

BEFORE THE ENVIRONMENT COURT

Decision [2016] NZEnvC 153

IN THE MATTER of the Local Government (Auckland
Transitional Provisions) Act 2010
(LGATPA) and the Resource
Management Act 1991 (RMA)

APPLICANT **AUCKLAND COUNCIL**

(ENV-2016-AKL-000171)

Court: Principal Environment Judge LJ Newhook

 Environment Judge M Harland

Date of Decision: 17 August 2016, on the papers

**DECISION OF THE ENVIRONMENT COURT ON EX PARTE APPLICATION
FOR WAIVERS / DIRECTIONS**

- A: The application is allowed.
- B. The waivers and directions sought are granted.



REASONS

Introduction

[1] On 9 August 2016 the Court invited members of the legal and planning professions to an informal conference for preliminary discussions on preparation for the efficient management of such appeals as may be lodged in the Environment Court concerning Auckland Council's decisions on the Independent Hearing Panel's recommendations on the Proposed Auckland Unitary Plan (PAUP).

[2] The conference was expressly advised to be informal, and that attendance was not compulsory. The conference focused only on Environment Court processes. High Court processes were naturally not discussed.

[3] The purpose of the informal conference was to give members of the Court and senior practitioners the opportunity to discuss and consider the following issues:

- (a) The possibility of service waiver(s) involving electronic or other possible alternatives;
- (b) Preliminary consideration of procedures for identification and categorisation of topics;
- (c) Preliminary consideration of procedures for identification of priorities (including as between matters in the High Court and this Court); and
- (d) Preliminary issues affecting deployment of Environment Court resources for Alternative Dispute Resolution and hearing activities.

[4] Apparently in consequence of discussions on topic (a) at the informal conference, and further discussions amongst some counsel afterwards, the Court received an *ex parte* originating notice of motion from the Auckland Council on 16 August 2016. The application sought various waivers and directions under s 281 of the RMA in relation to potential appeals under ss 156(1) or (3) of the LGATPA against decisions of the Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel on the PAUP.



The application for waivers and directions

[5] The waivers and directions sought relate generally to the service of any Notices of Appeal, the operation of s 274 of the RMA, and the filing and service of any further Court documents relating to any appeals.

Service of Notices of Appeal

- (a) A waiver in favour of the appellants of the usual requirement in clause 14(5) of Schedule 1 to the RMA, regulation 13 and Form 6 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 (the **2013 Regulations**) to serve a copy of any Notice of Appeal on every person who made a submission on the provision or matter to which the appeal relates, and the related requirement in regulation 14 and Form 6 of the 2013 Regulations to give written notice to the Registrar of the Environment Court of the name, address, and date of service for each such person served.
- (b) A waiver in favour of the appellants of the usual requirement in Form 6 to file an additional copy of the Notice of Appeal with the Environment Court.
- (c) A direction that any Notice of Appeal be served on the Auckland Council electronically by email to unitaryplan@aucklandcouncil.govt.nz.

Section 274 notices

- (a) A waiver of the usual requirement to lodge a signed original and 1 copy of any s 274 notice with the Court, and a direction instead that anyone seeking to join the appeal as a s 274 party may, as an alternative to complying with the usual requirements of s 274 and Form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (the **2003 Regulations**), be allowed to file an electronic copy of any s 274 notices by email to the Court's dedicated email address for s 156 appeals unitaryplan.ecappeals@justice.govt.nz which may be signed or unsigned, in which case no hard copy need be filed with the Court.



- (b) A waiver of the usual requirement to serve a copy of any s 274 notice on “all other parties”. Instead, service of s 274 notices on “all other parties” can be effected by the Court uploading copies of s 274 notices received to the Environment Court’s website.¹ For the avoidance of doubt, an electronic copy of any s 274 notice must be served by email on the appellant and on the Council at unitaryplan@aucklandcouncil.govt.nz.
- (c) For those persons who decide to file a hard copy of their s 274 notices with the Court, a waiver of the usual requirement to file an extra copy of the notice.

All other documents filed in relation to the appeal

- (a) A direction that, unless hard copies are subsequently specifically required to be filed and/or served by the Court, all other documents relating to the appeal filed by any party may be:
- (a) filed electronically with the Court by email to unitaryplan.ecappeals@justice.govt.nz; and
- (b) served electronically on the appellant and / or Council, as appropriate, by email,

with service of all other parties deemed to be effected by the Court uploading the document(s) to the Court’s website.²

Grounds for seeking the waiver and directions

[6] In total, 9,443 primary submissions and 3,915 further submissions were made on the PAUP.

[7] The Council supports the Court’s earlier tentative suggestion raised with practitioners to make use of electronic methods of filing and service for all appeals filed under s 156 of the LGATPA in view of the substantial number of submitters.

[8] The waivers and directions sought will:

¹ <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>
² <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>



- (a) Substantially reduce the burden on appellants and any s 274 parties, who may otherwise be obliged to serve documents on a significant number of parties;
- (b) Minimise the quantities of paper which would otherwise be generated by strict compliance with s 156(5) of the LGATPA, clause 14(5) of Schedule to the RMA, and regulations 13 and 14, and Form 6 of the 2013 Regulations, and Form 33 of the 2003 Regulations; and
- (c) Address the significant logistical issues for the Court and all parties that would otherwise arise, particularly around filing and service of documents.

