

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

Decision No. [2018] NZEnvC 098

IN THE MATTER of the Resource Management Act 1991
AND of direct referral of an application for
resource consent for the necessary
infrastructure and related activities
associated with holding the America's Cup in
Auckland
BETWEEN PANUKU DEVELOPMENT AUCKLAND
LIMITED
(ENV-2018-AKL-000078)
Applicant
AND AUCKLAND COUNCIL
Regulatory Authority

Court: Principal Environment Judge L J Newhook
Environment Judge D A Kirkpatrick

Counsel: D Nolan QC, W Loutit and K Stubbing for Applicant

Date of Decision: 26 June 2018

Date of Issue: 26 June 2018

**DECISION OF THE ENVIRONMENT COURT
ON NOTICE OF MOTION FOR PROCEEDINGS UNDER
SECTION 87G OF THE RESOURCE MANAGEMENT ACT 1991**

A: Application granted.

REASONS

Introduction

[1] On 25 June 2018 Panuku Development Auckland Limited applied under s 87G RMA

Panuku Development Auckland Limited v Auckland Council



that the application it has made for necessary resource consents for the construction, occupation, use and maintenance of permanent and temporary infrastructure and undertaking of activities within the coastal marine area and on land associated with the America's Cup, be decided by the Environment Court.

[2] The grounds for the application are:

- (a) The Auckland Council (**Council**) made a decision on 7 May 2018 granting the applicant's request to allow the application to be determined by the Environment Court instead of by the Council under section 87E of the RMA;
- (b) The applicant has considered the report prepared by the Council under section 87F of the RMA dated 22 June 2018 and wishes to proceed to have the application heard by the Environment Court;
- (c) The timeframe for the construction of infrastructure required to host the 36th America's Cup is extremely tight, as the supporting infrastructure to accommodate syndicates is to be required to be ready from late 2019. (The applicant says that a decision from the Court would be needed by mid to late October 2018 if construction targets are realistically to be achieved);
- (d) The project involves a development to Auckland's waterfront. There is a high level of public interest in the application generally, but also in relation to the consenting process associated with the event and related infrastructure. The nature of submissions received indicates the application is likely to be contentious;
- (e) It will be more efficient in terms of cost and time for all parties and interested persons to have the application referred directly to the Environment Court, as the matter may come before the Environment Court in any event through an appeal of any decisions made by the Council; and
- (f) Upon the further grounds contained in the affidavit of Matthew William Twose dated 25 June 2018.

[3] We have considered earlier decisions of the Environment Court about applications under s 87G RMA. We prefer, and on reflection agree with, the line of authority in the



majority of the decisions to the effect that the decision is administrative in nature. We hold that it does not require input from parties other than the Applicant. We refer particularly to two decisions: *Mainpower NZ Limited v Hurunui District Council*;¹ and *Road Metals Company Limited v Selwyn District Council*.²

[4] Our decision is informed by s 87I RMA (“When consent authority must determine application”), which provides that an application must be determined by the consent authority in circumstances where either the applicant advises the authority that the applicant does not intend to lodge a notice of motion under s 87G(2), or the applicant does not lodge a notice of motion under s 87G(2),³ effectively not anticipating a scenario in which the Court might refuse an application under s 87G(2).

Pre-set timetable

[5] The applicant and the council had earlier approached the Court requesting that it marshal resources and roster its members to meet the needs of urgency. Although the Court has not been seised of a formal proceeding until the present s87G application was lodged yesterday, the Court previously issued a Minute on 6 April and made a preliminary decision *ex parte* granting anticipatory waivers and making preliminary directions so as to allow forward planning and efficiencies of process by the applicant, council and all potential parties.⁴ For ease of reference we set out the waivers and directions in **Attachment 1**.⁵

Decision

[6] The course of action followed in the last paragraph has given us a detailed insight into the grounds now raised in bringing this application. During the last few weeks we have not only had the opportunity to look at the substantive application, but also the entirety of the submissions and latterly the Council’s report under s 87F RMA.

[7] We are in no doubt, having considered all these things, that the grounds recorded in paragraph [2] above, and the detailed matters addressed in the supporting affidavit of Mr

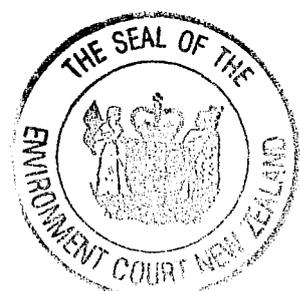
¹ *Mainpower NZ Limited v Hurunui District Council* [2010] NZEnvC 409 and [2011] NZEnvC 384.

² *Road Metals Company Limited v Selwyn District Council* [2012] NZEnvC 214.

³ Neither of which circumstances apply here.

⁴ *Panuku Development Limited v Auckland Council* [2018] NZEnvC 064.

⁵ *Panuku Development* at [12] and [13].



Twose, are fully made out.

[8] We grant the application. No issue of costs *inter partes* of course arises.

