Resource Management Act 1991 (RMA) for failure to comply with an abatement notice;<sup>2</sup> and
- (b) three charges being CRN ending 0157-0159 brought under ss 168 and 367 of the Building Act 2004 (BA) for failure to comply with a notice to fix and for wilful obstruction of building officers (respectively).<sup>3</sup>

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<sup>1</sup> Proceeding CRI-2022-025-901.

<sup>2</sup> Being CRN ending 0156, brought under ss 322(1) and 338(2)(d).

<sup>3</sup> Being CRN ending 0157 brought under s168, and CRNs ending 0158 and 0159 brought under s367.

[2] Other charges had been brought by the Council against Mr Kidd under the BA, and these are scheduled for a judge-alone trial (JAT) commencing 19 June 2023 (the June charges).<sup>4</sup>

[3] By application dated 23 February 2023 the Council sought leave for all charges to be heard together in one trial (on 19 June 2023) in the interests of justice. However, before that application was determined, Mr Kidd gave notice through his counsel of his election for a trial by jury in respect of the RMA charge (on 9 March 2023). This election is not available for offences under the BA, being category one offences under that Act.

[4] That election had implications for the Council's joinder application as it did not want all charges to be heard by a jury trial. Counsel noted that if the RMA charge is not severed then the usual course under s139 of the Criminal Procedure Act 2011 (CPA) would be for all charges to proceed to a jury trial.

[5] Accordingly, the Council made a further application to sever the RMA charge from the BA charges and then for the BA charges to be joined with and considered concurrently with the June charges at the scheduled JAT.

[6] The Council's applications were foreshadowed at a case management hearing held by AVL on 9 March 2023 where Mr Kidd was represented by counsel, Ms McKenzie. Mr Kidd had been granted leave not to appear. However, upon learning of the Council's changed position in relation to the joinder application, counsel indicated a desire to take further instructions from Mr Kidd once the further applications to be filed by the Council were received.

[7] Counsel filed a further memorandum on 14 April 2023, advising that the defendant:

- (a) wished to have all sets of charges heard together; and
- (b) changed his election to a JAT in relation to the RMA charge so that all

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<sup>4</sup> Proceeding CRI-2021-025-477.

charges could be heard at the same hearing, to reduce the court's time and costs to the parties.

[8] However, the June BA charges are scheduled for a JAT before a District Court Judge who does not hold an Environment Court warrant. Accordingly, the scheduled trial date of 19 June 2023 would have to be vacated if all charges are to be heard together, as there is no Environment Court Judge available over those scheduled dates. Accordingly, further comments were sought from the prosecution on the implications of Mr Kidd's further changed position on those comments were duly received. By its memorandum, the prosecutor maintained its previous position that the BA charges ought to be joined and heard together, and for the RMA charge to be severed and heard separately by an Environment Judge. Its priority was to preserve the hearing date presently scheduled to commence 19 June 2023 in respect of the June charges.

#### **Severance of RMA charge**

[9] The Council's application for severance is made on the basis that there is a considerable community interest in the June charges coming before the court for determination as soon as possible. Counsel submits that there are also considerable efficiencies and benefits if the more recent BA charges are severed from the RMA charge.

[10] The facts of the alleged offending for each of the BA charges are closely connected and are set out in the summaries of facts filed by the prosecutor for the June charges and those more recently brought. All BA charges arise from activities undertaken by Mr Kidd at buildings and property holdings in Church Street, Winton. Accordingly, there is a significant overlap in the evidence to be offered by the prosecutor to prove each of the charges.

[11] Counsel notes that the RMA charge is subject to a different legislative regime with different legal tests under the RMA, for which there are different defences available. More relevantly, while all properties are located in the same cul-de-sac, the property that is the subject of the (alleged) RMA offending is separate from those that give rise to the BA charges.

[12] Moreover, the enforcement officers with investigatory powers under the RMA who undertook the investigation of the RMA charges are not the same officers who investigate offending under the BA, and accordingly there will be no overlap in the witnesses or in the evidence in relation to these groups of charges.

### **Joinder of BA charges**

[13] The joinder application in relation to the BA charges is based upon the close linkages and the factual background for each of the charges; a commonality in the witnesses who would be called to give evidence in relation to the BA charges, and in the interests of an efficient disposition of all these matters.

[14] Under s138(2) of the CPA, the prosecutor is able to seek leave for the joinder of two or more charges where the matters have been adjourned for a hearing, although by s138(4) the court may, on its own motion, decide that in the interests of justice charges may be heard separately. The Council submits that the BA charges could all be heard at the scheduled JAT once they are all joined.

### **My decision**

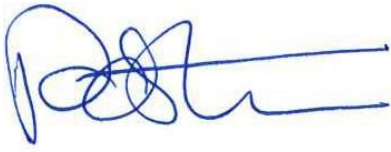
[15] The grounds for the Council's application and severance of the charges remain valid, notwithstanding the change of election more recently made by Mr Kidd.

[16] I agree with the prosecutor that in the interests of justice, the RMA charge ought to be severed from the BA charges and that the BA charges should be joined with the June charges where they can proceed to be heard by a District Court Judge without losing the scheduled dates.

[17] Accordingly, my decision is:

- (a) to allow the severance of the RMA charge, CRN 22025500156 from the BA charges CRNs22025500157-0159; and

- (b) to allow the joinder of the BA charges CRNs 22025500156-0159 with the June charges currently scheduled for a hearing on 19 June 2023.



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**P A Steven**  
**District Court Judge and Environment Judge**