Discussion

[9] Two features of s 281 of the RMA are particularly relevant in this context of this application. This first is that it does not appear that the Court's jurisdiction is confined to a proceeding already before the Court. That is relevant because the application by the Council here is an originating proceeding.³

[10] The second is that the Court can waive the requirements of the Act and make directions in an appropriate case.

[11] In addition to filing this application the Council intends to publish a notice in the New Zealand Herald on 19 August 2016, publically notifying the decisions of the Auckland Council on the recommendations of the Auckland Unitary Plan Independent Hearings Panel. This notice will include a summary of appeal rights, timeframes for filing and sets out the specific arrangements this Court has made for the filing of appeals, including that this Court has approved an amended template for Notices of Appeal under s 156(1) and s 156(3) of the LGATPA.

[12] All submitters and further submitters will also receive a letter from the Council that reiterates and elaborates on the information that will be provided in the notice in the New Zealand Herald. The information will also be made available on the Council's Unitary Plan website.



³ *Clifford Bay Proposed Port v Marlborough District Council* EnvC C77/97, 28 July 1997.

[13] The result of the notice, the letter and the Council's website is that all submitters and further submitters will not only be on notice that Council's decisions have been released, but they will also be advised of the waivers and directions made in this decision. This will include that certain Forms and Regulations under the RMA and the LGATPA (including the template for Notices of Appeal) have been tailored to make them easier to use and understand in the context of filing appeals against the PAUP in this Court.

[14] Having particular regard to the open and forthright manner in which submitters are to be alerted to the circumstances underpinning the intended waivers and directions, the Court is minded to make the process of filing appeals and other documents in relation to the PAUP as efficient and streamlined as possible, commensurate with good access to justice. The main issue to determine is whether any potential party would be prejudiced by the waivers and directions sought.

[15] In the special circumstances of this case we are satisfied that the procedures established for filing and service of Notices of Appeal and other related documents on the PAUP sufficiently overcome any concerns about prejudice. The waivers and directions sought will simplify processes and enable parties to access Court documents in a timely and efficient manner.

[16] The Court has also turned its mind to this application being *ex parte*, and that if there were to be any doubt whether a civil proceeding should proceed without notice, the applicant's counsel should give warning to lawyers for other parties, and that certain procedural steps might then be followed, often called a "Pickwick process".⁴ The Court notes that the application has been made by counsel for Auckland Council after consulting with senior RMA practitioners. Also, numerous others attended the informal conference where the possibility of an application for waiver and directions was discussed, and opportunity offered for input.

Directions and waivers



⁴ *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd* [1972] FSR 427; [1972] RPC 786; [1972] 3 All ER 384; (1972) 116 SJ 697.

[17] Accordingly, the Court grants the waivers and directions sought (summarised) as set below⁵:

Service of Notices of Appeal

- (a) The requirement to serve a copy of any Notice of Appeal on every person who made a submission on the provision or matter to which the appeal relates is waived.
- (b) The related requirement to give written notice to the Registrar of the Environment Court of the name, address, and date of service for each such person served is waived.
- (c) Any Notices of Appeal may be filed with the Court electronically at unitaryplan.ecappeals@justice.govt.nz. Parties are still required to file a hard copy of their appeal with the Court, but the requirement to file a second hard copy of the Notice of Appeal is waived.
- (d) Any Notice of Appeal may be served on the Auckland Council electronically by email to unitaryplan@aucklandcouncil.govt.nz.

Section 274 notices

- (a) The requirement to lodge a signed original and 1 copy of any s 274 notice with the Court is waived.
- (b) The Court directs that any person seeking to join an appeal as a s 274 party may file an electronic copy of any s 274 notices by email to the Court's dedicated email address for s 156 appeals unitaryplan.ecappeals@justice.govt.nz which may be signed or unsigned, in which case no hard copy need be filed with the Court.
- (c) The requirement to serve a copy of any s 274 notice on "all other parties" is waived. Instead, service of s 274 notices on "all other parties" will be effected by the Court uploading copies of s 274 notices received to the Environment Court's website.⁶
- (d) An electronic copy of any s 274 notice must be served by email on the

⁵ The full detail reflects the applications made as recorded early in this decision.

⁶ <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>



appellant and on the Council at unitaryplan@aucklandcouncil.govt.nz

- (e) For those persons who decide to file a hard copy of their s 274 notices with the Court, the requirement to file an extra copy of the notice is waived.

All other documents filed in relation to the appeal

- (a) The Court directs that, unless hard copies are subsequently specifically required to be filed and/or served by the Court, all other documents relating to the appeal filed by any party may be:

(i) filed electronically with the Court by email to unitaryplan.ecappeals@justice.govt.nz; and

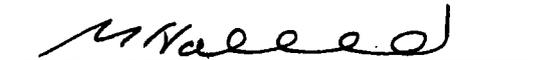
(ii) served electronically on the appellant and / or Council, as appropriate, by email,

with service of all other parties deemed to be effected by the Court uploading the document(s) to the Court's website.

SIGNED at Auckland this 17th day of August 2016



LJ Newhook
Principal Environment Judge



M Harland
Environment Judge

