

BEFORE THE ENVIRONMENT COURT

Decision [2017] NZEnvC 099

IN THE MATTER

of potential appeals under the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) and the Resource Management Act 1991 (RMA) following the High Court's Judgment in *The Straits Protection Society Incorporated v Auckland Council* [2017] NZHC 1351

BETWEEN

AUCKLAND COUNCIL

(ENV-2016-AKL-000171)

Applicant

Court: Principal Environment Judge LJ Newhook

Date of Decision: 5 July 2017

Date of issue of Decision: 5 July 2017

WAIVERS / DIRECTIONS

IN RELATION TO POTENTIAL APPEALS UNDER s156(3) OF THE LOCAL GOVERNMENT (AUCKLAND TRANSITIONAL PROVISIONS) ACT 2010



Introduction

[1] On 20 June 2017 the High Court released its Judgment in *The Straits Protection Society Incorporated v Auckland Council* [2017] NZHC 1351, issuing a declaration that:

The recommendation provided by the Auckland Unitary Plan Independent Hearing Panel to the Auckland Council in relation to the Rural Urban Boundary (RUB) as it affected the Hauraki Gulf Islands was beyond the scope of submissions made on the Proposed Auckland Unitary Plan (PAUP) and should have been identified as such in terms of s 144(8)(a) of the Local Government (Auckland Transitional provisions) Act 2010.

[2] The effect of the declaration is that, when making its decision to delete the RUB for the Hauraki Gulf Islands, the Council accepted an out of scope recommendation which gives rise to a specific right of appeal to the Environment Court under s 156(3) of the LGATPA.

Application for waivers and directions in relation to appeals under s 156(1) & (3) LGATPA

[3] On 16 August 2016 the Auckland Council filed an *ex parte* originating notice of motion seeking various waivers and directions under s 281 of the RMA in relation to potential appeals that were to be filed under s 156(1) and (3) of the LGATPA against decisions of the Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel on the PAUP.

[4] In considering that application the Court was minded to make the process of filing appeals and other documents in relation to the PAUP as efficient and streamlined as possible. As a result, the Court issued decision [2016] NZEnvC 153 granting various waivers and directions.

[5] The waivers and directions granted simplified processes and enabled the parties to access Court documents in a timely and efficient manner.

[6] In light of the appeal right that has now been triggered by the High Court's Judgment in *The Straits Protection Society Incorporated*, the Council has sought to rely on the waivers and directions previously granted by this Court in relation to s 156(1) and (3) of the LGATPA.



[7] The Court has considered the waivers and directions previously issued and is satisfied that they are applicable to the current circumstances. They will help to streamline and ensure an efficient appeal process and will mean 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 PAUP.

Directions and waivers

[8] Accordingly, the Court confirms the situation as applicable in the circumstances of this possible new avenue of appeal, and grants the following waivers and directions in respect of any potential appeals following the High Court's Judgment in *The Straits Protection Society Incorporated*.

[9] In addition, the Council is directed to serve a copy of this decision on the 8 affected submitters who addressed the topic of whether the RUB applies on Waiheke Island.

Service of Notices of Appeal

- (a) The requirement 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 is waived.
- (b) The related requirement to give written notice to the Registrar of the Environment Court of the name, address, and date of service for each such person served is waived.
- (c) Any Notices of Appeal may be filed with the Court electronically at unitaryplan.ecappeals@justice.govt.nz. Parties are still required to file a hard copy of their appeal with the Court, but the requirement to file a second hard copy of the Notice of Appeal is waived.
- (d) Any Notice of Appeal may be served on the Auckland Council electronically by email to unitaryplan@aucklandcouncil.govt.nz.

Section 274 notices

- (a) The requirement to lodge a signed original and 1 copy of any s 274 notice with the Court is waived.
- (b) The Court directs that any person seeking to join an appeal as a s 274 party may 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.

- (c) The requirement to serve a copy of any s 274 notice on "all other parties" is waived. Instead, service of s 274 notices on "all other parties" will be effected by the Court uploading copies of s 274 notices received to the Environment Court's website.¹
- (d) An electronic copy of any s 274 notice must be served by email on the appellant and on the Council at unitaryplan@aucklandcouncil.govt.nz
- (e) For those persons who decide to file a hard copy of their s 274 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

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

5th

day of

July

2017

[Signature]

LJ Newhook
Principal Environment Judge

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

