

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 121

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

AND of potential appeals under s 156(1) of the LGATPA against decisions of the Auckland Council on the proposed Auckland Unitary Plan an application for Waivers / Directions under section 281 of the RMA

BETWEEN AUCKLAND COUNCIL
(ENV-2017-AKL-000115)
Applicant

Principal Environment Judge L J Newhook sitting alone under s 279 of the Act

Date of Decision: 10 August 2017

Date of Issue: 10 August 2017

**DECISION OF THE ENVIRONMENT COURT ON APPLICATION FOR WAIVERS
AND DIRECTIONS**

A: The application for waivers and directions is granted.



ENV-2017-AKL-000115 Auckland Council

REASONS

Introduction

[1] On 16 June 2017 the High Court released its Judgment in *Man O' War Farm Limited v Auckland Council*,¹ addressing the legality of the definition "Land which may be subject to coastal hazards". The parties to the appeal reached an agreement that the definition is uncertain and therefore unlawful, and sought a number of amendments to bring clarity. At [15]–[16] of the judgment Whata J said:

[15] The appeal is therefore allowed. However, the substantive matter of concern is the extensive nature of the relief sought. While I am amenable to facilitating the expeditious conclusion of these matters, in reality the amendments sought are substantive and require substantive review. Given the breadth of the potentially affected persons by the amendments, I am not prepared to grant the relief on a final basis. I note that the joint memorandum confirms that there were numerous submitters to the relevant provisions and even though only Federated Farmers took the opportunity to participate in the appeal, this Court should be slow to engage in an evaluative exercise of the nature proposed, without the confidence that relevant affected parties have had an opportunity to contribute to the amendments sought.

[16] I therefore propose to proceed on the following basis, given the consensus of all parties, including the Council:

(a) I grant the appeal and make the amendments sought by the parties. I note, in this regard, that whatever prejudice this may cause to affected persons in the interim, they have had the opportunity to participate in this appeal and did not take it.

(b) However, in terms of finalisation of the Plan, I see no other option but to refer the matter back to the Council and for the Council to serve a copy of my decision on the submitters on this part of the Plan and to afford them an opportunity to appeal to the Environment Court, should they consider it necessary to do so, in respect of the amendments made.

Application for waivers and directions

[2] The Auckland Council has applied pursuant to s 281 of the RMA for various waivers and directions in respect of potential appeals arising under s 156(1) of the LGATPA that may be brought as a result of the High Court's Judgment.

[3] The application was accompanied by an affidavit of Cecilia Anne Davison on behalf of Auckland Council, dated 9 August 2017.



¹ [2017] NZHC 1349.

[4] The application has been made on an *ex parte* basis, and the Council has confirmed that no party wishes to seek leave to appear and be heard in relation to this application.

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

[6] The Council has submitted that the waivers and directions it seeks are consistent with waivers and directions previously issued by the Environment Court in *Re application by Auckland Council*² and *Re application by Auckland Council*.³

Directions and waivers

[7] The waivers and directions sought will help to streamline and ensure an efficient appeal process. They will also ensure that any new appeals resulting from the High Court's Judgment will be subject to the same processes as those previously filed in relation to the Auckland Unitary Plan.

[8] Accordingly, the Court grants the following waivers and directions in respect of any potential appeals following the High Court's Judgment in *Man O' War*.

(a) Service of Notices of Appeal

- (i) A waiver in favour of 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.
- (ii) A waiver in favour of appellants of the 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.

² [2016] NZEnvC 153.

³ [2017] NZEnvC 095.



- (iii) A direction that any Notice of Appeal may be filed with the Court electronically at unitaryplan.ecappeals@justice.govt.nz but noting that appellants are still required to file one hard copy of any Notice of Appeal with the Court.
- (iv) A direction that any Notice of Appeal be filed within 30 working days of the date of these directions.
- (v) A direction that any Notice of Appeal be served on the Auckland Council electronically by email to unitaryplan@aucklandcouncil.govt.nz.

(b) Section 274 notices

- (i) A waiver of the usual requirement to lodge a signed original and one 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.
- (ii) 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.⁴
- (iii) A direction that an electronic copy of any s 274 notice must be served by email on the appellant and on the Council (to unitaryplan@aucklandcouncil.govt.nz).
- (iv) For those parties intending on filing a hard copy of any s 274 notice, a waiver of the usual requirement to file an extra copy of the notice with the Court.



⁴ <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>

(c) All other documents filed in relation to the appeal

(i) A direction that, unless hard copies are subsequently specifically required by the Court to be filed and/or served, 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 and/or Council (via unitaryplan@aucklandcouncil.govt.nz) by email, with service of all other parties deemed to be effected by the Court uploading the document(s) to the Court's website.

(d) Council to give following advice to affected submitters

(i) Following the issue of this decision, the Court directs the Council to send a letter to all affected submitters (primary submitters and further submitters) on the affected provisions, advising them of:

- The *Man O'War* judgment and the direction given to the Council to serve all affected submitters and advise of the right of appeal under s 156(1) of the LGATPA. A copy of the Judgment will be attached to the Council's letter.
- The decision issued by this Court on this *ex parte* application by the Council. The letter will outline the approved waivers and directions, including, importantly, the date by which any Notices of Appeal (and subsequent s 274 notices) must be filed.
- The specific Unitary Plan webpage on the Council's website which contains all information about the Council's decisions, all decisions issued by the High Court and Environment Court arising from appeals / reviews and a detailed summary of the appeal rights relevant to the Council's decisions, among other information.
- The Environment Court's Auckland Unitary Plan Appeals webpage, which provides information about the various appeal topics, decisions issued by the Court, the specific arrangements approved by the Court (and all judicial directions decisions issued so far) and the requisite appeal forms for s 156(1) appeals.



- (ii) The letter is directed to be reproduced on the Council's Unitary Plan webpage, together with more information concerning appeal rights, including a link to the LGATPA and to the 2013 Regulations.
- (iii) Any Notices of Appeal received in relation to the affected coastal hazard provisions are to be uploaded to the Council's website.

DATED at Auckland this 10th day of August 2017



A handwritten signature in black ink, appearing to read "L J Newhook".

L J Newhook
Principal Environment Judge