

**BEFORE THE ENVIRONMENT COURT**

**ENV-2018-CHC-**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of potential appeals under  
Clause 14 of Schedule 1  
of the Act against  
decisions of the  
Queenstown Lakes  
District Council on Stage 1  
of the Proposed  
Queenstown Lakes  
District Plan

**AND**

**IN THE MATTER** of an application for  
waivers and directions  
under section 281 of the  
Act

**BY** **QUEENSTOWN LAKES  
DISTRICT COUNCIL**

Applicant

---

**NOTICE OF MOTION ON POTENTIAL APPEALS ON THE PROPOSED QUEENSTOWN LAKES  
DISTRICT PLAN**

**23 April 2018**

---

**Queenstown Lakes District Council**  
Counsel: A H Balme/ K L Hockly  
10 Gorge Road  
Queenstown 9300  
Ph: (03) 441 1784  
Email: [katharine.hockly@qldc.govt.nz](mailto:katharine.hockly@qldc.govt.nz)

**To:** The Registrar  
Environment Court  
Christchurch

## **1 Introduction**

- 1.1** The decisions by the Queenstown Lakes District Council (**Council**) on Stage 1 of its Proposed District Plan (**PDP**) are expected to be issued on 3 May 2018.
- 1.2** It is anticipated that a substantial number of appeals on the Council's decisions on Stage 1 of the PDP will be filed with the Court under clause 14 of Schedule 1 of the Resource Management Act 1991 (**RMA**).
- 1.3** Accordingly, the Council has filed this notice of motion to:
- (a) provide information to the Court on the PDP process so far, including an outline of the content of, and Council hearings for, Stage 1, and a progress report for Stage 2;
  - (b) indicate the Council's preliminary thoughts on options for the case management of the Stage 1 appeals (including potential grouping of appeals on the PDP into topics, and other procedural matters); and
  - (c) seek, pursuant to section 281 of the RMA, various waivers and directions that may assist to streamline the filing and service of any notices of appeal and section 274 notices relating to these appeals.

## **2. Outline of Stage 1 and Stage 2 of the partial District Plan Review**

- 2.1** The Council's partial District Plan Review (**DPR**) is intended to be carried out in four stages.<sup>1</sup> The Council publicly notified Stage 1 on 26 August 2015 and Stage 2 on 23 November 2017. It is intended that Stages 3 and 4 of the PDP will be notified after the completion of Council hearings on Stage 2.

---

<sup>1</sup> It is not intended that stages 1-4 of the District Plan Review will constitute a full review of the District Plan as some specific land has been excluded being the Frankton Flats B and Remarkables Park, Northlake Special Zone, Peninsula Bay North zones, Ballantyne Road Industrial and Residential extension, and the Queenstown land affected by Plan Change 50.

## Stage 1 of the Proposed District Plan

- 2.2** The PDP as notified in Stage 1 contained 32 chapters. The geographic area covered by the PDP, Stage 1, is generally limited to the area of PDP zones notified on the plan maps in Stage 1,<sup>2</sup> and covers approximately 90 percent of the District. The 32 chapters address the following:
- (a) introductory matters (Chapter 1) and the definitions used throughout the PDP (Chapter 2);
  - (b) higher order provisions setting out the strategic direction of the Proposed District Plan (Chapters 3, 4, 5 and 6) (**Strategic Direction Provisions**);
  - (c) a number of zone chapters (Chapters 7-17, 21-23 and 41-44);
  - (d) provisions on a number of topics located in separate “district wide chapters,” that are intended to apply to all areas of the District currently included in the PDP (Chapters 26 - 28, 30 and 32 - 36) (**District Wide Provisions**);
  - (e) designations that apply across all areas of the District – these are not limited to the area of land currently included in the PDP (Chapter 37); and
  - (f) plan maps for the land currently included in the PDP through Stage 1, showing the zoning for land and various plan map annotations that apply to that land.
- 2.3** Submissions on Stage 1 of the PDP closed on 18 December 2015. In total, 1,206 submissions (raising 18,734 submission points) were lodged with the Council.
- 2.4** The Council appointed a Panel of Commissioners (**Panel**) to hear submissions and make recommendations on Stage 1 of the PDP. The hearings were held

---

<sup>2</sup> With the exception of the designations that apply in the District and the protected trees and heritage items scheduled in Chapters 26 and 32, some of which are located outside of the zones notified as part of Stage 1 of the PDP.

between March 2016 and September 2017 and the Council's decisions on the Panel's recommendations are expected on 3 May 2018.

*Stage 2 of the Proposed District Plan*

- 2.5** Stage 2 of the PDP is also underway. Given the potential for the Stage 1 PDP appeals and Stage 2 PDP hearings to be progressing simultaneously during the middle of this year, and because the Council will have officers and consultants heavily involved in both processes, it will be extremely important for the Council to carefully manage its limited resources so that it can best serve the needs of the Court as well as its own hearing process.
- 2.6** Stage 2 of the PDP was publicly notified for submissions on 23 November 2017. The provisions as notified in Stage 2 cover the following six topics:
- (a) Chapter 24 Wakatipu Basin;
  - (b) Chapter 25 Earthworks;
  - (c) Chapter 29 Transport;
  - (d) Chapter 31 Signs;
  - (e) Chapter 38 Open Space and Recreation;
  - (f) Visitor accommodation provisions.
- 2.7** The above topics comprise three new district wide chapters (intended to apply to all land included in the District Plan Review), two new zone chapters (and associated new zones on the Stage 2 plan maps), and new provisions for and/or variations to various Stage 1 chapters and plan maps.
- 2.8** The submission period for Stage 2 of the PDP closed on 23 February 2018. The Council notified its Summary of Decisions Requested on 12 April 2018 with the period for making further submissions opening on that same date. The Council intends to hold two separate hearings for Stage 2, during July and September 2018.

