

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

Decision No. [2018] NZEnvC 193

IN THE MATTER of the Resource Management Act 1991

AND of appeals under s 120 of the Act

BETWEEN TE RUNANGA O NGATI AWA

(ENV-2018-AKL-000133)

NGATI TUWHARETOA

(ENV-2018-AKL-000134)

SUSTAINABLE OTAKIRI
INCORPORATED

(ENV-2018-AKL-000135)

Appellants

AND BAY OF PLENTY REGIONAL COUNCIL

AND WHAKATANE DISTRICT COUNCIL

Respondents

AND CRESWELL NEW ZEALAND LIMITED

Applicant

Court: Environment Judge D A Kirkpatrick

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

Date of Decision: - 4 OCT 2018

Date of Issue: - 4 OCT 2018



DECISION OF THE ENVIRONMENT COURT ON APPLICATION FOR WAIVER

- A: The application for waiver is granted.
- B: Rihi Vercoe is joined as a s 274 party to the following appeals:
- Te Runanga o Ngāti Awa (ENV-2018-AKL-000133)
 - Ngati Tuwharetoa (ENV-2018-AKL-000134)
 - Sustainable Otakiri Incorporated (ENV-2018-AKL-000135)

REASONS**Introduction**

[1] These appeals relate to a decision to grant resource consents to Creswell New Zealand Limited in relation to the Otakiri Springs Water Bottling Plant Expansion.

The application for waiver

[2] On 24 September 2018 Ms Rihi Vercoe lodged a notice to become a party to all three appeals under s 274 of the Act. The notice was accompanied by an application for waiver to file the notice out of time. In support of her waiver Ms Vercoe submitted that:

I seek a waiver of the timeframe for lodging this notice in relation to these appeals because my husband of 45 years died on 19th May 2018, after 6 years of illness.

I have been very busy attending to his estate matters, and adjusting to life as a widow – coping with grieving mode and the loneliness.

For that reason I was unable to get on board with responding to these appeals opposing the granting of resource consents within the given timeframes.



My interest in these proceedings has been well documented from the outset, with both local and national media seeking me out for interviews.

The parties' responses to the application

[3] The following parties have advised the Court that they support or do not oppose the waiver application:

- (a) Creswell New Zealand Limited;
- (b) Te Runanga o Ngāti Awa;
- (c) Ngati Tuwharetoa (BOP) Settlement Trust;
- (d) Sustainable Otakiri Incorporated;
- (e) Bay of Plenty Regional Council;
- (f) KiwiRail;
- (g) Te Runanga o Ngai Te Rangi Iwi; and
- (h) Whakatane District Council.

[4] No party opposed the application for waiver.

Section 281 of the Act

[5] 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.

...

[6] 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).¹

[7] Therefore, the consideration of applications under s 281 is a two step process. Firstly 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. Secondly, if no party is unduly prejudiced, the Court must determine the waiver application on its merits.

Discussion

[8] In considering the first part of the test, it is clear in this case that no party has sought to establish that they will be unduly prejudiced by the application for waiver. I am also satisfied that no party has opposed the waiver application.

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

[10] In *Omaha Park Ltd v Rodney District Council*² 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.

[11] Although progress has been made in relation to the resolution of these appeals, this progress will not be undermined or jeopardised by the waiver application being granted. An application to strike out the appeal by Sustainable Otakiri Incorporated has been filed along with an application for security for costs. Both applications were heard by the Court on 3 October 2018. I am satisfied that this case event will not be undermined by the addition of a further s 274 party, and that there is no reason to decline the waiver application.

Decision

[12] The application for waiver is granted.

[13] Rihi Vercoe is joined as a s 274 party to the following appeals:

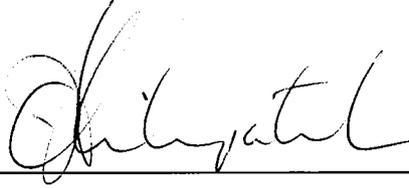
- Te Runanga o Ngāti Awa (ENV-2018-AKL-000133)

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

² EnvC A046/08.



- Ngati Tuwharetoa (ENV-2018-AKL-000134)
- Sustainable Otakiri Incorporated (ENV-2018-AKL-000135)



D A Kirkpatrick
Environment Judge

