

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

AND

IN THE MATTER of designations 1100 and 1102 (Auckland International Airport Limited) and 4310 and 4311 (Minister of Defence) in the proposed Auckland Unitary Plan

AND

IN THE MATTER of an Application for Waivers / Directions under section 281 of the RMA in relation to the service requirements of section 151(5) of the LGATPA

**NOTICE OF MOTION BY AUCKLAND COUNCIL UNDER SECTION 281 OF THE RMA
APPLYING FOR WAIVERS / DIRECTIONS**

Dated 19 October 2016

**BROOKFIELDS
LAWYERS
M C Allan
Telephone No. 09 979 2128
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND**

To: The Registrar
Environment Court
Auckland

And copy to: Minister of Defence

c/ Rosemary Dixon
rosemary.dixon@crownlaw.govt.nz

Auckland International Airport
c/ Allison Arthur-Young
allison.arthur-young@russellmcveagh.com

1. The Auckland Council (**Council**) applies pursuant to section 281 of the RMA for various waivers and directions in respect of the requirements of section 151(5)(b) of the LGATPA as they relate to the service of notice on certain owners and occupiers of land to which the following four designations in the proposed Auckland Unitary Plan (**Proposed Plan**) apply:

- (a) Auckland International Airport Limited (**AIAL**) designation 1100. This designation relates to the main designated airport area, but its provisions also address a large number of properties within defined noise contour areas (the Aircraft Noise Notification Area (**ANNA**), the High Aircraft Noise Area (**HANA**), and Moderate Aircraft Noise Area (**MANA**) areas).
- (b) AIAL designation 1102. This designation relates to specification for obstacle limitation surfaces (**OLS**), restrictions relating to runway end protection areas, and restrictions for non-aeronautical ground lights.
- (c) Minister of Defence (**MOD**) designation 4310. This designation relates to the air base at Whenuapai, but includes provisions relating to a noise control area.
- (d) MOD designation 4311. This designation is for Whenuapai Airfield Approach and Departure Path Protection.

2. AIAL designations 1100 and 1102 and MOD designations 4310 and 4311 are together referred to in this Application as "**the Designations**".

3. The waivers and directions sought generally concern the Council's service obligations in relation to the decisions of requiring authorities AIAL and the MOD on the Designations.

AIAL's decisions are dated 30 September 2016. MOD's decisions are dated 21 September 2016.

4. The Council seeks the following waivers and directions:

- (a) In the case of AIAL designation 1100, a waiver of the requirement to serve notice of AIAL's decision on the designation on the owners and occupiers of properties within the "designated area" and within the HANA, MANA and ANNA areas as identified in the designation figures (but still effect service on all submitters);
- (b) In the case of AIAL designation 1102, a waiver of the requirement to serve notice of AIAL's decision on the designation on owners and occupiers of properties within this designation, encompassing the Obstacle Limitation Surface areas, runway protection areas and sites subject to requirements for non-aeronautical ground lights identified in the designation figures (but still effect service on all submitters);
- (c) In the case of MOD designation 4310, a waiver of the requirement to serve notice of MOD's decision on the designation on the owners and occupiers of properties within the designation and the noise control area identified in the designation figures (but still effect service on all submitters);
- (d) In the case of MOD designation 4311, a waiver of the requirement to serve notice of MOD's decision on the designation on the owners and occupiers of properties within this designation, encompassing the airfield approach and departure path protection areas identified in the designation figures (but still effect service on all submitters);
- (e) For all four designations, directions that alternative service be effected by means of notices published in:
 - (i) The New Zealand Herald;
 - (ii) At least one community newspaper circulating in the area surrounding each airport; and
 - (iii) The Council website.

5. The Council seeks the above waivers and directions on the grounds stated in the attached Affidavit of **JOHN MICHAEL DUGUID** and on the following further grounds:

