

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

CIV-2008-425-000650

BETWEEN SKYLINE ENTERPRISES LIMITED
Applicant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL
First Respondent

AND ZIPTREK ECOTOURS INCORPORATED
Second Respondent

Counsel: RJB Fowler and K Anderson for Applicant
J E MacDonald and M A Ray for First Respondent
R J Somerville QC & C D McKenzie for Second Respondent

Judgment: 11 December 2009

**JUDGMENT OF HON. JUSTICE FRENCH
As to Costs**

[1] This judicial review proceeding concerned the decision of Queenstown Lakes District Council to grant Ziptrek's resource consent application on a non-notified basis. In my judgment of 6 November 2009, I held that Skyline was a person adversely affected and the application should have been notified. However, I declined to grant Skyline any remedy, primarily because of its delay in issuing the proceedings, its commercial motivation and the fact that quashing the consent and requiring the Council to reconsider the application would, in the circumstances, be an exercise in futility. I was satisfied the outcome would be the same.

[2] At the conclusion of my judgment, I reserved leave for the parties to apply for an order relating to costs in the event they were unable to agree.

[3] Agreement has in fact been reached except for one matter, namely whether the costs payable by Skyline to the Council (agreed to be on a 2B basis) should be reduced on account of the fact that Skyline succeeded on the substantive issue.

[4] The Council contends no reduction should be made and that in this regard there should be no distinction between it and Ziptrek, Skyline having agreed to pay Ziptrek costs on a 2B basis without any abatement.

[5] In support of that submission, the Council relies on the reasons which persuaded me to deny Skyline a remedy. It submits that the proceeding was doomed from the start and hence unmeritorious. The Council contends costs should reflect the final outcome.

[6] There is some force in those arguments.

[7] On the other hand, the fact that Skyline did succeed on the substantive point is not a matter without significance. It cannot in my view be disregarded completely for the purposes of costs.

[8] On balance, I consider that in all the circumstances the fairest approach is to allow a 20 per cent reduction on the scale costs payable to the Council. I confirm the 20 per cent reduction does not apply to disbursements which should be paid in full.

Solicitors:
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