

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

CIV 2006-404-003546

UNDER the Resource Management Act 1991
IN THE MATTER OF an appeal under section 299 of the Act
BETWEEN THE FRIENDS OF PAKIRI BEACH
Appellant
AND AUCKLAND REGIONAL COUNCIL
First Respondent
AND SEA-TOW LTD AND MCCALLUM
BROS LTD
Second Respondents

Hearing: On the papers

Judgment: 22 April 2008

**COSTS JUDGMENT OF ANDREWS J
[Application for leave to appeal]**

*This judgment was delivered by me on 22 April 2008 at 2:30pm
pursuant to r 540(4) of the High Court Rules.*

.....
Registrar/Deputy Registrar

Date:

Solicitors:
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Brookfields, PO Box 240, Auckland
DLA Phillips Fox, PO Box 160, Auckland

N R W Davidson QC, PO Box 2929, Christchurch Mail Centre

[1] In my judgment released on 3 December 2007 I declined the application by The Friends of Pakiri Beach (“The Friends”) for leave to appeal to the Court of Appeal against the judgment of Winkelmann J striking out 10 of 12 grounds of appeal against a decision of the Environment Court.

[2] At [43] I directed that the first respondents SEA-TOW LTD (“Sea-Tow”) and McCallum Bros Limited (“McCallum”) are entitled to costs on a 2B basis, together with disbursements as fixed by the Registrar.

[3] The parties have not been able to agree as to the calculation of scale costs. Sea-Tow and McCallum seek costs in the sum of \$4,960, together with a disbursement of \$54. That includes \$800 claimed for second counsel at the hearing of the application for leave. The Friends do not agree that costs for second counsel should be certified for.

[4] Memoranda have been filed. That filed on behalf of Sea-Tow and McCallum does not set out any grounds why they are entitled to costs for second counsel. The memorandum filed on behalf of The Friends refers to the judgment of Chambers J in *Nomoi Holdings Ltd v Elders Pastoral Holdings Ltd*¹ where the Judge observed at [19] that the manner in which civil litigation is now conducted means that the need for second counsel has reduced in the vast majority of cases and that, accordingly, the circumstances in which second counsel will be certified for in category 2 cases will be fewer than was the case, say, before 1990.

[5] I note that Winkelmann J has declined to certify for costs of second counsel in respect of the application to strike out heard before her.

[6] As Winkelmann J found, in relation to the application to strike out, I also find in respect of the application for leave to appeal: the matter was not one of such legal or factual complexity as to justify second counsel

¹ *Nomoi Holdings Ltd v Elders Pastoral Ltd* (2001) 15 PRNZ 155

[7] Accordingly, I decline to certify for second counsel at the hearing.

Andrews J