- (a) Section 151(5) of the LGATPA provides as follows in relation to service of notice of requiring authorities' decisions on designations:
- (5) The Auckland Council must ensure that, within 15 working days after it receives the decision, a notice of decision and a statement of the time within which an appeal against the decision may be lodged is served on—
- (a) persons who made a submission on the requirement; and
 - (b) owners and occupiers of land to which the designation or heritage order applies.
- (b) Under sections 157 and 158 of the LGATPA, only submitters have a right of appeal to the Environment Court or High Court in relation to requiring authorities' designation decisions.
- (c) Requiring authorities' decisions are due to be notified in the week of 17 October 2016, and the Council is presently effecting service as required by section 151(5) of the LGATPA.
- (d) In the case of the decisions on the Designations at issue, the Council is proposing to send letters to all submitters on those designations (as required by s151(5)(a), LGATPA). In other words, all those persons who have potential appeal rights will receive a letter by mail.
- (e) However, the Council is concerned about the substantial cost to ratepayers which will be incurred in attending to service of letters, as required by s151(5)(b), on all owners and occupiers of land to which the designations apply, particularly in the case of these (airport) designations. While it is open to debate whether certain areas, for instance within the AIAL noise contours, are "*land to which the designation... applies*", the Council is proceeding on a conservative basis for the purposes of service under s151(5) and on an assumption that these areas arguably fall within the scope of section 151(5)(b).
- (f) It has been calculated that there are:
- (i) 39,438 owners / occupiers located within the AIAL designation 1100 area, including the ANNA, HANA and MANA areas;
 - (ii) 147,397 owners / occupiers located within the OLS areas, runway protection areas and sites subject to requirements for non-aeronautical ground lights specified in AIAL designation 1102;

- (iii) 1,115 owners / occupiers located within the MOD designation 4310 area, including the noise control area; and
 - (iv) 122,432 owners / occupiers located within the Whenuapai Airfield Approach and Departure Path Protection areas specified in MOD designation 4311.
- (g) The total number of owners and occupiers to be served is therefore calculated as being 310,382.
- (h) It has been estimated that the cost to the ratepayer of sending letters to these owners and occupiers would come to a total of \$170,472.15, comprising \$120,828.39 for postage, plus \$49,643.76 for printing and processing.
- (i) The Council considers this cost to be substantial and disproportionate to the benefit of serving notices on all 310,382 owners and occupiers.
- (j) In lieu of sending letters to these persons, the Council considers that adequate alternative service can be effected via publication of notices in the New Zealand Herald, local newspapers and on the Council's website. As Mr Duguid explains in his affidavit, the notices will confirm that decisions have been issued by AIAL and MOD confirming the Designations, address appeal timeframes (as otherwise required by section 151(1)(b)), and provide a Council website link to the decisions.
- (k) The Council does not consider that any undue prejudice will arise, given:
 - (i) The proposals for public notice of the relevant designation decisions;
 - (ii) Owners and occupiers of land do not have appeal rights under sections 157 and 158 of the LGATPA, unless they made submissions on the Designations; and
 - (iii) Service is still being effected in accordance with section 151(5)(a) for all owners / occupiers with potential appeal rights (i.e. those owners / occupiers who made submissions).

- (l) The proposed waivers / directions will have the added environmental benefit of minimising the quantities of paper which would otherwise be generated by strict compliance with section 151(5)(b) in the case of the properties in question.
- (m) For completeness, it is also noted that both AIAL and the New Zealand Defence Force support this application.

Alternative Waiver / Direction

6. The Council seeks the following waiver and direction, solely in the event that the Court refuses the waivers / directions referred to in paragraph 4 above:

- (a) A waiver of the usual timeframe for service of notices concerning AIAL's and MOD's decisions on the Designations, and a direction that letters be sent to all owners / occupiers of land referred to in paragraph 4(a) to (d) within 5 working days of the Court issuing its decision on this Application.

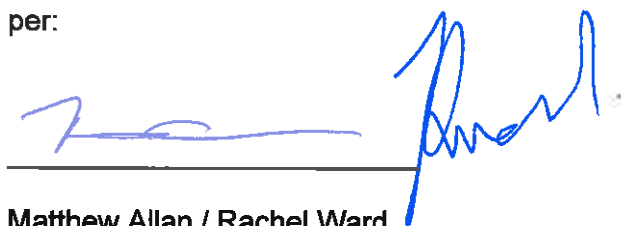
7. The Council seeks the above alternative waiver and direction on the following grounds:

- (a) If the Court declines the Application for the waivers / directions sought in paragraph 4, the Council will need 5 working days to print and arrange for mailing of letters to all 310,382 persons.

Dated 19 October 2016

AUCKLAND COUNCIL as Applicant
by its lawyers and duly authorised agents
BROOKFIELDS

per:



Matthew Allan / Rachel Ward

Address for service of the Applicant:

Brookfields
Lawyers
Matthew Allan / Rachel Ward

Tower One, 205 Queen Street, Auckland, New Zealand
PO Box 240, Shortland Street, Auckland 1140
DX CP24134

Telephone No.: 09 979 2128
Fax No.: 09 379 3224
Email: allan@brookfields.nz

Annexures:

- (a) Memorandum of Counsel dated 19 October 2016.
- (b) Affidavit of John Michael Duguid dated 19 October 2016.