BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 156

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals under s 156 of the Local Government (Auckland Transitional Provisions) Act 2010
BETWEEN	ZHI LI, JING NIU AND WEILI YANG (ENV-2016-AKL-000196) Appellants
AND	OKURA HOLDINGS LIMITED (ENV-2016-AKL-000211) Appellant
AND	AUCKLAND COUNCIL Respondent
AND	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED and LONG BAY-OKURA GREAT PARK PROTECTION SOCIETY INCORPORATED and OKURA RURAL LANDOWNERS GROUP Section 274 parties

Court:	Environment Judge B P Dwyer sitting alone under s 279 of the Act
Hearing:	In Chambers at Wellington
Date of Decision:	27 August 2018
Date of Issue:	27 August 2018

PROCEDURAL DECISION OF THE ENVIRONMENT COURT

REASONS

[1] On 6 June 2018 the Court issued a decision[1] (the decision) on appeals brought by Okura Holdings Ltd (OHL) and Li and others relating to the appropriate zoning of OHL's property at Okura pursuant to the proposed Auckland Unitary Plan. The appeal was declined.

[2] Paragraph [782] of the decision provided (in summary) that notwithstanding that it was not the Court's normal practice to reserve costs on plan appeals, the issue of costs was left open in this case and that if any party considered it appropriate to do so, costs applications could be made pursuant to the Environment Court Practice Note 2014.

[3] On 27 June 2018 OHL filed an appeal to the High Court against the decision.

[4] By minute of 28 June 2018, I directed that any party which had not already filed a costs application[2] need not do so until the outcome of the High Court appeal is known and that further directions may be sought by any party at that time.

[5] Notwithstanding the direction, on 11 July 2018 the Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) and the Long Bay Okura Great Park Society (the Society) made costs applications against OHL.

[6] On 16 August 2018 counsel for Forest and Bird and the Society challenged the approach which I have taken in the minute of 28 June and sought that OHL be directed to respond to the costs applications and that the applications be determined by the Court. As I understand it, three propositions are advanced in support of that process:

- First was that this approach is supported by case law;
- Second was that the costs applications should be determined while the circumstances are fresh in the Court's memory;
- Third was... "the resource implications of the Environment Court and now High Court proceedings for the Society".[3]

I now consider those propositions. In doing so I make the observation that the award of costs in the Environment Court is ultimately a discretionary matter and approached on a somewhat different basis to many other Courts where costs awards routinely

[1] [2018] NZEnvC 87.
[2] Auckland Council had already done so.
[3] Para 6 memorandum of 16 August 2018.

follow outcome on a scale basis. Section 285 RMA gives the Environment Court a wide discretion as to whether or not to award costs and the quantum of such awards.

[7] It is clear from the case law cited that on occasions the Court has determined costs applications notwithstanding the fact of an appeal having been lodged against the Court's primary decision and on other occasions it has declined to do so. I note that the Court's Practice Note gives no direction as to any "standard practice" in this regard. I consider that whether or not costs applications are determined or put on hold pending the outcome of a High Court appeal against a primary decision is a matter to be determined by the Court in light of all applicable circumstances in any given instance.

[8] I accept that it is preferable for costs applications to be determined while circumstances are fresh in the Court's memory. In this instance the issues of whether or not costs might be awarded and if so what the quantum of costs should be, will substantially revolve around the merits of the case advanced by OHL and the Court's findings on those merits. The merits are comprehensively discussed in the decision which in my view will provide a more than adequate aide memoire should one be required. If the High Court should find against this Court on those matters of merit, that might directly affect the outcome of the costs applications.

[9] Finally, the resource issue referred to in para 5 of counsel's memorandum of 16 August reflects the submission contained in para 37 of the joint costs application that unless costs are awarded the Society may have difficulty participating in the High Court proceedings. I acknowledge that would be very unfortunate, not least because of the prominent part played by the Society in the proceedings before this Court. However, I do not consider that consideration can be determinative in this instance. There can be no guarantee whatever that the costs application will be successful in which case the Society will find itself in the situation of concern to it in any event.

[10] For all of these reasons I determine to maintain the approach indicated in my minute of 28 June 2018 that OHL need not respond to the costs applications until the High Court appeal has been resolved.

BP Dwyer
Environment Judge