

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

Decision No. [2018] NZEnvC 177

IN THE MATTER of the Resource Management Act 1991
AND of a proposed direct referral of a notice of requirement by the Minister of Education to designate part of a site at 80- 82 Wyllie Rd, Papatoetoe for "Educational Purposes - School (Years 0-8)" in the Auckland Unitary Plan (Operative in Part)
AND
IN THE MATTER of an originating application under section 291 of the RMA for waivers and directions
BETWEEN MINISTER OF EDUCATION
(ENV-2018-AKL-000258)
Applicant
AND AUCKLAND COUNCIL
Regulatory Authority

Court: Principal Environment Judge LJ Newhook

Counsel: C Kirman and A Devine for Applicant

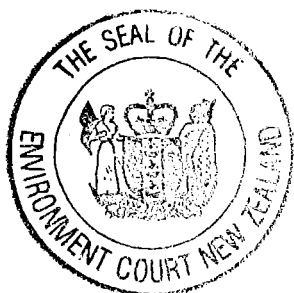
Date of Decision: 20 September 2018

Date of Issue: 20 September 2018

**DECISION OF THE ENVIRONMENT COURT
ON NOTICE OF MOTION FOR PROCEEDINGS UNDER
SECTION 291 OF THE RESOURCE MANAGEMENT ACT 1991**

A: The application for anticipatory directions and waivers is granted.

Minister of Education



REASONS**Introduction**

[1] On 18 September 2018, the Minister of Education filed a Notice of Motion seeking anticipatory orders and directions in relation to a proposed direct referral of a Notice of Requirement for a School at Wyllie Road, Papatoetoe.

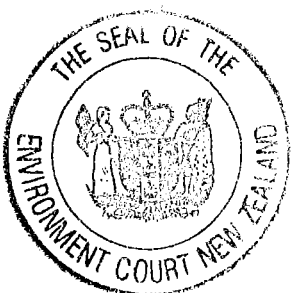
[2] The Notice of Requirement is proposed to be lodged with Auckland Council on 21 September 2018 by the Minister of Education for a designation of part of a site at 80-82 Wyllie Rd, Papatoetoe for "*Educational Purposes - School (Years 0-8)*" to be included in the Auckland Unitary Plan (Operative in Part).

[3] At the time of lodging the NOR with the Council the Minister will make a request pursuant to section 198B of the Resource Management Act 1991 that the NOR be the subject of a decision by the Environment Court, instead of a recommendation by the Council and a decision by the Minister.

[4] Broadly, the proposed anticipatory waivers and directions are intended to:

- (a) Enable submitters to the NOR to be automatically deemed to be section 274 parties to the Direct Referral;
- (b) Facilitate electronic case management of the Direct Referral generally;
- (c) In view of the particularly tight timeframes for the NOR process for the establishment of a school at the Site by 1 February 2019, confirm dates for a pre-hearing conference, and any mediation or conferencing that may be required, in advance; and
- (d) Require the Council and the Minister to provide notice of the relevant waivers/directions and potential timetable through to a hearing in the Environment Court to submitters / section 274 parties at the earliest possible opportunity.

[5] The Council has confirmed that it supports the waivers and directions sought in this Notice of Motion.



Waivers / Directions

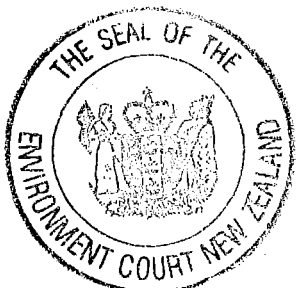
[6] Having considered the Minister's application and supporting memorandum, both dated 18 September 2018, the following waivers and directions are made on a qualified anticipatory basis in respect of the foreshadowed Direct Referral application for the NOR. The qualifications are as found in paragraph [8] below; also that leave is reserved for s274 parties to vary the case management directions in paragraph [10] below for good cause (in which event any application to vary will likely be processed expeditiously by the Court).

[7] Reasons for holding that the Court has jurisdiction to make these orders and directions are the same as recorded in The Court's decision *Panuku Development Auckland Limited and Auckland Council*¹, so will not be repeated here.