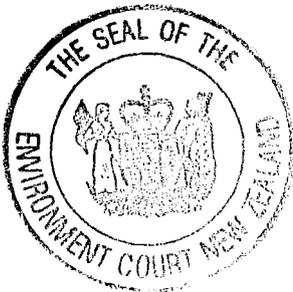
[9] We direct that this decision be issued by the Court to all those who lodged submissions.



L J Newhook
Principal Environment Judge



D A Kirkpatrick
Environment Judge

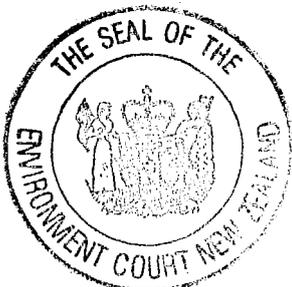


Attachment 1: Waivers and Directions issued on 10 May 2018

[12] Subject to [remarks as to the preliminary nature of the decision] I **order and direct** as follows:

- (a) A waiver of the usual requirement to lodge a signed original and 1 copy of any section 274 notice with the Court, and a direction instead that submitters may, as an alternative to complying with the usual requirements of section 274 and Form 33 in that regard, be allowed to file an electronic copy (i.e. by email) of any section 274 notices with the Court, 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 copies of any section 274 notices on "all other parties" other than the Applicant (Panuku) and the Council. Instead, it is proposed that service of section 274 notices on "all other parties" be effected by the Court uploading copies of section 274 notices received to a website / webpage specific to the Application. For the avoidance of doubt, submitters would still need to serve Panuku and the Council with copies of any section 274 notices preferably by email (or alternatively by post) at the following addresses:

	The Applicant (Panuku)	The Council
By Email	americas.cup36@simpsongrierson.com	allan@brookfields.co.nz
By Post	Panuku Development Auckland c/ Simpson Grierson Private Bag 92518 Auckland 1141 New Zealand Attn: Bill Loutit – Partner	Auckland Council c/ Brookfields Lawyers PO Box 240 Shortland Street Auckland 1140 New Zealand Attn: Matthew Allan - Partner



- (c) For those submitters who decide to file a hard copy of their section 274 notices with the Court, a waiver of the usual requirement to file an extra copy of the notice.

- (d) A direction that otherwise all section 274 notices shall meet the requirements of section 274 of the RMA, including the requirement in subsection (3)(b) to state "whether the person supports or opposes the proceedings and the reasons for that support or opposition".
- (e) 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 Application filed by any party may be:
- (i) filed electronically with the Court by email, and
 - (ii) served electronically on Panuku and/or Council, as appropriate, by email (addresses above);
- with service of all other parties deemed to be effected by the Court uploading the document(s) to its dedicated website / webpage.

[13] I also make the following directions (intervening exigencies apart):

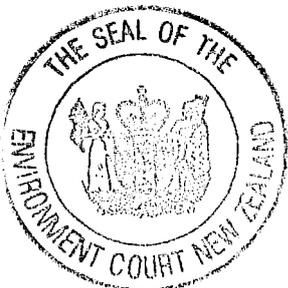
- (a) A direction that a pre-hearing conference be scheduled for Wednesday 18 July 2018 (two working days following the close of the section 274 period).
- (b) A direction that two days be allocated for Court-assisted mediation on Thursday 19 and Friday 20 July 2018.
- (c) The following directions relating to expert witnesses conferencing:
- (i) Agreed statements of issues are to be prepared by Tuesday 24 July 2018 (with no requirement for pre-exchange of 'will say' statements); and
 - (ii) Court-facilitated expert conferencing is to be scheduled for Wednesday 25 July - Monday 30 July 2018, with the technical experts conferencing on Wednesday - Friday, and the planning witnesses conferencing on Monday (with the benefit of the technical experts' Joint Witness Statements).
- (d) A direction that the draft timetable **attached** to this Decision ("**Draft Timetable**") be provided to submitters in accordance with sub-paragraph (e) below, as a tentative indication of the timetable through to hearing in September 2018 (subject to further discussion at the pre-hearing conference).



(e) The following directions to ensure early notice is provided to submitters, and therefore potential section 274 parties, of the waivers / directions and the Draft Timetable:

- (i) The Council is to provide a copy of this Decision containing the waivers / directions and Draft Timetable to submitters when it serves its section 87F report on submitters under section 87F(5)(b) of the RMA;
- (ii) Panuku is likewise required to provide a copy of the Court's Decision containing the waivers / directions and Draft Timetable to submitters when it serves notice of its direct referral application on submitters under section 87G(2)(b)(ii) of the RMA;
- (iii) The Council is to publish this Decision setting out the waivers / directions and the Draft Timetable to its website.⁶

In each instance above, the Council / Panuku, as the case may be, is also to provide contact details for the three Court-appointed process advisors.⁷



⁶ The Court has today opened a page on its website for administration of these proceedings, and is publishing this Decision there.

⁷ Now two, Brian Putt and David Wren.