

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV 2006-485-001061

BETWEEN	HERZOG INVESTMENTS Appellant
AND	WAITAKI DISTRICT COUNCIL First Respondent
AND	D I & A M MACTAVISH Second Respondents

Hearing: On papers

Appearances: L A Andersen for Appellant
T J Shiels for Second Respondent

Judgment: 5 March 2008

COSTS JUDGMENT OF FOGARTY J

[1] By judgment delivered on 29 November 2006 an appeal by the appellant was dismissed and costs reserved. Due to oversight the submissions received as to costs have not been addressed, but are in this judgment.

[2] Mr Shiels for the second respondent seeks costs on a 2C basis with an adjustment pursuant to r 47(b) to allow for time claimed for the hearing and preparation of the hearing be one day rather than based on the actual time taken up for the hearing which was three-quarters of a day.

[3] Mr Andersen seeks costs on a 2B basis.

[4] Appeals from the decisions of the Environment Court are frequently subtle. I have no doubt that it is entirely reasonable for Mr Shiels to be allowed time on a 2C basis adjusted by r 47(b) as follows:

	Day / Part Day
Preparation for case management conference	.4
Appearance at case management conference	.4
Preparation for appeal	1.0
Appearances hearing	1.0
Total	<u>2.8 days</u> ====

Scale costs at \$1,600 per day = \$4,480

Costs are so awarded, with any disbursements as fixed by the Registrar.

Solicitors:
Gault Mitchell Lawyers, Wellington, for Appellant
Anderson Lloyd Caudwell, Dunedin, for First Respondent
J D Polson, Dunedin, for Second Respondent