

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**Decision No. [2020] NZEnvC 97**

IN THE MATTER of the Resource Management Act 1991  
AND of an appeal under clause 14 of the First  
Schedule to the Act  
BETWEEN MINISTER OF CONSERVATION  
(ENV-2019-WLG-106)  
Appellant  
AND GREATER WELLINGTON REGIONAL  
COUNCIL  
Respondent

Court: Environment Judge B P Dwyer sitting alone under s 279 of the Act  
Hearing: In Chambers  
Date of Decision: 2 July 2020  
Date of Issue: 2 July 2020

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**DECISION OF THE ENVIRONMENT COURT  
ON WAIVER APPLICATION PURSUANT TO SECTION 281 RMA**

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A: Application for waiver granted.

**REASONS**

**Introduction**

[1] Greater Wellington Regional Council (the Regional Council) has notified a Proposed Natural Resources Plan (the Proposed Plan). A number of appeals in respect of the Proposed Plan are currently before the Court going through pre-hearing (primarily mediation) processes.



[2] Those appeals include an appeal by the Minister of Conservation (the Minister) which was filed on 17 September 2019, which includes an appeal point on Policy P132 of the Proposed Plan which is identified in the listing of appeals before the Court as Topic 11.

[3] On 16 June 2020 Wellington City Council (the City Council) filed a s 274 notice in respect of this aspect of the Minister's appeal together with an application for waiver for late filing of the notice pursuant to s 281 RMA. The Court advised the parties by minute of 30 June 2020 that the waiver application was granted with reasons to follow<sup>1</sup>. This decision gives those reasons.

### **The City Council Application**

[4] The City Council acknowledged in its waiver application that the period for filing its s 274 notice ended on 9 October 2019 so the notice was filed approximately eight months out of time. It further advised that the reason for delay in filing the appeal was that the appeal by the Minister had been "overlooked" by its officers. Notwithstanding, City Council representatives had been involved in informal discussions with the parties to this appeal in respect of the wording of Policy P132 and were available to attend mediation.

[5] The basis on which the City Council sought to claim an interest in the Minister's appeal was set out in these terms in the memorandum which it filed in support of the application for waiver:

#### **2 WCC's interest in the appeal**

- 2.1 WCC's section 274 notice seeks to join the appeal as it relates to Policy P132 of the Proposed Plan.
- 2.2 WCC is an owner, provider and maintainer of infrastructure and recreational facilities within the Coastal Marine Area (**CMA**), particularly in the Lambton Harbour Area through its wholly owned Council Controlled Organisation, Wellington Waterfront Ltd. Unlike other areas of the CMA in New Zealand, the Lambton Harbour Area is a highly modified, multi-use environment which is home to many residents and businesses including the TSB Arena and Te Papa.

<sup>1</sup> This was to enable the City Council to participate in mediation the following day.



- 2.3 The vibrancy and vitality of the Lambton Harbour Area rely on a range of activities occurring within the CMA and adjacent urban areas. It is important that the Proposed Plan includes provisions that appropriately manage and control the use, development and change of use of buildings and structures in this area of the CMA.
- 2.4 WCC supports the Respondent's Decisions Version of the Proposed Plan in relation to Policy P132 and considers that the relief sought by the Appellant will inappropriately restrict the future efficient management of existing buildings and structures and activities as well as any future development/redevelopment in the Lambton Harbour Area.

[6] The City Council recognised the requirements of s 281 RMA which apply to waiver applications. It contended that there would be no undue prejudice to other parties should it be allowed to join the appeal process. The basis on which it made that contention is set out in the following terms in its memorandum of 16 June 2020.

**4 There will be no undue prejudice to the parties**

- 4.1 WCC understands that mediation on Topic 11 and specifically Policy P132 were held remotely on 5 and 6 May 2020. At that mediation, we understand that the Respondent was tasked with engaging with WCC in respect of this appeal. Counsel is advised that the Respondent contacted WCC directly after that mediation on 6 May 2020. This was the first time WCC became aware that an appeal had been lodged in relation to this aspect of the Proposed Plan.
- 4.2 Following engagement with the Respondent, WCC attended informal negotiations with the parties on 8 June 2020. As a result of those informal negotiations, WCC considers it desirable for the WCC to formally participate in this proceeding given its own ownership interests in the Lambton Harbour Area.
- 4.3 WCC understands that the parties are hopeful that the appeal can be resolved without hearing time and no evidence exchange timetable is proposed at this stage. WCC is similarly hopeful that a negotiated or mediated settlement can be achieved and would welcome the opportunity to work together with the parties to devise a solution that recognises the importance of the CMA while ensuring the structures, buildings and activities are efficiently managed in the context of the highly modified, multi-use environment of the Lambton Harbour Area.
- 4.4 Representatives from WCC as well as an expert planner are able to attend mediation at short notice and it is therefore considered that WCC joining this appeal will not result in any undue delay in the proceedings.



