

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

Decision No. [2024] NZEnvC 68

IN THE MATTER

of the Resource Management Act 1991

AND

an application for declarations under
s311 of the Act

BETWEEN

ENVIRONMENTAL DEFENCE
SOCIETY INCORPORATED

(ENV-2023-CHC-002)

Applicant

AND

MINISTER FOR THE
ENVIRONMENT AND MINISTER
OF FORESTRY

Respondents

Court: Environment Judge P A Steven

Hearing: In Chambers at Christchurch

Last case event: 28 March 2024

Date of Decision: 8 April 2024

Date of Issue: 8 April 2024

DECISION OF THE ENVIRONMENT COURT

A: The stay of proceedings is granted under the following grounds:



EDS v MINISTER FOR THE ENVIRONMENT AND MINISTER OF FORESTRY –
STAY

- (a) the decision on jurisdiction has been appealed to the High Court; and
- (b) the respondents do not oppose the stay on the basis that the applicant intends to prosecute their appeal as expeditiously as possible.

B: Parties are to confer and file a reporting memorandum within 5 working days of the outcome of the High Court proceeding.

C: Leave is reserved for any party to apply for further or other orders at any stage until the appeal is determined.

REASONS

Introduction

[1] On 29 February 2024, the Environment Court issued a decision¹ that it does not have jurisdiction to make declarations two, three and four sought by Environmental Defence Society Incorporated ('EDS').

[2] On 21 March 2024, EDS lodged an appeal to the High Court against the decision on jurisdiction.

[3] Directions were made in the interim for parties to confer and file a joint memorandum addressing the most appropriate path forward for this matter.

[4] On 28 March 2024, the parties filed an application to stay this proceeding, pending the High Court appeal.

Application for stay

[5] The application for stay has been made on the following grounds:²

¹ *Environmental Defence Society Inc v Minister for the Environment* [2024] NZEnvC 24.

² Application to Stay Proceedings dated 28 March 2024, (2)-(3).

The parties have conferred and consider that it would be most efficient to resolve the issues raised by the questions of law in the EDS appeal, prior to taking further steps in the Environment Court proceedings. This avoids any risk of duplication of issues and resources.

Accordingly, and by consent, the parties respectfully seek directions for an interim stay (until further order of the Court) of the proceedings in ENV 2023 CHC 002.

The court's powers

[6] The court has the power to stay a proceeding through a combination of ss269 and 272 Resource Management Act 1991 ('RMA') and rule 18.10 District Court Rules 2014.

[7] Section 272 RMA provides that the Environment Court shall hear and determine all proceedings as soon as practical after the date on which the proceedings are lodged unless, in the particular circumstances of the case, it is not appropriate to do so.

[8] Through s278 RMA, the Environment Court is able to utilise the District Court Rules. Rule 18.10 District Court Rules 2014 allows the court, pending the determination of an appeal, to stay a proceeding subject to any conditions it thinks just.

[9] The overarching principle applying to an application for stay of a proceeding must be the interests of justice overall. The court must weigh in balance the successful litigant's rights to the fruits of a judgment and 'the need to preserve the position in case the appeal is successful'. Relevant factors for consideration include:

- (a) whether the appeal may be rendered nugatory;
- (b) the bona fides of the applicant as to prosecution of the appeal;
- (c) whether the successful party will be injuriously affected by the stay;
- (d) the effect on third parties;

- (e) the novelty and importance of the questions involved;
- (f) the public interest in the proceeding;
- (g) the overall balance of convenience; and
- (h) the apparent strength of the appeal.

Consideration

[10] As this application for stay is filed by consent of all parties, no disputes have been raised as to the relevant factors for consideration.

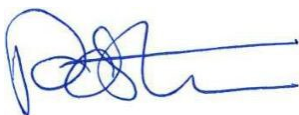
[11] I consider that it is appropriate in the circumstances of this case to grant the stay pending the outcome of the High Court appeal on [2024] NZEnvC 24 for the following reasons:

- (a) the respondents do not oppose the stay;
- (b) the parties agree that it would be more efficient to resolve the issues raised in EDS's appeal prior to taking any further steps in the Environment Court proceeding; and
- (c) EDS intends to prosecute its appeal before the High Court as expeditiously as possible.

Outcome

[12] The application to stay proceedings is granted.

[13] The parties are to provide a further report to the court following the outcome of the High Court proceedings.



P A Steven
Environment Judge

