

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

**Decision No. [2018] NZEnvC 176**

IN THE MATTER of the Resource Management Act 1991  
AND of appeals under s 120 of the Act  
BETWEEN A BURGOYNE / TE TAUMATA  
KAUMATUA O NGATI KURI RESEARCH  
UNIT  
(ENV-2018-AKL-000121)  
DIRECTOR-GENERAL OF  
CONSERVATION  
(ENV-2018-AKL-000126)  
Appellants  
AND NORTHLAND REGIONAL COUNCIL  
Respondent  
AND MOTUTANGI-WAIHARARA WATER  
USERS GROUP  
Applicants

Court: Environment Judge D A Kirkpatrick

Hearing: on the papers at Auckland under s 279 of the Act

Date of Decision: 20 September 2018

Date of Issue: 20 SEPTEMBER 2018

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**DECISION OF THE ENVIRONMENT COURT ON APPLICATIONS FOR WAIVER**

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- A: The applications for waiver are granted.
- B: Robert Campbell is joined as a s 274 party to the appeal by the Director-General of Conservation and Te Rūnanga o Ngai Takoto is joined to both



appeals as a s 274 party.

## REASONS

### Introduction

[1] These appeals relate to a joint application of 17 landowners for water takes from the Aupouri aquifer in the Far North.

### The applications for waiver

#### *Application by Robert Campbell*

[2] On 20 July 2018 Mr Campbell lodged a notice to become a party to both appeals under s 274 of the Act. The notice was in time in relation to the appeal by Mr Burgoyne/Te Taumata Kaumatua o Ngati Kuri Research Unit, but was 2 days out of time in relation to the appeal by the Director-General of Conservation.

[3] On 5 September 2018 an application for waiver was filed by Mr Campbell to join the Director-General of Conservation's appeal. In support of his waiver his counsel submitted that:

At the time the proceedings were initiated in the Environment Court, Mr Campbell was self represented and was unfamiliar with the Court processes for joining appeals, including the statutory timeframes. This resulted in a short delay in filing his section 274 notice. It is submitted that no prejudice arises as a result of the delay in Mr Campbell joining the proceedings.

#### *Application by Te Rūnanga o Ngai Takoto*

[4] On 28 August 2018, Te Rūnanga o Ngai Takoto filed a notice to become a party to both appeals. An application for waiver was also filed to join the appeals out of time.

[5] In support of its application for waiver Te Rūnanga o Ngai Takoto submitted the following:

Te Rūnanga o Ngai Takoto is one of 17 members of the Group (the applicant in the proceedings) and is also tangata whenua. There was uncertainty as to whether each individual applicant forming the Group was required to join the proceedings as an individual party, or whether their interests could be represented through the join position of the Group. While the Group will be presenting a joint case as the applicant in the appeals, Te



Rūnanga o Ngai Takoto wishes to join the proceedings as a party to ensure their interests are able to be represented.

### **The parties' responses to the application**

#### ***Mr Campbell***

[6] The Northland Regional Council consented to the waiver application by Mr Campbell

[7] Mr Burgoyne and the Te Taumata Kaumatua O Ngati Kuri Research Unit oppose the application.

[8] The reasons for their objection are stated as follows:

We object to the granting of the waiver application by Mr Robert Campbell, under section 281 of the Resource Management Act, as it would prejudice the appeals. There has been no statement of claim of fact, what his status is and who he represents.

Quite a period of time has gone by and we have received no correspondence from Mr Campbell. Also we believe that he has been aware of the fact that it has been before the Courts, and also he possibly has been aware of the mining of the Kaimaumau swamp by an Auckland firm, Resin & Wax Holdings to work about 10% or more that 4,000 hectares of wetland, and this would have threatened plants, reptiles and birds, and destroyed the wetlands as the total earthworks would be 4,417,000 cubic metres of earthworks.

#### ***Te Rūnanga o Ngai Takoto***

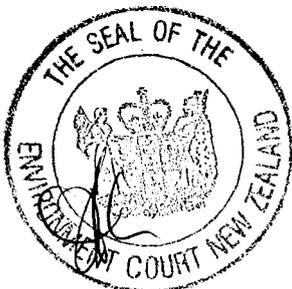
[9] The Northland Regional Council, MN & GT Covich, I Stanisich, K Valadares, K & D O'Connor, Elbury Holdings Limited, LJ King, Mapua Avocados Limited, Largus Orchard Management Limited Partnership, K & D Holloway, Motutangi Orchards, N, AV, S & JS Thompson and K & S Shine consented to the waiver application.

[10] Mr Burgoyne and the Te Taumata Kaumatua O Ngati Kuri Research Unit also oppose this application.