### **3. Case management options for the Stage 1 appeals**

**3.1** It is anticipated that the appeal period in relation to the Council's decisions on Stage 1 of the PDP will close near the end of June 2018, with the section 274 period ending near the end of July 2018.<sup>3</sup>

**3.2** Immediately after any appeals are served on the Council (and again after associated section 274 notices are served), the Council will be required to:

- (a) review all notices of appeal (and associated section 274 notices) to identify the relevant topics covered by each notice of appeal (and 274 notice);
- (b) identify whether further particulars are required in relation to certain appeals so that the Council will be able to formulate a position on those appeal points;
- (c) for the purpose of completing its annotation of the Stage 1 PDP provisions and maps, the Council will need to establish whether certain parts of the PDP are subject to appeal or are beyond challenge (and therefore deemed operative in terms of section 86F of the RMA); and
- (d) identify and advise the Court of any jurisdictional issues that should be addressed prior to or alongside any mediation.

**3.3** In completing the above tasks, the Council is willing to assist the Court by developing case management options for the Stage 1 PDP appeals that will take into account:

- (a) whether it is appropriate to hear certain appeals separately, or group appeals together for mediations and/or hearings;

---

<sup>3</sup> The appeal period in respect of decisions affecting notices of requirement, which were notified as part of Stage 1 of the PDP, will be different from that for the Stage 1 provisions. Case management of designation appeals is addressed in more detail in Part 3 of this Notice of Motion.

- (b) whether any particular sequencing of appeals (or groups of appeals) is appropriate; and
- (c) whether mediation would be of benefit for certain appeals (or groups of appeals), and if so, Council will liaise with the parties involved in relation to the likely timeframe required to prepare for any mediation.

**3.4** It is anticipated that, following consideration of the above, the Council would prepare and file, after conferring with all parties involved in the appeals, a reporting memorandum recommending an approach to the case management of the Stage 1 PDP appeals.

**3.5** It is considered that a period of three to four weeks following the close of the section 274 period will be required for the Council to undertake the above tasks. The Council respectfully requests that the Court consider issuing a direction on this basis, or refrain from issuing alternative case management directions until after it has considered the Council's recommendations.

**3.6** The following part of this notice addresses specific matters related to the above.

*Intended topic approach*

**3.7** It is anticipated that notices of appeal on the Stage 1 PDP provisions will address multiple issues and that a number of appeals are likely to overlap. The Council's preliminary view is that breaking the appeals down and grouping them into topics is likely to be helpful in ensuring that the appeals are efficiently managed. At the Council level, hearings were broken into topics, in the same way.

**3.8** It is anticipated that each appeal could be broken up into its separate appeal points and the appeal points allocated to a topic and (where relevant) subtopic. The appeals programme could then reflect this division of topics, and mediations/hearings could take place on a topic basis rather than be separated by appeal.

**3.9** In the interests of encouraging the efficient resolution of the appeals, the appeals on the Strategic Direction Provisions may be able to be separated out

into the various topic groups and managed alongside the related appeals on lower order matters (such as the chapter specific objectives and policies, and the relevant rules). It is the Council's preliminary view that managing the appeals in this manner may encourage the parties to focus their positions, which could reduce the breadth of the issues raised at mediation and before the Court. However, careful consideration will be required, following the filing of appeals, as to whether separating out the Strategic Direction Provisions would be a possible option or whether the Strategic Direction Provisions would need to be dealt with as a single preliminary topic.

### *Mediation*

- 3.10** The Council anticipates there will be significant benefits from mediating the appeals on the PDP provisions. The Council acknowledges the comments in the paper *"Issues with access to justice in the Environment Court of New Zealand,"*<sup>4</sup> in which the authors endorsed the role of alternative dispute resolution and in particular the role of mediation in narrowing issues in dispute, reducing hearing time and costs to all parties.
- 3.11** The Council's preliminary view is that the positive aspects of mediation referred to in the above paper will result in significant benefits for the parties to the PDP appeals. Taking such factors into account, it is the Council's intention to seek sufficient time for mediation where it is considered that matters will be able to be resolved without resort to a hearing. It is anticipated that where mediation is not successful the Council will seek a timetable for the exchange of evidence to address the outstanding issues.
- 3.12** Prior to mediation, the Council's preliminary view is that a helpful approach could involve the preparation of position papers for each meditation topic, to ensure that all parties' positions are clarified prior to mediation. It is envisaged that the position papers could include the following:
- (a) a summary of the Council's position in respect of the relevant topic; and
  - (b) a breakdown of the Council's position on the specific relief sought by each party to the relevant appeal.

