

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2024-404-3154
[2025] NZHC 2610

UNDER the Resource Management Act 1991

BETWEEN HAUMOANA WHITE, RUSSELL GIBBS
and SHANE HUNT as trustees of the
POUTAMA KAITIAKI CHARITABLE
TRUST (IN LIQ)
Applicants/Appellant

AND NEW ZEALAND TRANSPORT AGENCY
WAKA KOTAHI
Respondent

Hearing: 3 April 2025

Appearances: Applicants (H White and S Hunt) in person
D G Allen and C A Easter for the Respondent

Judgment: 8 September 2025

JUDGMENT OF ROBINSON J

*This judgment was delivered by me on 8 September 2025 at 4:00 pm
pursuant to Rule 11.5 of the High Court Rules*

.....
Registrar/Deputy Registrar

Solicitors:
Buddle Findlay, Wellington

Copy to:
Applicants/Appellant

Introduction

[1] This is an appeal of the Environment Court's order on 17 May 2023 that Poutama Kaitiaki Charitable Trust (Poutama) and three of its trustees, Haumoana White, Russell Gibbs and Shane Hunt (trustees), pay \$70,000 costs to the respondent, New Zealand Transport Agency Waka Kotahi (Waka Kotahi) (costs decision).¹ Although the trustees were not party to the proceedings, the Environment Court ordered that Poutama and the trustees personally be jointly and severally liable to pay those costs.

[2] Poutama filed a Notice of Appeal on 14 June 2023 but the trustees were not named as appellants. On 2 February 2024 Poutama was placed into liquidation and the Official Assignee was appointed liquidator. Poutama did not pursue the appeal and it has been struck off the Charitable Trusts Register.

[3] Waka Kotahi subsequently served bankruptcy notices and issued bankruptcy proceedings against the trustees. Although not named appellants, the trustees wish to pursue the appeal in Poutama's absence. Waka Kotahi says, amongst other things, that the appeal fell away when Poutama was removed from the Charitable Trusts Register; and that in any event the appellants are not a party to the appeal.

[4] The issues before me are:

- (a) whether the trustees have standing to pursue the appeal;
- (b) whether the Environment Court had jurisdiction to order costs against the trustees personally; and
- (c) if so, whether the Environment Court exercised its jurisdiction to award costs lawfully.

¹ *Director-General of Conservation v Waka Kotahi – New Zealand Transport Agency* [2023] NZEnvC 100 [Costs decision].

The Environment Court Proceedings

[5] The Environment Court proceedings involved appeals of council decisions to grant Waka Kotahi resource consents, and to confirm an alteration to the existing Waka Kotahi designation in respect of the Mt Messenger section of State Highway 3. Four parties appealed those council decisions, including Poutama and the Director-General of Conservation.

[6] The costs decision records that two of the appeals were resolved through informal discussions and court assisted mediation, while another was withdrawn with the parties agreeing there would be no issue as to costs.² In contrast it is clear from the costs decision that Poutama's appeal was, to say the least, keenly fought.

[7] Key steps in the Environment Court included:

- (a) the substantive hearing held over seven hearing days in July 2019 (including the Court's site visit);
- (b) the Environment Court's first interim decision issued 19 December 2019;³
- (c) the Environment Court's second interim decision issued on 10 March 2021;⁴ and
- (d) the Environment Court's final decision issued 1 April 2021.⁵

[8] Poutama unsuccessfully appealed both interim decisions and the final decision to the High Court.⁶ Poutama's application for leave to appeal the first interim decision

² At [5]–[6].

³ *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203 [*First interim decision*].

⁴ *Director-General of Conservation v Taranaki Regional Council* [2021] NZEnvC 27.

⁵ *Director-General of Conservation v Taranaki Regional Council* [2021] NZEnvC 40.

⁶ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159; *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629.

direct to the Supreme Court was dismissed.⁷ Its various other attempts to appeal the High Court’s decisions were unsuccessful.

[9] Waka Kotahi’s application in the Environment Court for a costs award of \$84,473 was essentially stayed pending the outcome of the various High Court proceedings.

