

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

IN THE MATTER of the Resource Management Act
1991 (**the Act**)

AND of appeals under clause 14 of
Schedule 1 to the Act

BETWEEN PIPERS LIMITED PARTNERSHIP
(ENV-2020-AKL-031)

WAIITI HEADWATERS LIMITED
(ENV-2020-AKL-032)

Appellants

AND AUCKLAND COUNCIL

Respondent

**MINUTE OF THE ENVIRONMENT COURT
(7 APRIL 2020)**

Proposed Plan Change 20 to the Auckland Unitary Plan (Operative in Part)

Introduction

[1] On 2 April 2020, Waiiti Headwaters Limited and Pipers Limited Partnership (**the appellants**) lodged with the Environment Court, by email, appeals against parts of Auckland Council's decision on Proposed Plan Change 20 (Rural Activity Status) to the Auckland Unitary Plan (Operative in Part) (**decision**).

[2] According to the Council's website, the decision was notified on 20 February 2020. This accords with the date the appellants say they received a copy of the decision. Pursuant to clause 14(4) of Schedule 1 to the Act, any appeal to the Court under clause 14 must be lodged within 30 working days of service of the notice of decision of the local authority under clause 11. The last day for timely

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filing of the appeals under the Act is 2 April 2020. Accordingly, both appeals have been filed within the statutory time frame.

COVID19

[3] However, since 26 March, New Zealand has been under a state of emergency with the Epidemic Preparedness Act 2006 operating (**The Epidemic**). The Resource Management Act gives powers to a Judge to make orders in the course of proceedings (s279(1)) and waivers of time requirements in that Act (s281). As a District Court Judge, the Judge also has broad powers to modify any “rule of court” under s24(2)(ba) of the Epidemic Preparedness Act 2006.

[4] The Court is likely to be faced with a range of issues arising as a result of the current state of emergency in relation to general and plan appeals. These issues were considered in relation to a council plan decision issued after the 26th march in *Application by Whakatane District Council and Bay of Plenty Regional Council* [2020] NZEnv 36. I also understand there may have been an informal direction for service of parties without email in a Palmerston North Plan case.

[5] Given the range of circumstances which could arise during The Epidemic directions and waivers will need to be considered as they arise. Generally however this cannot be seen as a period with “business as usual” and the Court recognises the Acts provisions may need to be varied to achieve fairness and flexibility.

[6] In this case the two appeals have been filed by the same counsel but it is possible there may be a range of other appeals filed later. To that extent it is premature to case track decisions until The Epidemic has abated. Further, the objective should be to inform participants but understand that other matters (i.e family illness) may limit participation at this time.

Service

[7] In an email to the Court on 2 April 2020, Ms D Henderson, on behalf of Mr R Bartlett QC (counsel for the appellants), advises “I confirm that all interested parties are being served via email, and in the case of those who provided a physical address, by post or courier.”



[8] According to the Schedule of Submitters requiring service (as attached to the appellants' respective notices of appeal), I note that in each instance email addresses for service are not available for six submitters.

[9] Although the appellants have not sought waivers of service for those submitters who have not provided an email address for service, the Court is mindful of the restrictions imposed by the Government's Covid-19 Alert Level 4 system currently in place. Such restrictions may delay service by post or courier and may affect the ability of the submitters generally to obtain access to resources and advice pertaining to the filing of interested party notices. This has implications for otherwise requiring strict adherence to the interested party notification period provided by section 274 of the Act.

[10] In the ordinary course of events, the section 274 period for these appeals would end on 28 April 2020, but this period falls within the current Alert Level 4 time frame and restrictions.

[11] It also does not take into account potential constraints on participation due to the Epidemic.

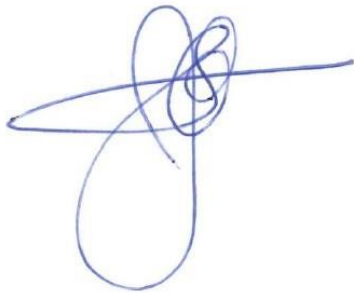
Directions

[12] To this end, I make the following **directions**:

- (a) Service by the appellants of their respective notices of appeal is waived and can occur by email or other means if necessary (where a submitter has not provided an email address for service) up to 20 working days after the state of emergency is lifted or further direction of the Court. The appellants are to advise the Court of the date and means of service once service has been effected. Time for filing such advice is extended to 25 days after the state of emergency is lifted.
- (b) Section 274 notices to these appeals may be lodged with the Court up to 15 working days after the state of emergency is lifted or service is effected, whichever is later.



- (c) Given the exigencies created by the state of emergency, the Court does not consider that any party or prospective party to these appeals will be unduly prejudiced by these waivers and directions.
- (d) The Court will issue case management directions for the efficient disposition of these appeals following completion of the section 274 period.
- (e) The appellants shall serve a copy of this Minute on Auckland Council and each submitter listed in the respective Schedule of Submitters and notify the Court once service has been effected.



JA Smith
Environment Judge