---

<sup>4</sup> Authored by Judges Newhook, Kirkpatrick and Hassan and presented at the international symposium Environmental Adjudication in the 21st Century, held under the auspices of the Environment Court of NZ and University of Otago on 11 April 2017 in Auckland

**3.13** It is anticipated that the preparation of the position papers may result in an additional workload for the Council and to some degree the other parties prior to mediation, which may result in the Council respectfully requesting additional preparation time. However, from Counsel's experience the use of position papers has been very effective in the efficient resolution of plan appeals around New Zealand.<sup>5</sup> As such, it is the Council's view that the preparation of position papers is likely to be a helpful and efficient approach.

**3.14** The Council further anticipates grouping the appeal points into smaller subtopics, to focus the discussion of issues as far as possible and to ensure that mediation time is used effectively.

#### *Preliminary jurisdictional issues*

**3.15** The Council anticipates that a number of jurisdictional issues may arise out of the appeals (such as issues of parties' standing to appeal) that may most appropriately be dealt with through applications to the Court prior to or alongside the holding of mediations. It is the Council's intention to identify such issues and apply to the Court for appropriate orders as quickly as possible following the close of the appeals period and prior to the commencement of mediations. Other parties may also wish to make similar applications during this time.

#### *Timing of appeals against designations*

**3.16** For the avoidance of doubt, the Council confirms that the Council's decisions on its own notices of requirement (**NORs**) and its recommendations on other requiring authorities' NORs are also expected on 3 May 2018.

**3.17** Subject to the Court's confirmation, it is the Council's view that it would generally be appropriate for appeals on designations to be managed separately from appeals on the PDP provisions.

---

<sup>5</sup> Such as the Palmerston North City Council and South Taranaki District Council Proposed District Plan appeals.



**3.18** Due to the difference in the timing for the lodging of appeals on NORs,<sup>6</sup> it is anticipated that separate appeals will be filed on them.

**3.19** In some instances there may be an overlap between the PDP provisions subject to appeal and the content of a requiring authority's decision on a designation. In such circumstances, it may be appropriate to manage the appeals against a NOR along with the relevant PDP provisions. The Council intends to identify such cases and notify the Court as appropriate.

#### **4. Application for waivers and directions under section 281 of the RMA**

**4.1** The Council seeks the following waivers and directions pursuant to section 281 of the RMA in respect of the potential appeals on its decisions on Stage 1 of the PDP:

(a) **Notices of appeal:**

(i) a direction that all notices of appeal (in relation to the Council's decisions on the provisions of Stage 1 of the PDP and the requirements of the Council) must be served on:

- the Council electronically by email to: [dpappeals@qldc.govt.nz](mailto:dpappeals@qldc.govt.nz); and
- where the appeal relates to an original submission made by the appellant, on every person that made a further submission on the relevant original submission point;

(ii) a waiver in favour of appellants of the usual requirement in clause 14(5) of Schedule 1 to the RMA, regulation 7, and Form 7 of the Resource Management (Forms, Fees, and

---

<sup>6</sup> Requiring authorities other than the Council have 30 working days to accept or reject the Council's recommendations on their notices of requirement (section 172(1) of the RMA). The Council then has 15 working days to serve a requiring authority's decision on submitters and persons affected by the decision (section 173(1)). Any person who made a submission then has a further 15 working days from the date of service to appeal that decision (section 174(2)(c)). The result is that appeals on other requiring authorities' decisions will be due around 60 working days from the date that the Council issues its recommendations.

Appellants will have 15 working days to file appeals on the Council's decisions on its own notices of requirement (sections 168A(5) and 174(2)(c)).

Procedure) Regulations 2003 to serve a copy of Form 7 on every person (not being a further submitter that is served in accordance with paragraph 4.1.(a)(i) above) who made a submission on the provision or matter to which the appeal relates;

- (iii) a waiver in favour of appellants (in relation to decisions on the requirements of the Council) of the usual requirement in clause 14(5) of Schedule 1 to the RMA, regulation 8, and Form 8 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 to serve a copy of Form 8 on every person (not being a further submitter that is served in accordance with paragraph 4.1.(a)(i) above) who made a submission on the requirement to which the appeal relates; and
- (iv) a direction that service of all notices of appeal on every other person (not being a further submitter that is served in accordance with paragraph 4.1.(a)(i) above) who made a submission on a provision, requirement or matter to which the appeal relates will be effected by the Council uploading copies of all notices of appeal onto its website as soon as possible after the appeal is received by the Council.

(b) **Section 274 notices:**

- (i) a direction that any section 274 notice must be served on the Council electronically by email to: [dpappeals@qldc.govt.nz](mailto:dpappeals@qldc.govt.nz) and on the appellant electronically on any email address provided in the notice of appeal;
- (ii) a waiver of the usual requirement to serve a copy of any section 274 notice on “all other parties”;
- (iii) a direction that service of section 274 notices on “all other parties” will be effected by the Council uploading copies of section 274 notices onto its website as soon as possible after the section 274 notice is received.

**4.2** For the avoidance of doubt, the Council intends that the above waivers and directions apply to appeals against its decisions on its own requirements. However, it does not seek the above waivers and directions in relation to appeals on the requirements of any other requiring authority.

