

**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 ATLAS CONCRETE LIMITED
(ENV-2020-AKL-000045)

ROBERT WHITE
(ENV-2020-AKL-000046)

GP (TURNSTONE CAPITAL) LIMITED
(ENV-2020-AKL-000047)

MIDDLE HILL LIMITED
(ENV-2020-AKL-000048)

Appellants

AND AUCKLAND COUNCIL

Respondent

AND GP (TURNSTONE CAPITAL) LIMITED

Applicant

**MINUTE OF THE ENVIRONMENT COURT
(19 MAY 2020)**

**Private Plan Change 25 (Warkworth North) to the Auckland Unitary Plan
(Operative in Part)**

Introduction

[1] On 12 May 2020, Atlas Concrete Limited, Robert White, GP (Turnstone Capital) Limited, and Middle Hill Limited (**the appellants**) lodged with the

ATLAS CONCRETE LTD & ORS-v- AUCKLAND COUNCIL (MINUTE 20200519)



Environment Court, by email, appeals against Auckland Council's decision approving and amending an application by GP (Turnstone Capital) Limited for a private plan change (**PPC25**) to rezone approximately 99 hectares of Future Urban zoned land to a mix of business and residential zones in Warkworth North (**decision**).

[2] The decision is dated 18 March 2020. Auckland Council's website notes that the decision was notified on 26 March 2020. Pursuant to clause 14(4) of Schedule 1 to the Act, a notice of appeal to the Environment 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. Clause 11 states that at the same time as a local authority publicly notifies a decision under clause 10(4)(b), it must serve, on every person who made a submission on the proposed plan, a copy of the public notice. Middle Hill Limited advises that it received notice of the decision on 27 March 2020. All other appellants advise that they received notice of the decision on 26 March 2020. Based on the information provided by the appellants, the last day for timely filing of the Middle Hill Limited appeal was 13 May 2020 and all other appeals 12 May 2020. In the event that the last day for the filing of any appeal was, in fact, 12 May 2020, all appeals have otherwise been filed within the statutory time frame.

COVID-19

[3] However, since 26 March 2020, New Zealand was placed under a state of emergency with the Epidemic Preparedness Act 2006 operating (**The Epidemic**). The Resource Management Act 1991 gives powers to a Judge to make orders in the course of proceedings (section 279(1)) and waivers of time requirements in that Act (section 281). As a District Court Judge, the Judge also has broad powers to modify any "rule of court" under section 24(2)(ba) of the Epidemic Preparedness Act 2006.

[4] On 13 May 2020, the state of emergency was lifted, putting the country in a transition period. The Court is likely to be faced with a range of issues arising as a result of the state of emergency in relation to general and plan appeals. These issues were considered in relation to a council plan decision issued after 26 March 2020 in *Application by Whakatane District Council and Bay of Plenty Regional Council*. The issue was considered more generally in a Minute of the Environment Court *Waiiti Headwaters Limited & Anor v Auckland Council* of 7 April 2020.



[5] At paragraph 5 of the Minute, the Court said:

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 Council’s decision was notified on 26 March 2020. To that extent, it is premature to make case track decisions given the appeal period traverses the state of emergency. Further, the objective should be to inform participants but understand that other matters (eg, family illness) may limit participation at this time.

Service

[7] The appellants have advised that service of their respective notices of appeal was undertaken by email on 12 May 2020. Ms Carruthers for GP (Turnstone Capital) Limited has advised that the requisite interested party advice note, otherwise required to accompany her client’s notice of appeal, was served by email on 13 May 2020. All other appellants attended to this matter on 12 May 2020. Accordingly, the Court understands that all persons requiring service have now been served by email.

[8] Although the appellants have not sought waivers of time, the Court is mindful of the restrictions that were imposed by the state of emergency and that are currently in place under Covid-19 Alert Level 2. Such restrictions may have affected the ability of submitters to obtain access to resources and advice pertaining to the filing of appeals against the decision on PPC25. This has implications for otherwise requiring strict adherence to the appeal period and interested party notification period provided by section 274 of the Act.

[9] In the ordinary course of events, the section 274 period would end on 4 June 2020 for the Middle Hill Limited appeal and on 3 June 2020 for the other appeals.

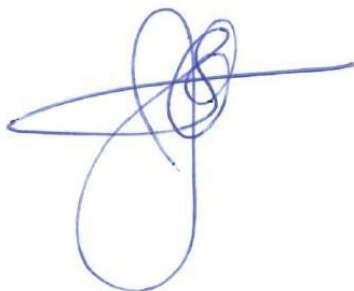
[10] However, it does not take into account potential constraints on participation due to The Epidemic, particularly the timely filing of appeals, such that the section 274 period may otherwise need to be enlarged.



Directions

[11] 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 the following directions:

- (a) The time for filing section 274 notices is extended to 19 June 2020. The Court will issue case management directions for the efficient disposition of these appeals after **26 June 2020**. Parties should indicate in their section 274 notices if they wish to mediate and, if so, a preference for formal mediation in person or via audio-visual attendance.
- (b) Waivers and directions in relation to any further notices of appeal that may be lodged in the interim (and any consequential interested party notice periods) will be considered and made in due course in light of the observations herein.
- (c) The appellants shall serve a copy of this Minute on Auckland Council, GP (Turnstone Capital) Limited and each submitter listed in the respective Schedule of Submitters and notify the Court once service has been effected.



JA Smith
Environment Judge

Issued: 19 May 2020