The costs decision

[10] In its costs decision of 17 May 2023 the Environment Court referred to its previous criticisms of “Poutama-led advocacy”.⁸ It referred to “problems of focus, relevance and scope” and “the possibility of divided loyalties and collateral objectives”.⁹ The Court referred to previous observations that the appeal “appears to be part of an ongoing campaign by Poutama for recognition and status”.¹⁰ In its first interim decision the Court had recorded:¹¹

Our overall concern is that the intervention of Poutama on the Pascoes’ behalf has made the task of addressing the Pascoes’ rights and interests more complex than it needed to be. Claims to cultural rights have been made on behalf of the Pascoes that go well beyond what the evidence supports.

[11] The Court found that Poutama played the lead role and that its involvement complicated the proceeding.¹² It found that Poutama had not identified the witnesses they intended to call, failed to clarify issues, and that there were difficulties around expert conferencing.¹³ The Court found Poutama failed to comply with very clear directions. The Court concluded:¹⁴

Based on the case management process, numerous memoranda filed, as well as the conduct of the hearing, we conclude that Poutama occupied most of the Court time in relation to the appeal. The unnecessarily lengthening of proceedings, both in the context of the hearing and in exchanges of memoranda after, would have contributed to the costs incurred by Waka Kotahi.

⁷ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2021] NZSC 124.

⁸ At [23].

⁹ At [23], citing *First interim decision*, above n 3, at [271]–[272].

¹⁰ At [23], citing *First interim decision*, above n 3, at [272].

¹¹ At [23], citing *First interim decision*, above n 3, at [273].

¹² At [45].

¹³ At [48].

¹⁴ At [54].

[12] The Court acknowledged that Poutama wished to present a full case, but found the manner in which it approached the appeal put Waka Kotahi to significant unnecessary costs.¹⁵ The Court had no evidence of Poutama’s impecuniosity, but recorded that in any event financial hardship or charitable status was not a reason to decline an award of costs in the matter.¹⁶

[13] The Court dealt with “apportionment” at the end of its decision, which given the circumstances, I set out in full:

[95] Waka Kotahi requests that the Court make an order for costs jointly and severally against Russell Victor Gibbs, Shane Dennis Hunt and Haumoana White as the Trustees of Poutama Kaitiaki Charitable Trust and the Trust itself.

[96] Poutama advised they are a registered charitable trust which is a separate legal entity. Poutama object to trustees being personally liable for costs in these circumstances Poutama submitted this would amount to “a personal attack by the Crown on Poutama Rangatira and Kaitiaki, who are merely fulfilling their obligations to the wider Poutama hapu and whanau.” Poutama referred to the decision of Justice Grice in which Poutama objected to a similar request by Waka Kotahi for costs in the High Court against Poutama Rangatira and Kaitiaki trustees personally.

[97] It does not appear as if the High Court specifically addressed the matter of personal liability in its decision. In the circumstances of this case we find that it is appropriate that the award include the trustees. They are the persons who determined to bring and pursue the appeal.

(footnotes omitted)

The appeal – procedural background

[14] On 14 June 2023 Poutama filed a Notice of Appeal in the New Plymouth Registry of the High Court. This appeal was within time and the proper filing fee was paid. However, the deputy registrar advised Poutama that the Notice of Appeal had been filed in the wrong registry. The appeal was of a decision made on the papers by the Environment Court at Auckland.

[15] Previous appeals had been filed in the High Court at New Plymouth. Poutama invited Waka Kotahi to agree this Notice of Appeal could also be filed in New Plymouth. Waka Kotahi did not agree.

¹⁵ At [57].

¹⁶ At [57].

[16] On 14 June 2023 Poutama filed its Notice of Appeal in the Auckland Registry. For reasons that are not entirely clear, the appeal was not registered at the time of filing and appears to have been overlooked. Poutama did not actively pursue the appeal, either before or after it went into liquidation on 2 February 2024.¹⁷

[17] On 3 October 2024 Waka Kotahi served bankruptcy notices on each of the trustees, having obtained a certificate of the Environment Court's judgment out of the District Court at New Plymouth and bankruptcy notices out of the High Court at New Plymouth.