**4.3** The Council seeks the above waivers and directions on the following grounds:

(a) In total, 1,206 submissions with 18,734 submission points were received on Stage 1 of the PDP. The waivers and directions will:

(i) reduce the burden on the Council in receiving hard copies of appeal documents;

(ii) reduce the burden on appellants and section 274 parties, who may be otherwise obliged to serve notice on a significant number of parties;

(iii) reduce the burden on appellants who may otherwise be required to review a significant number of submissions in order to determine who may constitute a *“person who made a submission on the provision or matter to which the appeal relates;”*

(iv) reduce the risk of service on certain persons being overlooked by appellants on account of the complexity in determining whether a person constitutes a *“person who made a submission on the ...matter to which the appeal relates”* as service on such persons will be provided though the notices of appeal being uploaded to the Council's website.

(b) The Environment Court in *Re Auckland Council*<sup>7</sup> granted a similar application made by Auckland Council in respect of upcoming appeals on its decisions on the Proposed Auckland Unitary Plan (**Appendix 1** to this Notice contains Auckland Council's application, and **Appendix 2** contains the Environment Court's decision). The

---

<sup>7</sup> [2016] NZEnvC 153.

Court identified two relevant aspects of section 281 of the RMA, being that:<sup>8</sup>

- (i) it does not appear that the Court's jurisdiction is confined to a proceeding already before the Court; and
  - (ii) the Court can waive the requirements of the RMA and make directions in an appropriate case.
- (c) The Council will make live a specific webpage on the Council's website, which will contain the all notices of appeal and section 274 notices served on the Council. As per the above waivers and directions, copies of all notices of appeal and section 274 notices will be uploaded as soon as possible after the notices are received by the Council, so that any submitters or other persons will be made aware of any appeal and have the opportunity to join any appeal by lodging a section 274 notice with the Court. The Council will identify, on its website, the PDP chapters or rezoning requests (to be identified as either a Queenstown or Upper Clutha rezoning request) relating to each appeal.
- (d) The Council will further send an email to all submitters who provided an electronic address notifying them when new appeals or section 274 notices have been uploaded to the website.
- (e) On 4 May 2018 the Council will:
- (i) give public notice of its decisions (as required by clause 10(4)(b) of Schedule 1 of the RMA); and
  - (ii) send a letter to all submitters and further submitters on Stage 1 of the PDP containing the information required by clause 11(1) of Schedule 1 of the RMA.
- (f) The Council appreciates that this application for waivers and directions under section 281 of the RMA may not be able to be

---

<sup>8</sup> [2016] NZEnvC 153 at [9] – [10].

decided prior to 4 May 2018. If the Court is minded to make the above waivers and directions after 4 May 2018 the Council will:

- (i) upload a copy of the Court's waivers and directions on the Council's webpage; and
  - (ii) serve notice on all Stage 1 PDP submitters (generally in electronic form but also by post where no electronic address is available) that the waivers and directions have been made and that they can be found on the Council's website.
- (g) If the Court is minded to grant the above waivers and directions prior to 4 May 2018 the Council would include notice of this fact as part of its public notice of 4 May 2018.
- (h) A draft copy of the proposed notice is attached at **Appendix 3**.

## **5. Just treatment of parties**

**5.1** Section 291 of the RMA requires that the Council include in this notice of motion the details of the parties to this application upon which this notice is to be served. The Council submits that, as no appeals have yet been filed on the Council's decisions on Stage 1 of the PDP there are no other parties to this application. As such this application has not been served on any party.


**5.2** The Council acknowledges that the *ex parte* nature of this application is a relevant matter for the Court's consideration. The Council is mindful that it is an objective of the Court's case management set out in paragraph 4.1(a) of the Practice Note to "*ensure the just treatment of all parties.*" With this factor in mind, Counsel engaged with a number of senior practitioners to discuss the matters set out in this notice of motion and took their feedback into account. There was a general level of support from the practitioners. Given this general level of support and the nature of the waivers and directions applied for, the Council respectfully submits that other parties to the appeals on Stage 1 of the Council's PDP would not be prejudiced by the Court granting them.

**5.3** However, the Court may wish to carry out similar consultation itself. If it was minded to do so, one option would be for the Court to arrange an informal

chambers conference with interested practitioners to discuss the Council's application. This could potentially also provide the Court with the opportunity to discuss the other matters addressed in this notice of motion with the Council's representatives and other practitioners.

- 5.4** Counsel is also willing to assist the Court by providing any further information that the Court considers would be of assistance, in advance of the appeals being received.

