

BEFORE THE ENVIRONMENT COURT

Decision [2017] NZEnvC 095

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

AND of potential appeals under s 156(1) of the LGATPA against decisions of the Auckland Council in relation to Chapter E37: Genetically Modified Organism provisions included in the proposed Auckland Unitary Plan

BETWEEN AUCKLAND COUNCIL
(ENV-2017-AKL-000089)
Applicant

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

Date of Decision: 30 June 2017

Date of Issue: 3 July 2017

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

A: The application for waiver and directions is granted.



REASONS

Introduction

[1] The Auckland Council has applied pursuant to s 281 of the RMA for various waivers and directions in respect of potential appeals arising under s156(1) of the LGATPA in relation to Chapter E37 – Genetically Modified Organism (**GMO**) provisions included in the proposed Auckland Unitary Plan.

[2] The application was prompted by the recent decision of Whata J in *The University of Auckland v Auckland Council*,¹ which made amendments to the GMO provisions included in the Proposed Plan and directed the Council to service notice on all affected submitters on this part of the Proposed Plan. The effect of the decision is that those affected submitters now have a right to appeal this aspect of the Proposed Plan under s 156(1) of the LGATPA.

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

Application for waivers and directions

[4] The Council seeks the following waivers and directions concerning the filing of any appeals relating to the GMO provisions on the grounds that they will:

- (a) substantially reduce the burden on potential appellants and any potential 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 Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan)

¹ [2017] NZHC 1150.



Regulations 2013 (the **2013 Regulations**), and Form 33 of the Resource Management (Forms, Fees and Procedure) Regulations 2003 (the **2003 Regulations**);

- (c) define a date by which any Notices of Appeal must be filed, providing certainty for all potential appellants and any potential s 274 parties, as well as the Court; and
- (d) address the significant logistical issues for the Court and all parties that would otherwise arise, particularly around filing and service of documents.

Waivers

[5] Having considered the application, and the affidavit of Cecilia Davison in support of the application, the Court grants the following waivers and directions:

Service of Notices of Appeal

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



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 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.
- (c) 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).
- (d) 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.

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

[6] Following the issue of this decision the Council will send a letter to all affected submitters (primary submitters and further submitters) on the GMO provisions, advising them of:

- (a) The High Court's decision and the direction given to the Council to serve all affected submitters and advise them of the right of appeal under s 156(1) of the LGATPA. A copy of the decision will be attached to the Council's letter.
- (b) This Court's decision on the application for waivers and directions. 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.
- (c) The specific Unitary Plan Webpage on the Council's website which contains all information about 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.
- (d) 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 decision issued so far) and the requisite appeal forms for s 156(1) appeals.
- (e) The Council's Unitary Plan webpage, with more information concerning appeal rights, including a link to the LGATPA and to the 2013 Regulations.



- (f) Any Notices of Appeal received in relation to the GMO provisions will be uploaded to the Council's website

DATED at Auckland this 30th day of June 2017



L.J. Newhook
Principal Environment Judge