Waivers / directions to simplify section 274 processes, and facilitate electronic case management upon direct referral

[8] Subject to the Minister bringing the NOR and s198B request as foreshadowed in paragraphs [2] and [3] above, the Court makes the following waivers / directions in relation to submitters:

- (a) A waiver of the usual requirement for submitters on the NOR to lodge a section 274 notice of an intention to become a party to the Direct Referral proceedings, and a direction that all submitters to the NOR under 169(2) of the RMA are deemed to be parties to the Environment Court Direct Referral proceedings under section 274 when their submission is lodged with the Council².
- (b) In consequence of (a) above, a waiver of the requirement to comply with the usual requirements of section 274 and Form 33. Specifically, the requirements to:
 - (i) Lodge a signed original and one copy of any section 274 notice (or submission) with the Court. Instead, the Council is directed to provide to the Court a copy of all of the submissions lodged on



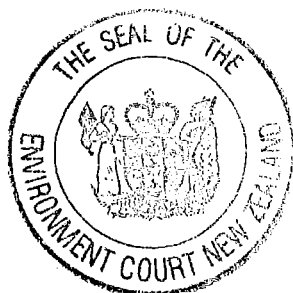
¹ [2018] NZEnvC 064, at paragraphs [10] and [11].

² Leaving open the rights of other persons under s274(1)(d) and (da)

the NOR under section 169 to the Court (as required by section 198E(3));

- (ii) Comply with the time period set out in section 274(2);
- (iii) Serve the Minister or the Council with a copy of the notice under section 274(2A). Copies of the submissions (being the deemed 274 notices) will be received as part of the section 169 process;
- (iv) Serve other parties under section 274(2B). Instead it is directed that copies of the submissions (being the deemed 274 notices) received as part of the section 169 process will be uploaded to a webpage on the Council's website which is specific to the NOR/Direct Referral;
- (v) Specify the matters listed at section 274(3) and comply with Form 33. To clarify, and to the extent that a submission under section 169 also requires these matters to be specified, this waiver does not affect the requirements of section 96 and Form 21; and
- (vi) 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 Direct Referral filed by any party may be:
 - Filed electronically with the Court by email; and
 - Served electronically on the Minister and the Council by email to the following addresses:

	The Minister	The Council
Email	ckirman@ellisgould.co.nz	<u>allan@brookfields.co.nz</u>
Post	The Minister of Education c/- Ellis Gould Lawyers PO Box 1509 Shortland Street Auckland 1140	Auckland Council c/- Brookfields Lawyers PO Box 240 Shortland Street Auckland 1140



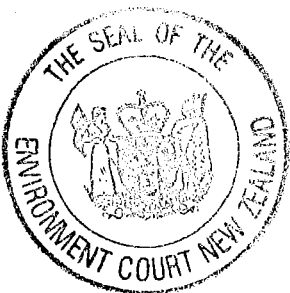
	Attn: Dr Claire Kirman Partner	Attn: Matthew Allan - Partner
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[9] For the avoidance of any doubt the above waivers and directions do not apply to any persons that wish to become a party to the proceeding under s 274(1)(d) of the Act as a person who has an interest in the proceedings that is greater than the interest that the general public has. For these persons the processes set out under s 274 of the Act apply.

Directions relating to initial case management steps, following Direct Referral, and to ensure early notice of Court's waivers / directions to all submitters

[10] The Court makes the following directions:

- (a) A direction that a pre-hearing conference be scheduled for 14 November, 13 working days following the close of the submission period under section 169 of the RMA.
- (b) A direction that one day be allocated for Court assisted mediation on 14 November 2018.
- (c) A direction that two days be allocated for expert conferencing on 19 and 20 November 2018 (with agreed statements of issues to be discussed at expert conferencing to be finalised by 16 November).
- (d) A direction that the draft timetable AS ABOVE is promptly drawn to the attention of all submitters on the NOR as a tentative indication of the timetable through to the hearing of the Direct Referral.
- (e) The following directions to ensure early notice is provided to submitters (and therefore section 274 parties) of the waivers / directions and the Draft Timetable:
 - (i) The Council is to make a copy of the Court's decision containing the relevant waivers / directions and the Draft Timetable available at the time it notifies the NOR. A copy will be published to the Council's webpage (which the public notice directs interested persons to) along with the NOR documents. The Council will also provide a copy to all persons served in accordance with



regulation 12(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003;

- (ii) The Council will also provide a copy to all persons who make submissions on the NOR, both:
- Initially, when acknowledging receipt of submissions; and
 - Subsequently, when serving a copy of its section 198D report on submitters; and
- (iii) The Minister will provide a copy of the Court's decision containing the relevant waivers / directions and the Draft Timetable to submitters when it serves notice of his direct referral application on submitters under section 198E(2)(b)(ii) of the RMA.
- (f) A direction that a process advisor be appointed by the Court ahead of the Minister's formal notice of motion for direct referral under section 198E being lodged with the Court, to assist submitters/section 274 parties in relation to the Direct Referral process.



LJ Newhook

Principal Environment Judge