**Dated** this 23<sup>rd</sup> day of April 2018



---

A H Balme/ K L Hockly  
Counsel for Queenstown Lakes  
District Council

**Address for service of applicant:**

Queenstown Lakes District Council  
Private Bag 50072 / 10 Gorge Road  
Queenstown 9348 / Queenstown 9300

Telephone: (03) 441 1784  
Email: [katharine.hockly@qldc.govt.nz](mailto:katharine.hockly@qldc.govt.nz)  
Contact persons: Katharine Hockly

## **APPENDIX 1**

Notice of Motion by Auckland Council under Section 281 of the RMA applying for  
waivers/directions dated 16 August 2016

**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 potential appeals under section 156(1) or (3) of the LGATPA against decisions of the Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

**AND**

**IN THE MATTER** an Application for Waivers / Directions under section 281 of the RMA

---

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

**Dated 16 August 2016**

---

---

**Auckland Council**  
Legal Services Group  
Private Bag 92516  
AUCKLAND

Tel: (09) 890 7703  
Fax: (09) 890 7723

Acting Solicitor: Christian Brown  
Email: [christian.brown@aucklandcouncil.govt.nz](mailto:christian.brown@aucklandcouncil.govt.nz)



To: The Registrar  
Environment Court  
**Auckland**

1. The Auckland Council (**Council**) applies pursuant to section 281 of the RMA for various waivers and directions in respect of potential appeals under section 156(1) or (3) of the LGATPA against decisions of the Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. The waivers and directions sought relate generally to the service of any Notices of Appeal, the operation of section 274 of the RMA, and the filing and service of any further Court documents relating to any appeals.
3. For the avoidance of doubt, the Council does not seek any waivers or directions in relation to any designation appeals, which may be filed under section 157 of the LGATPA.
4. The Council seeks the following waivers and directions:

**(a) Service of Notices of Appeal**

- (i) A waiver in favour of the appellants of the usual requirement in clause 14(5) of Schedule 1 to the RMA, regulation 13 and Form 6 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 (the **2013 Regulations**) 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, and the related requirement in regulation 14 and Form 6 of the 2013 Regulations to give written notice to the Registrar of the Environment Court of the name, address, and date of service for each such person served.
- (ii) A waiver in favour of the appellants of the usual requirement in Form 6 to file an additional copy of the Notice of Appeal with the Environment Court.
- (iii) A direction that any Notice of Appeal be served on the Auckland Council electronically by email to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz).

**(b) Section 274 notices**

- (i) 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 anyone seeking to join the appeal as a section 274 party may, as an alternative to complying with the usual requirements of section 274 and Form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (the **2003 Regulations**), be allowed to file an electronic copy of any section 274 notices by email to the Court's dedicated email address for section 156 appeals ([unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz)), which may be signed or unsigned, in which case no hard copy need be filed with the Court.
- (ii) A waiver of the usual requirement to serve a copy of any section 274 notice on "all other parties". Instead, service of section 274 notices on "all other parties" can be effected by the Court uploading copies of section 274 notices received to the Environment Court's website. For the avoidance of doubt, an electronic copy of any section 274 notice must be served by email on the appellant and on the Council (to

unitaryplan@aucklandcouncil.govt.nz).

- (iii) For those persons 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.

(c) **All other documents filed in relation to the appeal**

- (i) 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 appeal filed by any party may be:
- filed electronically with the Environment Court by email to [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz), and
  - 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.

5. The Council seeks the above waivers and directions on the following grounds:

(a) In total, 9,443 primary submissions and 3,915 further submissions were made on the Proposed Plan.

(b) The Council supports the Court's tentative suggestion raised with practitioners to make use of electronic methods of filing and service for all appeals filed under section 156 of the LGATPA in view of the substantial number of submitters.

(c) The waivers and directions proposed above will:

- Substantially reduce the burden on appellants and any section 274 parties, who may otherwise be obliged to serve documents on a significant number of parties;
- Minimise the quantities of paper which would otherwise be generated by strict compliance with section 156(5) of the LGATPA, clause 14(5) of Schedule to the RMA, and regulations 13 and 14, and Form 6 of the 2013 Regulations, and Form 33 of the 2003 Regulations; and
- Address the significant logistical issues for the Court and all parties that would otherwise arise, particularly around filing and service of documents.

(d) On 19 August 2016, the Council will:

- Publish a notice in the New Zealand Herald (**NZH**) briefly outlining appeal rights under the LGATPA, and referring to the specific arrangements proposed by the Environment Court for appeals under section 156(1) and (3) of the LGATPA. A draft copy of the proposed NZH notice is **attached** to this Application as **Annexure A**;
- Send a letter to all submitters and further submitters on the Proposed Plan containing, as a minimum, the information set out in the NZH notice; and
- Make 'live' a specific Unitary Plan Webpage on the Council's website which will contain the Council's decisions, the Hearings Panel's recommendations and a detailed summary of the appeal rights relevant to the Council's decisions, among other information.

(e) The NZH notice and letters referred to in (d) above will address (among other matters):

- The dedicated Environment Court email address and website established by the Court, and the Court's intention to make use of electronic methods of filing and service for section 156 appeals;
  - The purpose of the Court's dedicated website as a place where all section 156 appeals will be listed, and where all Notices of Appeal and other documents filed with the Court will be uploaded by Court staff;
  - The fact that the Waivers / Directions sought in this Application have been made by the Environment Court; and
  - The availability of further information on the Council's website concerning appeal rights.
- (f) The notice referred to at (d) and (e) above will be reproduced on the Council's Unitary Plan webpage<sup>1</sup>, together – as noted – with more information concerning appeal rights, including a link to the LGATPA and to the 2013 Regulations.
- (g) The Council confirms that it also intends to upload copies of all Notices of Appeal to its website.
- (h) The NZH notice and letters described in (d) and (e) above, together with the further publicity concerning appeals as described in (f) and (g) above, will assist in addressing any concerns that might otherwise arise from the proposal to waive the usual RMA service requirements.
- (i) In addition, the Council supports and has agreed to fund the appointment by the Court of an appropriately legally qualified process assistant during the appeal period for section 156 appeals (i.e. through to and including 16 September 2016), to provide assistance with matters of process to anyone contemplating an appeal.

