

**BEFORE THE ENVIRONMENT COURT**

**Decision No. [2016] NZEnvC 219**

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 an appeal under s 156(3) of the LGATPA

AND

IN THE MATTER of Hearing Topics 22 (Natural Hazards and Flooding) and 65 (Definitions)

BETWEEN MAN O'WAR FARM LIMITED

(ENV-2016-AKL-000261)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Decision made on the papers

Court: Principal Environment Judge LJ Newhook

Date of Decision: 14 November 2016

Date of Issue: 14 November 2016

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**DECISION OF THE ENVIRONMENT COURT ON WAIVER APPLICATION**

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**A: Waiver application allowed.**

**B: Appeal placed on hold pending the outcome of related proceedings in the High Court.**



## REASONS

### Introduction

[1] On 31 October 2016 Man O'War Farm Limited (MOW) lodged an appeal with the Environment Court regarding certain provisions of the proposed Auckland Unitary Plan ('PAUP'). This appeal was lodged 30 working days outside the statutory time frame. The Appellant has applied under s281 RMA to waive the late filing.

[2] MOW has also lodged an appeal with the High Court regarding (inter alia) the subject matter of the appeal lodged with this Court. The Appellant has filed the appeal with this Court out of caution and has taken this step to avoid having to seek a waiver for a much greater period after conclusion of the High Court proceedings, should that prove necessary.

### The Waiver Application

[3] MOW seeks the waiver on the following grounds:

- (a) No party would be unduly prejudiced by the granting of the waiver, as while Auckland Unitary Plan matters have been assigned to the Court's Priority Track, case management steps are at a preliminary stage; and
- (b) It would be reasonable in the interests of justice (in the exercise of the Court's discretion) to grant the waiver sought given uncertainty regarding which forum (High Court or Environment Court) the substantive matters raised in the late appeal to this Court fall to be addressed, with reference to s 156(3) and s144(6) of the LGATPA.

[4] In an email to the Registry on 2 November 2016, Auckland Council confirmed it would abide the decision of the Court on the application for waiver.

### Service

[5] MOW and Auckland Council have participated in constructive discussions which enabled the Court to consider directing the following:

- (a) Man O' War Farm Limited is to serve the appeal by email on all submitters to Topic 22 and to the relevant definitions in Topic 65 (as



to natural hazards), identifying these submitters in consultation with Council; and

- (b) On effecting service, these parties are to be advised of the Court's directions as to filing a section 274 notice (as set in its decision [2016] NZ EnvC 153), and also that any party with standing to join has 15 working days to do so from date of service, *noting that ordinarily time would run from date of filing*).

### The Law

[6] Section 281 RMA provides to the relevant extent as follows:

- (1) *A person may apply to the Environment Court to –*
- (a) *waive a requirement of this Act or another Act or a regulation about –*
- (i) *the time within it which anything shall be served; or*
  - (ii) *the time within which an appeal or submission to the Environment Court must be lodged; or*
  - (iii) *the method of service; or*
  - ...
  - (v) *the persons on whom anything shall be served; or*
  - ...
- (b) *give a direction about –*
- (i) *the time within which or the method by which anything is to be served; or*
  - or
  - (ii) *what shall be served, whether or not the direction complies with this Act or any other Act or a regulation; or*
  - ...

[7] Section 281(2) provides that the Environment Court shall not grant an application under this section unless it is satisfied none of the parties to the proceedings will be unduly prejudiced.

[8] In August this Court held that it had jurisdiction to make anticipatory waivers and directions under s 281 RMA in relation to future potential appeals against council's decisions on the PAUP under section 156(1) and (3) LGATPA.<sup>1</sup>

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<sup>1</sup> Refer Re Auckland Council [2016] NZEnvC153.



[9] I note particularly that s 281(1) is not limited to waivers and directions in relation to the requirements of the RMA, because it refers to "*other Act[s]*", and I am satisfied that this must logically include the LGATPA.

[10] I am satisfied that the Court has power to grant the waiver and directions in the present circumstances.

### **Directions**

[11] The application for waiver is granted.

[12] MOW is to serve the appeal forthwith by email on all submitters to Topic 22 and to the relevant definitions in Topic 65 (as to natural hazards), identifying these submitters in consultation with Council.

[13] On effecting service, these parties are to be advised of the Court's directions as to filing any section 274 notice (as set under [2016] NZ EnvC 153), and also that any party with standing to join has 15 working days to do so from date of service, *noting that ordinarily time would run from date of filing*).

[14] The appeal lodged with this Court is accepted, and placed on hold pending the outcome of the related proceedings in the High Court.

SIGNED at AUCKLAND this 14<sup>th</sup> day of November 2016



*[Handwritten signature]*

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Newhook  
Principal Environment Judge