

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2009-AKL-000230, 231, 232, 236,
245, 246, 276, 293, 298, 311, 312, 313,
321, 322, 323, 324, 326, 327, 329, 300,
332, 334, 335, 336, 337, 338, 339, 340,
341, 342, 344, 346, 348, 349, 350, 351,
352, 356, 357 AND 361

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under clause 14(1) of the First
Schedule

BETWEEN

J SUTTON
M O'SHEA
S O'SHEA
E & A SCOTT
D & P MCRARY & ORS
THE SALVATION ARMY TRUST
BOARD
B CHRISTIANSEN & ORS
PONUI FARMS LIMITED
D DOUGLAS & ORS
STRAND HOLDINGS (1997) LIMITED
W F CARLIN
HELETRANZ LIMITED
A G & J L LMITCHELL
SPORTWAYS UNITED LIMITED
FEDERATED FARMERS OF NEW
ZEALAND
WAIHEKE RETIREMENT VILLAGE
LIMITED



C & W GORDON
M FISHER & ORS
AUCKLAND REGIONAL COUNCIL
ANSWER SERVICES (HOLDINGS)
LIMITED
G BARRETT
RAINBOW MOUNTAIN HOLDINGS
LIMITED
B SMITH
THUMB POINT STATION LIMITED
WAIHEKE GOLF CLUB
INCORPORATED
PROGRESSIVE ENTERPRISES
LIMITED
R A WALDEN
WAIHEKE ISLAND RIDING CLUB
R H & L CAWSON
GULF DISTRICT PLAN ASSOCIATION
INCORPORATED
NORTH SHORE HELICOPTERS
LIMITED & ORS
ORAPIU LODGE LIMITED
WAIHEKE ISLAND AIRPARK RESORT
LIMITED
WAIHEKE ISLAND COMMUNITY
PLANNING GROUP INCORPORATED
C WHATA
WAIHEKE PROJECT MANAGEMENT
LIMITED
NEW ZEALAND HISTORIC PLACES
TRUST
H & J MACCULLOCH & ORS
G & P DOWNIE & ORS
MOORE & ORS
A & D GRAY
Appellants



AND

AUCKLAND CITY COUNCIL

Respondent

MINUTE OF THE COURT TO ALL EXISTING PARTIES
IN ACC HGI APPEALS

[1] As case-managing Judge for the HGI Review appeals, I have recently been considering a number of memoranda, waiver applications, and items of correspondence on them.

Topic Lists

[2] First, ACC has helpfully compiled a draft list of topics, and the appeals in which they arise. This has been done after consultation with parties as directed by me, and copied to parties (also as directed). I thank those parties who participated in the consultation, and note that some of their suggestions have been incorporated in the ACC's draft.

[3] The importance of the Court having such a draft is that its own database can be updated and the appeals can be case-managed by Judge and Registry from this point onwards – through procedural steps, mediation, settlements, and hearings as necessary. All parties should note that although the proposed plan is that of the Auckland City Council, the current stage in its life is based on this being the stage of appeals to this Court, so management of the process rests here, not at council. The council will have a central role because it wrote the plan and is a party to all appeals, but the management of the appeals will be by the Court, and all solutions will be subject to the Court's ultimate decision-making obligation, the end being that the Purpose of the Act is served.

[4] Council removed unilaterally several topics on the basis they were beyond jurisdiction. That removal appeared to pre-empt decision-making by the Court on jurisdictional issues, and the topics need to be restored to the schedule for case-management purposes unless/until removed by order of the Court. Referring to



paragraph 10 of the council's memorandum of 30 September, the council is directed to amend the draft by restoring the topics it removed.

[5] Mr Sean Deery has raised in a very general fashion, a concern that the ACC's approach to the topic-scheduling is inadequate in some way. I do not presently understand the concern, and would have hoped that all parties would have taken advantage of the consultation that I am told was undertaken by ACC in approaching that task. The Court needs to be assured only that the list is complete and is not misleading in its allocation of topics. The schedule is not required to go beyond topic allocation to record reasons for requesting particular relief, or other details.

Format

[6] While the council's schedule is helpful as a cross-referencing tool, there is a need for another schedule, constructed differently, for compatibility with the Court's "CMS" database. Constructed in Excel format, it should provide columns for Env. Topic Reference (the column to be filled in by the Registry); Topic Name; Appeal/s Linked to Topic; Appellant/s; Paragraph Reference (from each appeal); and s274 Parties. A template has been supplied under separate cover to ACC, being drawn from the existing database for another group of ACC appeals elsewhere in its district.

[7] Once the reconfigured spreadsheet becomes available, if any party has a concern that any topic is missing or is scheduled in such a way as to be misleading, that party may communicate with the Court (copy to ACC and other parties involved with that issue). Any such communication must be made within 10 working days after ACC has served the spreadsheet on parties and filed it in Court, but is not encouraged for the reasons given above.