**Dated 16 August 2016**



Christian Brown  
Counsel for the Applicant

**Address for service of Applicant:**

Auckland Council, Level 11, 135 Albert Street, Private Bag 92300, Auckland 1142

Telephone: (09) 890 7703

Fax: (09) 890 7723

Email: christian.brown@aucklandcouncil.govt.nz

Contact person: Christian Brown, Litigation & Regulatory, Auckland Council

---

<sup>1</sup> <http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Pages/home.aspx>  
Originating Application by Council for Waivers / Directions

**ANNEXURE A**

**Draft NZH Notice**

## Auckland Council

### Proposed Auckland Unitary Plan

#### Public notification of decisions by Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to proposed Auckland Unitary Plan

The Auckland Council (**Council**) hereby gives notice under s148 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) of the Council's decisions on the recommendations made by the Auckland Unitary Plan Independent Hearings Panel (**Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**).

The Council's decisions, the '**Decisions Version**' of the Proposed Plan (i.e. the Council's amended text and planning maps for the Proposed Plan following the Council's decisions), and the Panel's recommendations, have been uploaded to the Council's website at the following webpage (**Council's Webpage**), and can also be inspected online at any public library:

<http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Pages/home.aspx>

The Council's decisions address the recommendations of the Panel that the Council has accepted; the recommendations of the Panel that the Council has rejected, and the Council's reasons for doing so; and the Council's alternative solutions for all rejected recommendations (and accompanying section 32AA evaluation, where necessary). They also address:

- *The Panel's 'out of scope' recommendations:* The LGATPA process allowed the Panel to make recommendations to the Council that are beyond the scope of submissions (i.e. 'out of scope'). Where the Council has accepted out of scope Panel recommendations, there is a specific right of appeal. An explanation of how to identify the Panel's out of scope recommendations that have been accepted by the Council can be found at the Council's Webpage and in the Council's decisions;
- *Decisions on Council designations:* The Council's decisions notified on 19 August 2016 include decisions which relate to Council designations. There will be other decisions made on designations by other requiring authorities (non-Council designations), which will be notified directly to submitters, and owners and occupiers of land subject to those designations, by the Council at a later date.

#### Appeal rights

The usual appeal provisions of the Resource Management Act 1991 (**RMA**) do not apply. Instead, certain limited rights of appeal to the Environment Court and High Court are provided in the LGATPA:

- Appeals to the Environment Court on decisions, other than decisions on Council designations. Section 156, LGATPA, provides appeal rights for a submitter where the Council rejects a recommendation of the Panel, or for any person unduly prejudiced by the Council's acceptance of a Panel 'out of scope' recommendation. Any such appeals must be filed by 16 September 2016.
- Appeals to the Environment Court relating to Council designations (s157, LGATPA). Any such appeals must be filed by 30 September 2016.
- Appeals to the High Court on questions of law only (s158, LGATPA). Any such appeals must be filed by 16 September 2016.

Anyone contemplating filing an appeal with either the Environment Court or High Court is encouraged to seek legal advice, and to refer to the detailed provisions of the LGATPA and the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 (**2013 Regulations**) for an explanation of the appeal rights and procedures. Links to the relevant legislation, and a brief summary of the available appeal rights relevant to the Council's decisions notified on 19 August 2016 are provided on the "Appeals" page of the Council's Webpage.

#### Special arrangements for appeals under section 156, LGATPA

The Environment Court has put in place special procedural arrangements for dealing with any appeals lodged under s156, LGATPA only. These arrangements are explained in full on a dedicated webpage established by the Court (**Court's Webpage**):

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

**Summary of specific Environment Court arrangements for s156 appeals:**

- Waivers / directions have been made to facilitate electronic methods of filing / service for s156 appeals. A copy of the Court's decision granting the waivers / directions can be viewed on the Court's Webpage.
- All s156 appeals will be listed on the Court's Webpage, and all Notices of Appeal and other documents filed with the Court will be uploaded by Court staff.
- A dedicated email address has been established by the Court for the filing of documents with the Court ([unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz)), with the exception of the signed original of any Notice of Appeal, which must be lodged with the Environment Court in hard copy, together with the appropriate filing fee.
- While the 2013 Regulations provide forms for appeals to the Environment Court under the LGATPA, the Court has approved a slightly amended template Notice of Appeal for appeals under ss156(1) and 156(3), which can be downloaded from the Court's Webpage.
- A process assistant is to be appointed by the Court to provide assistance to potential appellants in relation to s156 appeals up to 16 September 2016 (the deadline for filing such appeals). Refer to the Court's Webpage for contact details for the appointed process assistant.

