

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

**Decision No. [2019] NZEnvC 007**

IN THE MATTER of the Resource Management Act 1991

AND of a proposed direct referral of a notice of requirement by the Minister of Children to alter designation 5900 'Care and Protection Residential Centre – Upper North' in the Auckland Unitary Plan (Operative in Part)

AND

IN THE MATTER of a proposed direct referral of a notice of requirement by the Minister of Children to alter designation 5902 'The Youth Justice Centre – Upper North' 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 FOR CHILDREN

Applicant

(ENV-2019-AKL-000007)  
(ENV-2018-AKL-000008)

AND AUCKLAND COUNCIL

Regulatory Authority

Court: Principal Environment Judge LJ Newhook

Counsel: C Kirman and A Devine for Applicant

Date of Decision: 23 January 2019

Date of Issue: 23 January 2019

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

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Minister for Children v Auckland Council



**The application for anticipatory directions and waivers is granted with qualifications and caveats.**

## **REASONS**

### **Introduction**

[1] On 17 January 2019, the Minister for Children filed two Notices of Motion seeking anticipatory orders and directions in relation to a proposed direct referral of a Notice of Requirement for two residential centres, a 'Care and Protection Centre' (ENV-2019-AKL-000007) and 'The Youth Justice Centre' (ENV-2019-AKL-000008).

[2] The Notices of Requirement are proposed to be lodged with Auckland Council on 22 February 2019 by the Minister for Children to alter:

- (a) Designation 5900 'Care and Protection Centre – Upper North' ("Whakatakapokai") at 398 Weymouth Road, Section 2 SO362124, Weymouth in the Auckland Unitary Plan (Operative in Part).
- (b) Designation 5902 'The Youth Justice Centre – Upper North' ("Korowai Manaaki") at 21 – 24 Kiwi Tamaki Road, Lot 2 DP448846 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 s 198B of the Resource Management Act 1991 ('the Act') and that the NOR be the subject of a decision by the Environment Court instead of recommendation by the Council and 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 surrounding the NOR process for enabling the two centres to accommodate 17 year olds as from 1 July 2019 (brought about by recent legislative change having the potential to increase numbers of detainees), 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 the two Notices of Motion.

### **Waivers / Directions**

[6] Having considered the Minister's application and supporting memorandum, both dated 17 January 2019, 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 leave is reserved for s274 parties to seek to vary the case management directions in paragraph [10] below for good cause (in which event any application to vary will, if possible, 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*<sup>1</sup>, so will not be repeated here.

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

[8] Expressly subject to the Minister bringing the NOR and s198B request as foreshadowed in paragraphs [2] and [3] above, and subject to other qualifications expressed in this decision, 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 will be deemed to be parties to the Environment Court Direct Referral proceedings

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<sup>1</sup> [2018] NZEnvC 064, at paragraphs [10] and [11].



once brought, resolved to proceed as such by the council, and ordered by the Court<sup>2</sup>.

- (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 submissions lodged on 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
- (c) 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:
- (i) Filed electronically with the Court by email; and
  - (ii) Served electronically on the Minister and the Council by email to the following addresses:

	The Minister	The Council
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<sup>2</sup> Leaving open the rights of other persons under s274(1)(d) and (da)



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 Attn: Dr Claire Kirman Partner	Auckland Council c/- Brookfields Lawyers PO Box 240 Shortland Street Auckland 1140 Attn: Matthew Allan - Partner

[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 those persons, the processes set out under s 274 of the Act must 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 the **week of 15 April**, 11 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 in the **week of 15 April 2019**.
- (c) A direction that two days be allocated for expert conferencing during the **week of 29 April 2019** (with agreed statements of issues to be discussed at expert conferencing to be finalised **by 18 April 2019**).
- (d) A direction that the draft timetable ATTACHED to this decision 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 this 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.

### **General**

[11] Attention is drawn to the qualifications expressed in paragraphs [6] and [8] to these directions and waivers. Also to the Minister's request for a hearing in the week of 20 May 2019. The Minister also respectfully requested that the Court issue a decision by early June, so as to be placed to comply with the new legislative regime from 1 July. While aware of the Minister's predicament, the Court needs to make it clear that the outcome of the proceedings cannot be seen to be a foregone conclusion, and that the timetable up to hearing, the timing of the hearing itself, and the time that might be needed to prepare and release a decision, will be at the discretion of the presiding



Judge, and can be affected by many factors and exigencies in a case and throughout the Court's workload generally.



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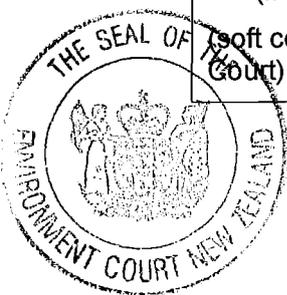
**L J Newhook**  
**Principal Environment Judge**



## APPENDIX A

### Draft Timetable

Task	Timeframe	Comments
1. Notice of Requirement lodged 2. Direct referral request (s 198B RMA)	Friday 22 February 2019	
Public notification	Friday 1 March 2019	Consider including in Council notice and letters advice of the Court's anticipatory directions and waivers, including tentative timetable
Council decision on direct referral request (s198C RMA)		
Submissions close	Friday 29 March 2019	Council letters of acknowledgment sent upon receipt of each submission confirming directions and waivers, and tentative timetable
Preparation of Council's s 198D report completed, and served on applicant and all submitters	Friday 5 April 2019	Council letters to submitters serving s 198D report to reconfirm process arrangements
Applicant to file notice of motion with Environment Court, and serve on all submitters	Monday 8 April 2019	Applicant letters sent to all submitters to reconfirm process arrangements
Initial paginated common bundle (CBD) of documents filed and served by Council (soft copy and 2 hard copies to Court)	Wednesday 10 April 2019	
Applicant's evidence filed and served (together with any documents not referred to in initial CBD)	Friday 12 April 2019	Evidence served on all submitters (on basis that all to be treated as s 274 parties from outset)
Council to file and serve: 1. Paginated version of Applicant's evidence 2. Paginated update to the CBD (if any) soft copy, plus 2 hard copies to Court	Monday 15 April 2019	



Applicant and Council to file joint memorandum for pre-hearing conference	Tuesday 16 April 2019	
Pre-hearing conference	Week of 15 April 2019	
Mediation	Week of 15 April 2019	
Experts to finalise agreed statements of issues to be discussed at expert conferencing – to be lodged with Court	Thursday 18 April 2019	
Court-assisted expert conferencing	Week of 29 April 2019	Technical experts Planners
Council to file and serve paginated set of all joint witness statements from expert conferencing	Wednesday 1 May 2019	
Council's and s 274 parties' evidence filed and served (together with any documents not referred to in initial CBD)	Friday 3 May 2019	
Council to file and serve: 1. Paginated copy of all Council and s 274 party evidence 2. Paginated update to common bundle of documents (if any) (soft copy and 2 hard copies)	Monday 6 May 2019	
Rebuttal evidence filed and served (soft copy and 2 hard copies)	Friday 10 May 2019	NB: this step encompasses: (1) Applicant rebuttal of Council and s 274 party evidence; (2) Council rebuttal of s 274 party evidence; (3) Section 274 party rebuttal of Council evidence or other s 274 party evidence
Council to file and serve paginated version of all rebuttal evidence (soft copy and 2 hard copies)	Monday 13 May 2019	
Hearing	Week of 20 May 2019	