[18] The trustees then took steps to activate Poutama's appeal and they applied for a stay of execution of the costs decision. They paid security for costs, and standard timetable directions were made.

[19] Waka Kotahi opposed the stay application (and the appeal) on various grounds, including that: the substantive appeal had fallen away with Poutama's de-registration; the trustees were not party to the appeal; and any appeal by the trustees was well out of time. After the stay application was heard, the trustees filed an application to intervene in the substantive appeal pursuant to r 4.56 of the High Court Rules 2016. Waka Kotahi opposed.

Do the trustees have standing?

[20] As discussed with the trustees and counsel for Waka Kotahi, I am firmly of the view that it is in the interests of justice for the trustees to participate in the appeal, notwithstanding the passage of time since it was filed and the de-registration of Poutama, the only named appellant. Although they were not parties in the Environment Court proceeding, costs orders were made against them from which they would be entitled to appeal. Although they allowed the appeal to remain dormant after it was filed in the Auckland Registry, they are not entirely responsible for the delay. They cannot be criticised for seeking to activate the appeal after Waka Kotahi served them with bankruptcy notices. In practical terms they have paid

¹⁷ The High Court in New Plymouth placed Poutama into liquidation on the application of a third party.

security for costs, filed and served written submissions and appeared to make oral submissions.

[21] There may strictly be merit in some of Waka Kotahi’s more technical points. However, the upshot of its position would be to deprive the trustees of their right to appeal the costs order against them, while leaving Waka Kotahi free to pursue its bankruptcy proceedings against them based on the unpaid judgment debt. I do not consider that would be in the interests of justice. For the reasons set out below, I also consider that the merits of the appeal are in favour of the trustees being parties to it, particularly in Poutama’s absence.

[22] During the appeal I indicated I would grant the trustees leave to appeal the Environment Court’s decision out of time, and direct that the appeal proceed on the basis of the written material before me and oral submissions. Perhaps more simply, I exercise the Court’s inherent jurisdiction to direct that the trustees be added as appellants to this appeal.

Did the Environment Court have jurisdiction to award costs against trustees?

[23] The first ground of appeal is that the Environment Court “unlawfully awarded costs against non-parties in their personal capacity in addition to the separate legal entity that was party to the case being [Poutama]”. This squarely raises the question whether the Environment Court has jurisdiction to order costs against non-parties.

[24] A recent Environment Court practice note confirms that it has a broad discretion as to costs.¹⁸ Costs do not necessarily “follow the event”. There is good reason for this. Environment Court decisions often involve the prediction of future outcomes, frequently have no winner, and can involve consideration of broad community interests, sometimes without legal representation.¹⁹

[25] Section 285 of the Resource Management Act 1991 (RMA), which governs the awarding of costs in the Environment Court, states:

¹⁸ Environment Court of New Zealand “Practice Note 2023” (2023) at 10.7(a).

¹⁹ Costs decision, above n 1, at [16].

285 Awarding costs

- (1) The Environment Court may order *any party to proceedings before it* to pay to any other party the costs and expenses (including witness expenses) incurred by the other party that the court considers reasonable.

[26] In *Redvale Lime Company Ltd v Rodney District Council*,²⁰ this Court held that the Environment Court did not have jurisdiction to order costs against the appellant's managing director, Mr Hopper, because he was not a party to the Environment Court proceeding. The Court described the Environment Court award making such an order as an "unjustified lifting of the corporate veil",²¹ with Andrews J concluding: "I am satisfied that [Mr Hopper] was not a party to the proceeding, and that there was no other basis on which a costs order could be made against him".²²

[27] Counsel for Waka Kotahi says this can be distinguished. He says *Redvale* concerned a director of a company, not trustees of a charitable trust. He says the timing of relevant events suggests Poutama was established primarily for the purposes of enabling the trustees to avoid personal liability. Counsel points out that the RMA has been amended since the decision was made, meaning that s 285(1) was expressed in different terms when it was considered by this Court in *Redvale*. And he submits that the conduct of Poutama in this case was worse than that of the corporate party in *Redvale*, which is "...[an]other basis on which a costs order could be made against the [the trustees]".

