

**BEFORE THE ENVIRONMENT COURT  
AT WELLINGTON  
I MUA I TE KOOTI TAIAO O AOTEAROA  
TE WHANGANUI-Ā- TARA ROHE**

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

**AND**

**IN THE MATTER** of an appeal under clause 14(1) of Schedule 1 to the Act

**BETWEEN** **WELLINGTON FISH AND GAME COUNCIL**  
(ENV-2019-WLG-122)

Appellant

**AND** **ROYAL FOREST AND BIRD PROTECTION  
SOCIETY OF NEW ZEALAND INCORPORATED**  
(ENV-2019-WLG-130)

Appellant

**AND** **WELLINGTON REGIONAL COUNCIL**

Respondent

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**MEMORANDUM OF COUNSEL IN SUPPORT OF APPLICATION FOR  
WAIVERS OF TIME TO FILE AMENDED SECTION 274 NOTICES  
4 December 2019**

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**MAY IT PLEASE THE COURT:**

1. Beef+Lamb New Zealand Ltd (B+LNZ) is a s 274 party to *Wellington Fish & Game Council v Wellington Regional Council* and *Royal Forest & Bird Protection Society of New Zealand Incorporated v Wellington Regional Council*. It seeks waivers under s 281 to file amended s 274 notices. The changes to the notices are set out at Appendix 1.
2. There are two tests to be met for orders to be made under s 281. The first is whether the Court should exercise its discretion.
3. The discretion of the Court in the first test is described as wide by Westlaw<sup>1</sup>. Relevant criteria include the reasons for the delay and what has happened in the proceedings to date<sup>2</sup>.
4. The amended notices are being filed following the Respondent completing the identification of topics for mediation, as directed by the Court. As the Court is aware<sup>3</sup>, the Respondent and B+LNZ could not reach agreement on certain topics B+LNZ considers it has an interest in. At the Respondent's suggestion, it was agreed that one way to deal with the issue was to file amended s 274 notices specifically addressing the topics where agreement was not reached; as such this application is being made.
5. It is submitted the Court can grant the waivers sought as they will have no impact on the progression of the appeals, given they are at an early stage. It is understood that mediation, notwithstanding some direct engagement will or has taken place, has not progressed substantively.
6. Turning to the second test, the Court must be satisfied that the appellant and respondent consent to the waiver or that any parties that have not consented will not be unduly prejudiced<sup>4</sup>.

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<sup>1</sup> *Resource Management Act* (online loose-leaf ed, Thomson Reuters) at A281.03.

<sup>2</sup> *Viaduct Harbour Holdings Ltd v Auckland CC* [2010] NZEnvC 168 at [22].

<sup>3</sup> See this counsel's memorandum dated 18 November 2019.

<sup>4</sup> Section 281 and *Shirtcliff v Banks Peninsula District Council* C17/99 at [10].

7. The consent of the Respondent was signalled at the pre-hearing conference in mid-November. The Appellants will be served with the application and can confirm their position to the Registry in due course.
8. In addition, it is submitted that if the waiver sought is granted no party will be prejudiced or unduly prejudiced on the same grounds as set out above; i.e. that the appeals are at an early stage and direct engagement to resolve the appeals has either not occurred or has not progressed substantively.
9. In addition, if direct engagement does not resolve the issues under appeal, formal mediation is not due to be undertaken until March and June (respectively) 2020, meaning that process will likewise not be prejudiced or affected.
10. Orders granting the waivers are therefore sought.



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CP Thomsen  
Counsel for the Appellant and Applicant  
4 December 2019

## Appendix 1

Amendments to the s 274 notices are:

- (a) To the Fish & Game appeal, at paragraphs:
  - (i) 6(a);
  - (ii) 6(b); and
  - (iii) 7(e).
  
- (b) To the Forest & Bird appeal, at paragraphs:
  - (i) 6(a);
  - (ii) 6(b);
  - (iii) 6(e);
  - (iv) 6(f);
  - (v) 7(d); and
  - (vi) 7(e).