

APPENDIX 1:

Environment Court decision [2025] NZEnvC 355

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHU**

Decision No. [2025] NZEnvC 355

IN THE MATTER	of the Resource Management Act 1991
AND	an appeal under s120 of the Act
BETWEEN	D G & P J BAIN
	(ENV-2024-CHC-101)
	Appellants
AND	DUNEDIN CITY COUNCIL
	Respondent

Court:	Environment Judge P A Steven
Hearing:	In Chambers on the papers
Last case event:	28 October 2025
Date of Decision:	4 November 2025
Date of Issue:	4 November 2025

DECISION OF THE ENVIRONMENT COURT

- A: The appeal is struck out.
- B: Costs are reserved.



REASONS

Background

[1] On 25 October 2024 D & P Bain (the appellants) filed an appeal against the decision of the Dunedin City Council (the Council) declining the resource consent application for the removal of a Scheduled Tree (T666) at 27 King Street, Mosgiel, Dunedin.

[2] The matter was subject to court-assisted mediation but remained unresolved. The matter was accordingly timetabled for hearing with an evidence exchange timetable put in place and tentative dates for hearing scheduled in the week of 8 December 2025 or otherwise, in February 2026. Parties were asked to confirm availability for a hearing in the December week.

[3] The court received a memorandum of counsel for the Council dated 25 September 2025 advising that the appellants had filed a new resource consent application for the removal of the protected tree. The Council sought directions that the evidence exchange timetable be put on hold and that the matter not proceed to hearing so that the new application could be processed.

[4] In a Minute dated 26 September 2025 the request to adjourn this matter was declined. The Minute recorded that the appellants' actions in lodging a fresh application for resource consent, with an active appeal on the decision to decline the first application (without telling the court), is an abuse of the court's process, particularly where no application was lodged by the appellants to vary the directions previously made by the court.

[5] Due to the non-response from the parties as to their availability for a hearing, in the week of 8 December, the court advised that a hearing could no longer be accommodated in that week or in February 2026. This resulted in the hearing for the week of 8 December 2025 being vacated, but the court determined that the timetable for an exchange of evidence would not be paused pending the

outcome of the new application.

[6] A hearing was re-scheduled for 10 and 11 March 2026, and the following directions were made:

- (a) the current evidence exchange timetable remains in place;
- (b) the hearing scheduled for the week of 8 December 2025 in Dunedin is vacated; and
- (c) the hearing will proceed on 10 and 11 March 2026.

[7] The appellants were advised that non-compliance with the evidence exchange timetable would result in the appeal being struck out.

[8] On 29 September 2025, the appellants filed a memorandum in relation to the new resource consent application stating that:

It is not meant to be disrespectful nor an abuse of the court in that it relates to matters that are not involved in the current appeal. The appellants expert arborist has discovered damage to the tree which has health and safety implications. It is not the same application as is before the Environment Court, rather a new application to remove the tree on the grounds of the new evidence discovered that there is a large crack running through the tree so as to raise the danger level.

[9] The court replied by email stating:

I have considered the further information shared in the appellant's memorandum.

The current appeal relates to a decision to decline an application for tree removal. A hearing before this court is de novo; any evidence advanced in support of the application, including any evidence of the condition of the tree, is relevant. The appellant is entitled to produce any evidence they wish to rely upon even if it was not advanced at the Council hearing.

The appellant is also entitled to withdraw the current appeal to focus resources on the new application before the Council.

If the appeal is to remain, the directions issued in the court's Minute of 25 September 2025 are re-affirmed.

[10] Both parties filed their list of issues to be addressed at the hearing, but no evidence has been filed by the appellants.

[11] The Council filed a memorandum on 28 October 2025, noting that:

The Appellants evidence in support of their appeal was due on 21 October 2025. That date has now passed, and no evidence has been served on the Respondent by the Appellants.

At this time the Council does not have any evidence to respond to, and would prefer not to have to incur the cost of preparing evidence if the appeal is not going to be pursued by the Appellants.

Counsel for the Respondent respectfully seeks directions from the Court as to the appropriate next steps.

Striking out proceedings in the Environment Court

[12] Section 279(4) of the Act sets out the criteria the court must consider in exercising its discretion to strike out a proceeding.

(4) An [Environment Judge] sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out if the Judge considers—

- (a) that it is frivolous or vexatious; or
- (b) that it discloses no reasonable or relevant case in respect of the proceedings; or
- (c) that it would otherwise be an abuse of the process of the [Environment Court] to allow the case to be taken further.

[13] An abuse of the court's process has been held to include where appellants have failed to adhere to directions from the court, including where they have failed

to prepare evidence for a scheduled hearing (despite notice being given).¹

Evaluation

[14] Despite the numerous directions from the court, this appeal has not been properly advanced by the appellants. They have failed to comply with the evidence timetable and I was clear in my last Minute that I would strike out the appeal if the timetable was not complied with. The evidence timetable imposed by the court has now been breached by the appellants.

[15] Time limits attach to various steps in the preparation for hearing to allow for the expeditious completion of hearing processes. If those timeframes are ignored it is difficult to ensure that proceedings are resolved in a timely manner.

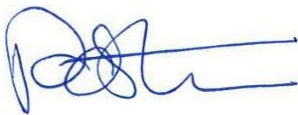
[16] The appellants have not adhered to the timetable and have not filed any evidence. To that extent, there is no case to respond to.

[17] I conclude that it is appropriate to strike out the appeal on the grounds that allowing it to continue is an abuse of the court's process.

Outcome

[18] The appeal is struck out.

[19] Costs are reserved.



P A Steven
Environment Judge

¹ See *Wainuiototo Bay Property Co Ltd v Waikato Regional Council*, EnvC Auckland, A223/03, 22 December 2003, at [21]–[22].