[28] With respect I do not consider these to be distinguishing factors. The determinative point is that the clear words of s 285 only empower the Environment Court to order costs against "*a party*". The slightly different way in which s 285 was expressed in 2009 does not alter its clear effect. I agree with Andrews J that, for the purposes of the Environment Court power to award costs under s 285, the distinction between a party and a non-party is binary.

²⁰ *Redvale Lime Company Ltd v Rodney District Council* HC Auckland CIV-2009-404-3023, 29 October 2009.

²¹ At [30].

²² At [31].

[29] Counsel for Waka Kotahi also submitted that because the trustees have been permitted to become a party to this appeal, it should be insignificant that they were not parties to the underlying proceedings. I do not agree. If anything, the opposite is true: they are parties to this appeal so they can challenge the costs awards against them as non-parties in the underlying proceedings.

[30] The Environment Court has routinely declined applications for costs orders against non-parties. In *Waitākere Resource Consents Ltd v Waitākere City Council*²³ the Council submitted the corporate veil should be lifted to allow costs against the sole director who was “effectively a party to the matter [...] as the sole director or controlling mind behind the proceedings”.²⁴

[31] Judge Whiting found that the Environment Court had no jurisdiction to order costs against the director. Contrasting the Environment Court’s powers under s 285(1) with the discretions set out in the relevant District Court and High Court Rules, Judge Whiting explained:

[26] In determining whether costs should be awarded against Mr Mawhinney I consider it relevant that the wording of Rule 46(1) of the High Court Rules and Rule 45(1) of the District Court Rules is very different to section 285(1) of the [Resource Management] Act.

[27] Rule 45 of the District Court Rules 1992 reads:

45 Costs at discretion of the Court

- (1) All matters relating to the costs of and incidental to a proceeding or a step in a proceeding are at the discretion of the Court.

[28] Rule 46 of the High Court Rules reads:

46 Costs at discretion of Court

- (1) All matters relating to the costs of and incidental to a proceeding or a step in a proceeding are at the discretion of the Court.

[29] While Rule 45 and 46 state that all matters relating to costs are at the discretion of the Court, section 285 is explicit in that it limits the Court to awarding costs against “any party”. Section 285 is not as broad as either Rule 45 or Rule 46.

²³ *Waitākere Resource Consents Ltd v Waitākere City Council* ENC Auckland A120/08, 31 October 2008.

²⁴ At [20].

...

[31] I am sympathetic to the Council and understand it has sought an award of costs against Mr Mawhinney in a personal capacity due to the difficulty it has had collecting costs awards from Mr Mawhinney's various companies in the past, and its desire to recover costs incurred at taxpayers expense. *However, based on the wording of section 285 of the Act, the Court is restricted from ordering non-parties to pay costs.* Accordingly, I decline to make an award of costs against Mr Mawhinney in a personal capacity.

(emphasis added)

[32] I agree.

[33] The distinction between parties and non-parties for these purposes is longstanding. In *Paihia and District Citizens Association Inc* the Planning Tribunal, stated:²⁵

[I]n my opinion, [the words of s 285(1) restricting the making of a costs order to only against "any party"] are a deliberate limitation on the Planning Tribunal's power to order payment of costs, and would preclude it from ordering other persons who are not parties to pay costs, even if they are members of a corporate or party.

[34] In 2002 the Environment Court stated in *Main v Rotorua District Council*:²⁶

Quite simply the section 274 participants are not parties to the proceedings and are therefore not able to obtain an order for costs under section 285 of the [Resource Management] Act. Accordingly the Court has no jurisdiction to award costs to the section 274 participants.

