

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2020] NZEnvC 128**

IN THE MATTER	of the Resource Management Act 1991
AND	of an application for declarations under Part 12 of the Act
BETWEEN	ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED  (ENV-2020-CHC-099)  Applicant
AND	NEW ZEALAND ALUMINIUM SMELTERS LIMITED  Respondents

Court: Environment Judge J E Borthwick  
(Sitting alone pursuant to s 279 of the Act)

Hearing: In Chambers at Christchurch

Date of Decision: 20 August 2020

Date of Issue: 21 August 2020

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

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- A. Under section 281 of the Resource Management Act 1991 the application for waiver of time by the Minister for the Environment is granted and the Minister is joined as a s 274 party to the proceedings.

**REASONS**

**Introduction**

[1] The Environmental Defence Society Incorporated (“EDS”) has applied for declarations in relation to the movement of aluminium dross by-product from Tiwai



Point and its storage at sites in Mataura.<sup>1</sup> The respondent is New Zealand Aluminium Smelters Limited (“NZAS”).

[2] The following parties were served with a copy of the application:

- (a) NZAS;
- (b) Gore District Council;
- (c) Southland Regional Council;
- (d) the Ministry for the Environment;
- (e) Southland Storage Limited;
- (f) Gregory John Paterson; and
- (g) Douglas James Harvie.

[3] The parties served were directed by Environment Judge Jackson that they:<sup>2</sup>

must advise the Court by Wednesday 22 July 2020 as to whether they intend to participate, by filing a s 274 notice or (in the case of the Respondent) a Notice of Opposition.

[4] The following parties filed s 274 notices as directed:

- (a) Gore District Council; and
- (b) Southland Regional Council.

#### **The application for waiver**

[5] On 14 August 2020 the Minister for the Environment filed:

- (a) s 274 notice;
- (b) an application for a waiver of time to join the proceedings;
- (c) a memorandum in support of the application for waiver; and
- (d) an affidavit of Shaun Gregory Lewis affirmed 14 August 2020.

[6] The Ministry for the Environment is party to the existing contractual arrangements for funding the removal of the aluminium dross by-product from sites in

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<sup>1</sup> Application for declaration dated 6 July 2020.

<sup>2</sup> Letter from the Registry dated 8 July 2020.



Southland, including Maitauro, and considers that its involvement in the proceedings, including any alternative dispute resolution, may assist the parties in negotiating a settlement that supports the timely removal of the material from Maitauro.<sup>3</sup>

[7] No reason for the Ministry's delay in filing the s 274 notice was given.

[8] All parties to the proceeding have advised that they have no objection to the Minister for the Environment joining the proceedings.<sup>4</sup>

### Section 281 of the Act

[9] Under s 281(1)(a)(iia) of the Resource Management Act 1991 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;

...

(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.

...

[10] Consideration of an application under s 281 is a two-fold process. The court must first determine if the parties to the proceeding will be unduly prejudiced if the waiver is granted. Secondly, if no party is unduly prejudiced, the court must then determine whether it should exercise its discretion to grant the waiver. When considering whether to grant a waiver, relevant factors include the length of the delay, the reasons for the delay, the scheme of the Act relating to public participation, what

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<sup>3</sup> Memorandum of counsel for the Minister for the Environment dated 14 August 2020 and affidavit of Shaun Gregory Lewis affirmed 14 August 2020.

<sup>4</sup> NZAS memorandum dated 17 August 2020 at [4]; Gore District Council memorandum dated 17 August 2020 at [4]; Southland Regional Council memorandum dated 17 August 2020 at [2]; EDS email dated 18 August 2020.



has occurred in the proceeding and what effect introducing new parties might have on progressing the appeal to resolution.<sup>5</sup>



### Discussion

[11] I do not consider that any party will be unduly prejudiced by the Minister joining the proceedings. The Minister's application has been made relatively early in proceedings and is in time to allow participation in the Judicial Settlement Conference in early September 2020. Further, no party opposes the Minister joining and, as noted above, given the Ministry's prior involvement in this matter, its involvement may assist parties in reaching a suitable and timely settlement. On these bases, I am prepared to grant the waiver as sought.

### Decision

[12] The application for waiver is granted.

[13] The Minister for the Environment is joined as a s 274 party to the proceeding.

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**J E Borthwick**  
**Environment Judge**

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<sup>5</sup> *Omaha Park Ltd v Rodney District Council* EnvC A46/08.