**Date**

**19 August 2016**

## **APPENDIX 2**

*Re Auckland Council* [2016] NZEnvC 153

Decision of the Environment Court on *ex parte* application for waivers/directions

**BEFORE THE ENVIRONMENT COURT**

Decision [2016] NZEnvC 153

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

**APPLICANT**            **AUCKLAND COUNCIL**  
  
(ENV-2016-AKL-000171)

Court:                    Principal Environment Judge LJ Newhook  
  
                                Environment Judge M Harland

Date of Decision: 17 August 2016, on the papers

---

**DECISION OF THE ENVIRONMENT COURT ON EX PARTE APPLICATION  
FOR WAIVERS / DIRECTIONS**

---

- A:    The application is allowed.
- B.    The waivers and directions sought are granted.





## REASONS

### Introduction

[1] On 9 August 2016 the Court invited members of the legal and planning professions to an informal conference for preliminary discussions on preparation for the efficient management of such appeals as may be lodged in the Environment Court concerning Auckland Council's decisions on the Independent Hearing Panel's recommendations on the Proposed Auckland Unitary Plan (PAUP).

[2] The conference was expressly advised to be informal, and that attendance was not compulsory. The conference focused only on Environment Court processes. High Court processes were naturally not discussed.

[3] The purpose of the informal conference was to give members of the Court and senior practitioners the opportunity to discuss and consider the following issues:

- (a) The possibility of service waiver(s) involving electronic or other possible alternatives;
- (b) Preliminary consideration of procedures for identification and categorisation of topics;
- (c) Preliminary consideration of procedures for identification of priorities (including as between matters in the High Court and this Court); and
- (d) Preliminary issues affecting deployment of Environment Court resources for Alternative Dispute Resolution and hearing activities.

[4] Apparently in consequence of discussions on topic (a) at the informal conference, and further discussions amongst some counsel afterwards, the Court received an *ex parte* originating notice of motion from the Auckland Council on 16 August 2016. The application sought various waivers and directions under s 281 of the RMA in relation to potential appeals under ss 156(1) or (3) of the LGATPA against decisions of the Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel on the PAUP.



## **The application for waivers and directions**

[5] The waivers and directions sought relate generally to the service of any Notices of Appeal, the operation of s 274 of the RMA, and the filing and service of any further Court documents relating to any appeals.

### ***Service of Notices of Appeal***

- (a) A waiver in favour of the appellants of the usual requirement in clause 14(5) of Schedule 1 to the RMA, regulation 13 and Form 6 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 (the **2013 Regulations**) 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, and the related requirement in regulation 14 and Form 6 of the 2013 Regulations to give written notice to the Registrar of the Environment Court of the name, address, and date of service for each such person served.
- (b) A waiver in favour of the appellants of the usual requirement in Form 6 to file an additional copy of the Notice of Appeal with the Environment Court.
- (c) A direction that any Notice of Appeal be served on the Auckland Council electronically by email to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz).

### ***Section 274 notices***

- (a) A waiver of the usual requirement to lodge a signed original and 1 copy of any s 274 notice with the Court, and a direction instead that anyone seeking to join the appeal as a s 274 party may, as an alternative to complying with the usual requirements of s 274 and Form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (the **2003 Regulations**), be allowed to 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](mailto:unitaryplan.ecappeals@justice.govt.nz) 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 a copy of any s 274 notice on “all other parties”. Instead, service of s 274 notices on “all other parties” can be effected by the Court uploading copies of s 274 notices received to the Environment Court’s website.<sup>1</sup> For the avoidance of doubt, 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](mailto:unitaryplan@aucklandcouncil.govt.nz).
- (c) For those persons who decide to file a hard copy of their s 274 notices with the Court, a waiver of the usual requirement to file an extra copy of the notice.

***All other documents filed in relation to the appeal***

- (a) 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 appeal filed by any party may be:
  - (a) filed electronically with the Court by email to [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz); and
  - (b) 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.<sup>2</sup>

**Grounds for seeking the waiver and directions**

[6] In total, 9,443 primary submissions and 3,915 further submissions were made on the PAUP.

[7] The Council supports the Court’s earlier tentative suggestion raised with practitioners to make use of electronic methods of filing and service for all appeals filed under s 156 of the LGATPA in view of the substantial number of submitters.

[8] The waivers and directions sought will:

---

<sup>1</sup> <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>  
<sup>2</sup> <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>



- (a) Substantially reduce the burden on appellants and any s 274 parties, who may otherwise be obliged to serve documents on a significant number of parties;
- (b) Minimise the quantities of paper which would otherwise be generated by strict compliance with s 156(5) of the LGATPA, clause 14(5) of Schedule to the RMA, and regulations 13 and 14, and Form 6 of the 2013 Regulations, and Form 33 of the 2003 Regulations; and
- (c) Address the significant logistical issues for the Court and all parties that would otherwise arise, particularly around filing and service of documents.

### Discussion

[9] Two features of s 281 of the RMA are particularly relevant in this context of this application. This first is that it does not appear that the Court's jurisdiction is confined to a proceeding already before the Court. That is relevant because the application by the Council here is an originating proceeding.<sup>3</sup>

[10] The second is that the Court can waive the requirements of the Act and make directions in an appropriate case.

[11] In addition to filing this application the Council intends to publish a notice in the New Zealand Herald on 19 August 2016, publically notifying the decisions of the Auckland Council on the recommendations of the Auckland Unitary Plan Independent Hearings Panel. This notice will include a summary of appeal rights, timeframes for filing and sets out the specific arrangements this Court has made for the filing of appeals, including that this Court has approved an amended template for Notices of Appeal under s 156(1) and s 156(3) of the LGATPA.