Section 274 Notices

[8] From paragraph 17 of the ACC memorandum of 30 September, it will be seen that ACC believes that certain s274 notices have not been served on it. Without slavishly copying out here the list of appeals and their Court reference numbers, it will be sufficient notice to the relevant s274 parties that the parties named are Sean O'Shea, Renaissance Aotearoa Foundation Inc, D Chamberlain, P & D Chamberlain Ltd, South Ponui Ltd, R Bryant, GDPA Inc, R Wedekind, C Weitzel, B Gibson, C Greenwood, W



Jones and C O'Shea. Those parties should look at paragraph 17 of the memorandum, and remedy the service situations and advise the Court that that has been done.

Waivers

[9] As earlier perceived by the Judge, there are apparently many situations existing throughout the 41 appeals, where:

- Waivers have been sought to avoid the requirements in the Act to serve people who were submitters on the Plan. And waivers have been sought to avoid the requirement to file in Court copies of relevant submissions, further submissions, and the decisions of the council¹.
- Many appellants have not carried out service or applied for waivers.
- Parties (particularly persons who were submitters or further submitters on the plan), have taken no steps to lodge s274 notices in Court and serve the council and other parties involved with topics (either because they have never been served with the appeals, or for other reasons).

The Judge has thought carefully about these circumstances, and has a concern that it could become extremely inefficient for the Court, the council, and many parties, to now require the undertaking of service of thousands of pages on hundreds of people, and to process numerous inevitable waiver applications by appellants and s274 parties.

[10] Accordingly, after consultation with the ACC (because of cost implications of the advertising to be undertaken) and with a limited number of other parties, the Judge HAS DIRECTED as follows:

¹ For instance, applications have been made by Answer Services (Holdings) Ltd, Federated Farmers of NZ, Sean O'Shea, and Gordon Barrett, S Deery, Waiheke Project Management Ltd.



Existing Parties

- [a] Waivers are granted for all existing appellants authorising them to refrain from serving the appeal and/or attachments on further parties normally required to be served under the Act and regulations;
- [b] All existing s 274 parties are granted waivers from any further service on parties normally required by the Act or regulations.
- [c] Within 15 working days of the case schedule being available on ACC's website (www.aucklandcity.govt.nz/proposedhgiplan) and at council offices, any appellant dissatisfied with the manner of appeal or topic identification is to notify the court and ACC;
- [d] Within 15 working days of the case schedule being available on the ACC website as above, all existing s 274 parties shall notify the Registrar, with copy to ACC, of topics they are interested in, having full regard to the provisions of the section concerning their entitlement to do so;
- [e] The ACC is granted a waiver from lodging and serving the replies to the appeals unless and until otherwise directed by the Court.

Public Notice

- (a) ACC is to place a public notice in the "NZ Herald" as soon as possible, in terms of Attachment A to this Minute, to include details from the new spreadsheet of appeals, topics, and parties, and the required information for appellants and (aspiring) s274 parties.
- (b) ACC to place a copy of the "Herald" public notice and this Minute on its website in readily accessible form.
- (c) ACC to place public notices to be published within the same week as "Herald" notice, in the following publications, in the form in Attachment



B to this Minute: “Gulf News”, “Waiheke Marketplace”, “City Scene”, “Barrier Bulletin”, and “Waiheke Week”.

- (d) The council offer on its website in readily accessible form, copies of all of the appeals as currently lodged in Court.
- (e) The council offer on its website in readily accessible form, copies of all of its decisions on submissions, together with copies of all submissions.
- (f) The council to arrange for parties and potential parties, the services of its staff at Area Offices to assist people to access these documents on the website and to lodge and serve notices as invited by the public notices.
- (g) The council provide to the Court forthwith 4 copies of all of its decisions on the Review, and all of the submissions and further submissions on it.
- (h) All persons coming within s274(1)(e) RMA (those “who made a submission in the previous proceedings on the same matter”) are to comply with the directions and timings in the “Herald” notice.
- (i) All persons who seek to bring themselves within s274(1)(c) or (d) must carefully and responsibly consider whether they qualify, having regard to decisions of the Courts about them (the wordings have been interpreted in a manner that is generally much more restrictive than appear on their face), and comply with the directions and timings in the “Herald” notice.

[11] ACC has indicated an intention to continue to negotiate with appellants and parties in coming months, with a view to settling/narrowing/focussing the cases. The Court encourages all parties in that endeavour.

[12] The Court will make its specialist mediation service available to parties from the new year onwards, to the same end.

[13] The Court will conduct a callover/conference in open Court, of all appeals, early in the new year. The purpose will be to ensure that active steps are being taken by all to settle/narrow/focus cases, and to ensure early resolution of them whether by negotiation,



mediation, or hearing. It is the Court's expectation that from that time, any party needing the assistance of expert consultants, will have engaged and briefed them so as to ensure efficiency of the processes from that point onwards.

[14] Any of the appeals making full or substantial challenges to the Review will be subject to close examination in that conference, with special reference to previous decisions of the Court on the viability or strength of such appeals.

[15] Parties are advised at this stage that they should also come to that conference prepared where appropriate to offer consolidation and joint presentation of cases with other parties.

[16] The Court will also consider at the conference the issues of jurisdictional concern raised by ACC in its 9 October 2009 memorandum, and any others.

DATED at Auckland this *23rd* day of *October* 2009.



L J Newhook
Environment Judge

