

BEFORE THE ENVIRONMENT COURT

Decision [2017] NZEnvC 056

ENV-2016-AKL-000200

IN THE MATTER

of appeals under s156 of the Local Government (Auckland Transitional Provisions) Act 2010 against decisions of the Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel on the proposed Auckland Unitary Plan

BETWEEN

FENGLI HOU & WANSHI RUYI TRUST LTD

Proposed Appellants

AND

AUCKLAND COUNCIL

Proposed Respondent

Environment Judge C J Thompson

In Chambers: – under s279 of the Resource Management Act 1991

DECISION – PRELIMINARY JURISDICTION ISSUES

Decision issued: 19 APR 2017



Introduction

[1] The two named proposed appellants lodged an appeal on issues relating to the decisions of the Auckland Council in its processing of recommendations of the Auckland Unitary Plan Independent Hearings Panel on the Proposed Auckland Unitary Plan (PAUP). The Council raised, as a preliminary issue, the question of whether the appeal was valid, given the preconditions set out in s156(3) of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA).

[2] Procedurally, a timetable to resolve that issue was established by the Court for the lodging and exchange of written submissions by the parties, with the Council's submissions to be lodged and served by 31 March 2017; s274 parties' submissions to be lodged and served by 5 April 2017, and the proposed appellants' submissions to be lodged and served by 10 April 2017. There was a further deadline for the Council to lodge and serve submissions in reply by 13 April 2017.

[3] The Council lodged and served its submissions on 29 March 2017. No submissions have been lodged by any s274 party, nor by the proposed appellants. No application has been made for an extension of the lodgement date by any of those persons.

[4] However, the Court Registry received an email message from *Fengli Hou/Wanshi Ruyi Trust* dated 11 April 2017. The message, among other things, said this:

... I am not prepared to withdraw my appeal but reconsider whether the cases ought to remain with the Environment Court.

In light of the Environment Court's recent decision in *Lenihan & Others v Auckland Council* [2017] NZEnvC 022 (Lenihan decision), the Auckland Council has formed the view that no right of appeal to the Environment Court is available to you under the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA). Accordingly, I like to ask you a favour to transfer my appeal to High Court instead. ...

[5] This Court has no power to transfer any such proceeding to the High Court. If the proposed appellants wish to take proceedings in the High Court, they must do so themselves, and would be wise to take legal advice before doing so.



[6] The position with the proposed appeal in this Court is that the Council has lodged its submissions with the Court in accordance with the established timetable, and the proposed appellants have not done so. No extension of time has been sought.

[7] The email message already quoted appears to carry an implicit acceptance by the proposed appellants that the reasoning of the *Lenihan* decision would indeed apply to their proposed appeal, and that they recognise that there is no point in attempting to continue with it. On their face, the submissions lodged by the Council would strongly support that view. I emphasise though that I do not deal with the matter on the basis that the proposed appeal has expressly been abandoned.

[8] I deal with the matter simply on the basis that the timetable has not been complied with; that no reason has been given for that non-compliance; no extension has been sought, and that this Court cannot comply with the proposed appellants' wish to have the matter transferred by this Court to the High Court.

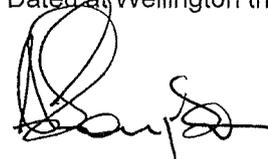
Order

[9] For those reasons, the proposed appeal is dismissed, and will be taken no further.

Costs

[10] I imagine it unlikely that there will be any issue of costs, but as a formality I will reserve costs. If there is to be any application it should be lodged and served within 15 working days of the issuing of this decision, and any responses lodged and served within a further 10 working days.

Dated at Wellington the 19th day of April 2017



C J Thompson
Environment Judge