- 4.5 Further, there will be no prejudice to the parties were a waiver to be granted as all of the concerns of and relief sought by WCC are already known to the other parties as a result of WCC's participation in the informal negotiations to date.
- 4.6 On this basis there will be no undue disruption to the course of the appeal and no other parties will be unduly prejudiced by the late filing of the section 274 notice. For these reasons, WCC respectfully requests that the Court grant the application to allow WCC to participate in mediation and, to the extent that WCC's interests have not been resolved in mediation, to make a final determination on the application at the substantive hearing.

### **Other Parties' Positions**

[7] There are presently a total of 29 parties (including the Minister and the Regional Council) to the Minister's appeal. By minute of 17 June 2020 the Court requested parties who/which opposed the waiver application to advise as to their opposition and the grounds thereof within five working days. The minute also invited parties who/which supported or did not oppose the application to advise their position by brief email. A number of responses were received.

[8] No party to the proceedings gave notice of opposition to the waiver application.

[9] Email responses were received from a number of parties in the following terms:

- By email of 17.06.20 Site 10 Redevelopment LP advised that it supported the City Council's waiver application;
- By email of 17.06.20 the Wellington Civic Trust advised that it did not oppose the waiver application;
- By email of 17.06.20 Centreport Ltd and CentrePort Properties Ltd confirmed that they did not oppose the waiver application;
- By email of 18.06.20 Wellington Water Ltd advised that it had no interest in the waiver application and would abide the Court's decision;
- By email of 18.06.20 First Gas Ltd advised that it did not oppose the waiver application and would abide the Court's decision;
- By email of 18.06.20 the Regional Council advised that it would abide the decision of the Court on the waiver application;
- By email of 18.06.20 the Minister advised that he/she did not oppose the waiver application;



- By email of 19.06.20, Rangitāne Tū Mai Rā Trust and Rangitane o Wairarapa Inc Soc advised that they had “no issues” with the waiver application.

### **Determination**

[10] Section 281(1)(a)(ia) enables the Court to waive a requirement as to the time within which persons must give notice under s 274 of their wish to be a party to proceedings before it. The Court’s power to do so is subject to the provisions of s 281(2) which provides as follows:

- (2) The Environment Court shall not grant an application under this section unless it is satisfied that none of the parties to the proceedings will be unduly prejudiced.

[11] The provisions of s 281(2) which I have set out above leave the Court no discretion to grant a waiver (“shall not grant an application under this section”) unless it is satisfied that none of the parties to the proceedings will be “unduly prejudiced” by the grant of the waiver.

[12] In my view it must commonly be the case that enabling another party to join proceedings as late as the City Council seeks to do, potentially involves an element of prejudice to other parties who/which have complied with statutory timeframes and participated in Court processes. There is a substantial risk that progress made towards resolution of an appeal might be upset or its conclusion delayed by the addition of a further late party to the proceedings. The issue to be determined by the Court is whether or not any potential prejudice is undue.

[13] In this case no other parties to the proceedings (including the Minister and the Regional Council) identify any undue prejudice or indeed any prejudice at all. In particular, no other party challenges the City Council’s interest in the appeal as set out in para [5] (above) nor does any other party contest the City Council’s contentions that there will be no undue prejudice as set out in para [6] (above). On that basis, I am satisfied that there is no undue prejudice to any other party.

[14] The Court has previously expressed the view that in considering a waiver application, it must consider not only the issue of undue prejudice, but (if it is satisfied there is no undue prejudice) it must also consider the merits of the application.



[15] In this case the City Council concedes that the delay in filing the waiver application was oversight on the part of its officers. That oversight occurred in a context where:

- The City Council had filed a submission on the proposed plan regarding interrelated policy P142;
- A total of 30 appeals have been filed in respect of the proposed plan;
- Other parties to the proceedings appear to accept that the City Council does have a genuine interest in Topic 11;
- Again, no other party opposed the waiver application; and
- At the mediation on Topic 11, the Regional Council was tasked with engaging with the City Council in respect of this appeal.

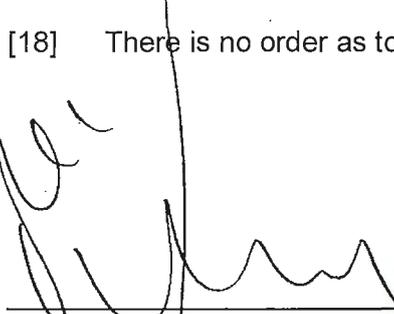
I accept that the oversight on the part of the City Council was genuine.

[16] Having regard to all of those factors set out above, I have determined that it is appropriate to grant the waiver application.

### **Outcome**

[17] The waiver application filed by the City Council to join the Minister's appeal insofar as the appeal relates to Topic 11 and Policy P132 is granted.

[18] There is no order as to costs.

  
B P Dwyer  
Environment Judge

