

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 4

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

AND

IN THE MATTER of appeals under section 157 of the LGATPA against decisions of requiring authorities or the Auckland Council in relation to the designations or heritage orders included in the Proposed Auckland Unitary Plan (PAUP)

AND

IN THE MATTER of an Application for Waivers / Directions under section 281 of the RMA

BETWEEN

TRAM LEASE LIMITED

(ENV-2016-AKL-000270)

Appellant

NEW ZEALAND TRANSPORT AGENCY

Respondent

AND

BUNNINGS LIMITED

(ENV-2016-AKL-000271)

Appellant

AUCKLAND TRANSPORT

Respondent

AND

MAWSON

(ENV-2016-AKL-000272)

Appellant

AUCKLAND TRANSPORT

Respondent



AND

HOUSING NEW ZEALAND
CORPORATION

(ENV-2016-AKL-000273)

Appellant

AUCKLAND INTERNATIONAL AIRPORT
LIMITED

Respondent

AND

ROCKFIELD TRUST

(ENV-2016-AKL-000274)

Appellant

KIWIRAIL HOLDINGS LIMITED

Respondent

AND

DILWORTH TRUST BOARD

(ENV-2016-AKL-000275)

Appellant

NEW ZEALAND TRANSPORT AGENCY

Respondent

AND

AUCKLAND COUNCIL

(ENV-2016-AKL-000276)

Appellant

KIWIRAIL HOLDINGS LIMITED

Respondent

AND

AUCKLAND TRANSPORT

(ENV-2016-AKL-000277)

Appellant

KIWIRAIL HOLDINGS LIMITED

Respondent



Decision made on the papers

Court: Principal Environment Judge Newhook

Date of Decision: 25 January 2017

Date of Issue: 26 January 2017

**DECISION OF THE ENVIRONMENT COURT ON APPLICATION BY AUCKLAND
COUNCIL UNDER S 281 OF THE RMA FOR WAIVERS / DIRECTIONS**

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

REASONS

Introduction

[1] On 14 December 2016 Auckland Council applied pursuant to s 281 of the RMA for various waivers and directions in respect of the appeals (already filed, and potential) under s 157 of the LGATPA against decisions of either requiring authorities or the Council in relation to designations or heritage orders included in the Proposed Auckland Unitary Plan.

[2] 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.

Waivers and Directions Sought

[3] The Council seeks the following waivers and directions.

Service of Notices of Appeal

[4] A waiver in favour of appellants of the usual requirement set out in s 174(3) of the RMA to serve a copy of any Notice of Appeal on every person who made a submission on the requirement to which the appeal relates.

[5] A direction that any Notice of Appeal is to be served electronically by email on the requiring authority, and on the Auckland Council by email to unitaryplan@aucklandcouncil.govt.nz.



Section 274 Notices

[6] A waiver of the usual requirement to lodge a signed original and 1 copy of any s274 notice with the Court, and a direction instead that anyone seeking to join the appeal as a s274 party may, as an alternative to complying with the usual requirements of s274 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 s274 notice by email to the Court's dedicated email address for s157 appeals (unitaryplan.ecappeals@justice.govt.nz), which may be signed or unsigned, in which case no hard copy needs to be filed with the Court.

[7] A waiver of the usual requirement to serve a copy of any s274 notice on "all other parties".¹ Instead, service of s274 notices on "all other parties" will be effected by the Court uploading copies of s274 notices received to the Environment Court's website. For the avoidance of doubt, an electronic copy of any s274 notice must be served by email on the appellant, the requiring authority, and on the Council (to: unitaryplan@aucklandcouncil.govt.nz).

[8] 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

[9] 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:

- filed electronically with the Environment Court by email to unitaryplan.ecappeals@justice.govt.nz; and
- served electronically on the appellant, requiring authority, 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.

Grounds for Seeking the above Waivers and Directions

[10] The Council supports the Court's suggestion raised with practitioners (in early August 2016) to make use of electronic methods of filing and service for all appeals

¹ Section 274(2A), RMA.



filed in relation to the PAUP under the various appeal provisions of the LGATPA.