[11] The reasons for their objection are stated as follows:

We object to the granting of the waiver application by Te Rūnanga o Ngai Takoto under section 281 of the Resource Management Act 1991, as it would prejudice the appeals. They have made a statement of claim of fact, relating to the granting of water consent. They were part of the Motutangi-Waiharara water users group.

Quite a period of time has gone by and we have received [no] correspondence from Te



Rūnanga o Ngai Takoto. Also we believe they were instrumental in the signing of the resource consent for the mining of the Kaimaumuau swamp by an Auckland firm, Resin & Wax Holdings to work about 10% of the 4,000 hectares of wetland, and this would have threatened the plants, reptiles and birds, and destroyed the wetlands as the total earthworks would be 4,417,000 cubic metres of earthworks. There was no consultation with any of the iwi groups or the Conservation Department and Heritage New Zealand and also no archaeological surveys.

### Section 281 of the Act

[12] Under s 281(1)(a)(iia) of the Act a person may apply to the Court for a waiver of the time within which a person may lodge a notice of interest under s 274 of the Act.

#### 281 Waivers and directions

(1) A person may apply to the [Environment Court] to—

(a) Waive a requirement of this Act or another Act or a regulation about—

...

(iia) the time within which a person must give notice under section 274 that the person wishes to be a party to the proceedings; or.]

...

(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.

(3) Without limiting subsection (2), the [Environment Court] shall not grant an application under this section to waive a requirement as to the time within which anything shall be lodged with the [Environment Court] (to which subsection (1)(a)(ii) applies) unless it is satisfied that—

(a) The appellant or applicant and the respondent consent to that waiver; or

(b) Any of those parties who have not so consented will not be unduly prejudiced.

...

[13] There are two tests to be met by an applicant relying on s 281. The first test, derived from s 281(1), is whether the Court should exercise its discretion to grant the waiver or directions sought. The second test relates to whether there is any undue prejudice to the parties to the proceeding as set out under s 281(2) and (3).<sup>1</sup>

[14] Therefore, the consideration of applications under s 281 is a two-step process. First, the Court is required to make a determination as to whether or not the parties to the proceeding will be unduly prejudiced if the waiver is granted. Second, if no party is unduly prejudiced, the Court must determine the waiver application on its merits.



<sup>1</sup> *Shirtcliff v Banks Peninsula District Council* EnvC C17/99, 19 February 1999.

## Discussion

[15] In considering the first part of the test, I must determine whether there is any undue prejudice to any party in granting the waiver. Undue prejudice means prejudice greater than that which would necessarily follow in every case from granting a waiver.<sup>2</sup>

[16] There will always be some prejudice to other parties if a further party is added to the proceedings. That of itself cannot amount to undue prejudice, otherwise it would never be possible to grant a waiver.<sup>3</sup>

[17] Having considered the objections to the waivers being granted, I am not satisfied that they address how Mr Burgoyne or the Te Taumata Kaumatua O Ngati Kuri Research Unit would be unduly prejudiced by the two parties joining these appeals.

[18] Although I acknowledge that Mr Burgoyne and the Te Taumata Kaumatua O Ngati Kuri Research Unit object, this in itself is not enough to meet the threshold of the test that joining the person as a party would be unduly prejudicial.

[19] There being no undue prejudice established, I turn to the second part of the test which is whether the applications for waiver should be granted on their merits.

[20] In *Omaha Park Ltd v Rodney District Council*<sup>4</sup> a number of guideline criteria for the granting of a s 281 waiver in relation to new parties were established. These included what has happened in the proceeding in the meantime and what effect introducing new parties might have on progressing the appeal to resolution.

[21] Although progress has been made in relation to the resolution of the two appeals, this progress will not be undermined or jeopardised by the waiver applications being granted. This is not a case where granting the waiver will introduce a new party into the process that has not previously been involved in the appeals. Mr Campbell is already a s 274 party to the appeal by A Burgoyne and Te Taumata Kaumatua O Ngati Kuri Research Trust. Te Rūnanga o Ngai Takoto is already a party to both appeals as part of the applicant group Motutangi-Waiharara Water Users Group.

[22] As the applicants for waiver are already involved in both appeals, I am satisfied that there is no reason to decline the waiver applications.

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<sup>2</sup> *Reilly v Northland Regional Council* (1993) 2 NZRMA 414.

<sup>3</sup> *Kapiti Environmental Action Inc v Kapiti Coast District Council*, Environment Court Wellington W042/07.

<sup>4</sup> EnvC A046/08.



**Decision**

[23] The applications for waiver are granted.

[24] Robert Campbell is joined as a s 274 party to the appeal by the Director-General of Conservation and Te Rūnanga o Ngai Takoto is joined to both appeals as a s 274 party.



A handwritten signature in black ink, appearing to read "D A Kirkpatrick", is written over a horizontal line.

**D A Kirkpatrick**  
**Environment Judge**