[35] Finally, in *Tasman Action Group Inc* in 2007, the Environment Court stated:²⁷

[W]e hold that the Environment Court can have no inherent power that is inconsistent with the text of [s 285(1) of the RMA]. We [...] hold that the Environment Court does not have power to order the members of an unincorporated society which is a party to a proceeding to pay costs in that proceeding (except of course to the extent that they may also themselves be parties to the proceeding).

²⁵ *Paihia and District Citizens Association Inc v Northland Regional Council* PT Auckland A92/95, 19 October 1995 at 8.

²⁶ *Main v Rotorua District Council* ENC Christchurch C92/02, 29 July 2002 at [6].

²⁷ *Tasman Action Group Inc v Inglis Horticulture Ltd* ENC Christchurch C157/07, 5 December 2007 at [11].

[36] There are other instances of the Environment Court finding that s 285 of the RMA precludes it awarding costs against non-parties.²⁸

[37] Counsel for Waka Kotahi points out that the Environment Court is not bound by its previous decisions. In *Guardians of Paku Bay Association Inc v Waikato Regional Council* this Court observed:²⁹

It has traditionally been accepted that, while the Environment Court is entitled to take into account the decisions and dicta of other courts which have considered the same or similar matters at an earlier stage, it is not bound by its previous decisions, and is free to consider each case on its merits.

[38] But this is a different point. The Environment Court may not be bound by its previous decisions, but it is always bound by the RMA. The words of s 285(1) are quite clear. The Environment Court may order costs against “any party”. The trustees were not parties.

[39] For that reason I allow the trustees’ appeal. The Environment Court had no jurisdiction under s 285(1) to order costs against them.

Other appeal grounds

[40] It is unnecessary for me to determine the other grounds of appeal, which in any event focussed on Poutama’s position rather than that of the trustees. In fairness I record that the trustees strongly urged that I should allow Poutama’s appeal. The trustees filed lengthy and detailed submissions challenging the award, including the Court’s adverse findings and comments about the way Poutama conducted its case. However, I tend to agree with counsel for the respondent that in many respects the trustees were endeavouring to re-litigate substantive matters on which Poutama had been unsuccessful.

²⁸ See *Ngātiwai Trust Board v Whangarei District Council* PT Auckland A16/96, 5 March 1996 at 8; *Cypress Capital Ltd v Taupō District Council* [2020] NZEnvC 90 at [27]-[28]; *Canterbury Regional Council v Kaikoura District Council* ENC Christchurch C167/05, 14 November 2005 at [43].

²⁹ *Guardians of Paku Bay Association Inc v Waikato Regional Council* [2012] 1 NZLR 271, [2012] NZRMA 61 at [61] (footnotes omitted).

[41] I also record that in support of their submissions that the Court should hear and allow Poutama's appeal, the trustees referred me to the Supreme Court's decision in *Ellis v R*, essentially to the effect that tikanga recognised Mr Ellis' mana and appeal rights posthumously.³⁰ The trustees submitted that this also requires the Court to hear Poutama's appeal, notwithstanding its liquidation and de-registration.

[42] I do not accept that submission. Poutama's costs appeal and its subsequent liquidation and de-registration are materially different to Mr Ellis' circumstances before the Supreme Court. Poutama was a charitable trust, a creature of statute. It no longer exists. As the trustees have successfully pointed out, for present purposes Poutama was separate from the trustees themselves. In any event, based on the material before me I would have dismissed Poutama's appeal. For the reasons set out by the Environment Court in its thorough judgment, the costs award against Poutama was a lawful exercise of its discretion under s 285(1).

Decision

[43] The trustees are joined as appellants.

[44] The trustees' appeal is allowed. The costs order against them personally is set aside.

[45] The trustees were self-represented. However, if the trustees wish to claim costs which cannot be agreed they should file one memorandum of not more than three pages in length by 4:00 pm on 6 October 2025. The respondent should file a memorandum of similar length by 4:00 pm on 20 October 2025. I will deal with any issues on the papers.

Robinson J

³⁰ *Ellis v R* [2022] NZSC 114.