[11] The Court has previously issued waivers and directions ([2016 NZEnvC 153] in relation to appeals filed under ss156(1) and (3) of the LGATPA (on *ex parte* application by the Council dated 16 August 2016) which address the same logistical issues for appellants, submitters (and the Court), with the Court noting at paragraph [15] that, "The waivers and directions sought will simplify processes and enable parties to access Court documents in a timely and efficient manner."

[12] The Council submits that the waivers and directions sought as part of this application will:

- (a) Substantially reduce the burden on appellants, requiring authorities, and any s274 parties, who may otherwise be obliged to serve documents on a significant number of parties for appeals filed under s157 of the LGATPA.
- (b) Minimise the quantities of paper which would otherwise be generated by strict compliance with s157 of the LGATPA, s274(2A) of the RMA and Form 33 of the 2013 Regulations.
- (c) Address the significant logistical issues for the Court and all parties that would otherwise arise, particularly around filing and service of documents.

[13] The Council has satisfied the additional requirements of s151(5) of the LGATPA by providing notice of the decisions of requiring authorities other than the Council, and information relating to appeal rights and appeal timeframes, to:

- (a) All persons who made a submission on requirements; and
- (b) All owners and occupiers of land to which designations or heritage orders apply.²

[14] Copies of all decisions received from requiring authorities are available on the Council's Unitary Plan website, as well as additional information relating to decisions on designations, appeals against those decisions, information about general appeal rights, appeal timeframes and forms, including a link to the LGATPA and to the 2013 Regulations.

² With the exception of AIAL designations 1100 and 1102, and MOD designations 4310 and 4311, in relation to which the Court has made certain waivers and directions: [2016] NZEnvC 208.



[15] The Council will be uploading copies of all Notice of Appeal filed under s157 of the LGATPA and s274 notices to its website.

[16] The Council has confirmed with all appellants and requiring authorities listed above that they support the proposed waivers and directions.

Discussion

[17] Under s281 of the RMA the Court can waive the requirements of the Act and make directions in an appropriate case.

[18] 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.

[19] In the special circumstances of the PAUP I am 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.

Directions and Waivers

[20] Accordingly, the Court grants the waivers and directions sought (summarised) as set out below.³

Service of Notices of Appeal

[21] The requirement to serve a copy of any Notice of Appeal on every person who made a submission on the requirement to which the appeal relates is waived.

[22] Any Notice of Appeal is to be served electronically by email on the requiring authority, and on the Auckland Council by email to unitaryplan@aucklandcouncil.govt.nz.

Section 274 Notices

[23] The requirement to lodge a signed original and 1 copy of an s274 notice with the Court is waived.

³ The full detail reflects the applications made as recorded early in this decision.



[24] The Court directs that any person seeking to join an appeal as a s274 party may file an electronic copy of any s274 notices by email to the Court's dedicated email address for s157 appeals which may be signed or unsigned, in which case no hard copy needs to be filed with the Court.

[25] The requirement to serve a copy of any s274 notice on "all other parties"⁴ is waived. Instead, service of s274 notices on "all other parties" will be effected by the Court uploading copies of s274 notices received to the Environment Court's website.⁵

[26] An electronic copy of any s274 notice must be served by email on the appellant, the requiring authority, and on the Council at unitaryplan@aucklandcouncil.govt.nz.

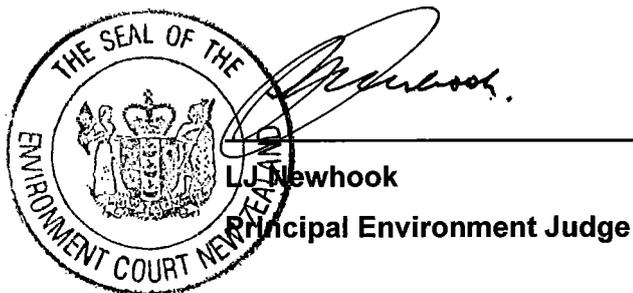
[27] For those persons who decide to file a hard copy of their s274 notices with the Court, the requirement to file an extra copy of the notice is waived.

All other documents filed in relation to the appeal

[28] 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:

- filed electronically with the Environment Court by email to unitaryplan.ecappeals@justice.govt.nz; and
 - served electronically on the appellant, requiring authority, 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 28th day of January 2017



⁴ Section 274(2A), RMA.

⁵ <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>