[12] All submitters and further submitters will also receive a letter from the Council that reiterates and elaborates on the information that will be provided in the notice in the New Zealand Herald. The information will also be made available on the Council's Unitary Plan website.



<sup>3</sup> *Clifford Bay Proposed Port v Marlborough District Council* EnvC C77/97, 28 July 1997.

[13] The result of the notice, the letter and the Council's website is that all submitters and further submitters will not only be on notice that Council's decisions have been released, but they will also be advised of the waivers and directions made in this decision. This will include that certain Forms and Regulations under the RMA and the LGATPA (including the template for Notices of Appeal) have been tailored to make them easier to use and understand in the context of filing appeals against the PAUP in this Court.

[14] Having particular regard to the open and forthright manner in which submitters are to be alerted to the circumstances underpinning the intended waivers and directions, the Court is minded to make the process of filing appeals and other documents in relation to the PAUP as efficient and streamlined as possible, commensurate with good access to justice. The main issue to determine is whether any potential party would be prejudiced by the waivers and directions sought.

[15] In the special circumstances of this case we are satisfied that the procedures established for filing and service of Notices of Appeal and other related documents on the PAUP sufficiently overcome any concerns about prejudice. The waivers and directions sought will simplify processes and enable parties to access Court documents in a timely and efficient manner.

[16] The Court has also turned its mind to this application being *ex parte*, and that if there were to be any doubt whether a civil proceeding should proceed without notice, the applicant's counsel should give warning to lawyers for other parties, and that certain procedural steps might then be followed, often called a "Pickwick process".<sup>4</sup> The Court notes that the application has been made by counsel for Auckland Council after consulting with senior RMA practitioners. Also, numerous others attended the informal conference where the possibility of an application for waiver and directions was discussed, and opportunity offered for input.

#### Directions and waivers



<sup>4</sup> *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd* [1972] FSR 427; [1972] RPC 786; [1972] 3 All ER 384; (1972) 116 SJ 697.

[17] Accordingly, the Court grants the waivers and directions sought (summarised) as set below<sup>5</sup>:

***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](mailto: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](mailto: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](mailto: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.<sup>6</sup>
- (d) An electronic copy of any s 274 notice must be served by email on the

<sup>5</sup> The full detail reflects the applications made as recorded early in this decision.

<sup>6</sup> <http://www.environmentcourt.govt.nz/auckland-unitary-plan-appeals/>



appellant and on the Council at [unitaryplan@aucklandcouncil.govt.nz](mailto: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](mailto: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 17<sup>th</sup> day of August 2016



LJ Newhook  
Principal Environment Judge



M Harland  
Environment Judge



## APPENDIX 3

Draft notice regarding proposed waivers and directions

### Notice of Queenstown Lakes District Council

#### Special procedural arrangements in relation to service of appeals on Stage 1 of the PDP

The Queenstown Lakes District Council (**Council**)'s decisions on Stage 1 of its Proposed District Plan (**PDP**) were publicly notified on 4 May 2018. The Council's public notice of its decisions can be viewed on the Council's website here:

<https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/decisions-stage-1/>

The Environment Court has put in place special procedural arrangements for dealing with any appeals lodged on the Council's decisions on the Stage 1 provisions and the Council's designations (note that the special arrangements do not apply for appeals on any notices of requirement of any other requiring authorities).

In summary the special procedural arrangements are that:

#### Notices of appeal

1. Notices of appeal must be filed with the Court in accordance with the standard requirements set out in the Resource Management Act 1991 and the Resource Management (Forms, Fees, and Procedure) Regulations 2003.
2. The requirements relating the service of notices of appeal have been altered to the effect that:
  - (a) notices of appeal must be served on:
    - (i) the Council at its dedicated email address: [dpappeals@qldc.govt.nz](mailto:dpappeals@qldc.govt.nz); and
    - (ii) where your appeal is based on an original submission that you made, on every person that made a further submission on the relevant original submission point;
  - (b) service on every other person who made a submission on a provision, requirement or matter to which your appeal relates will be effected by the Council uploading copies of all notices of appeal onto its website.



### **Section 274 notices:**

3. Section 274 notices must be filed with the Court in accordance with the standard requirements set out in the Resource Management Act 1991 and the Resource Management (Forms, Fees, and Procedure) Regulations 2003.
4. The requirements relating the service of section 274 notices have been altered to the effect that:
  - (a) section 274 notices must be served on the Council electronically by email to: [dpappeals@qldc.govt.nz](mailto:dpappeals@qldc.govt.nz) and on the appellant; and
  - (b) service of section 274 notices on “all other parties” will be effected by the Council uploading copies of section 274 notices received onto its website.

### **Waivers and directions**

The full set of waivers and directions granted by the Environment Court can be viewed on the Council's website here:

<https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/xxxxxx>

### **What does this mean for you?**

In order to determine whether you are affected by an appeal or a section 274 notice you must review the notices of appeal and section 274 notices on the Council's website.

An email will be sent to all submitters who provided an email address when a new notice of appeal or section 274 notice is uploaded onto the Council's website.