

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2020] NZEnvC 133

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals under s 120 of the Act
BETWEEN	YALDHURST RURAL RESIDENTS ASSOCIATION INC (ENV-2020-CHC-093) FULTON HOGAN LIMITED (ENV-2020-CHC-094) Appellants
AND	CANTERBURY REGIONAL COUNCIL and SELWYN DISTRICT COUNCIL Respondents
AND	FULTON HOGAN LIMITED Applicant

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

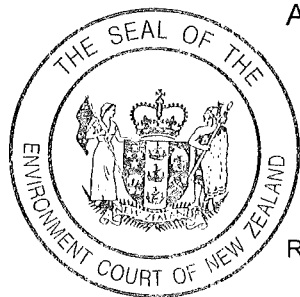
Hearing: In Chambers at Christchurch

Date of Decision: 20 August 2020

Date of Issue: 20 August 2020

DECISION OF THE ENVIRONMENT COURT
ON APPLICATION FOR WAIVER

- A. Under section 281 of the Resource Management Act 1991 the application for waiver of time by the New Zealand Motor Caravan Association Incorporated is granted and it is joined as a s 274 party to:



- (a) ENV-2020-CHC-093: Yaldhurst Rural Residents Association Inc v Canterbury Regional Council and Selwyn District Council; and
- (b) ENV-2020-CHC-094: Fulton Hogan Limited v Canterbury Regional Council and Selwyn District Council.

REASONS

Introduction

[1] This proceeding relates to two appeals by Yaldhurst Rural Residents Association Incorporated and Fulton Hogan Limited in relation to the grant of resource consents to establish and operate Roydon Quarry in Templeton.¹

[2] The s 274 period ended on 20 July 2020. The New Zealand Motor Caravan Association Incorporated ("NZMCA") has now filed two notices under s 274 to join the above appeals and an accompanying application for waiver to file out of time.²

[3] NZMCA advises that the notices were prepared and served on all potential parties to the appeal within the s 274 notice period. Due to a clerical error, the notices were not, however, filed with the court until 13 August 2020.

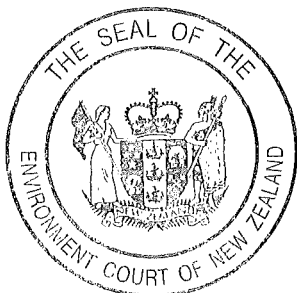
[4] Any party opposing NZMCA's waiver application was to advise the court by Tuesday 18 August 2020. No notices of opposition were received. Canterbury Regional Council confirmed it had no objection.³

Section 281 of the Act

[5] 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 –



¹ Stephen John Bain has also appealed the grant of the resource consents (ENV-2020-CHC-091) but no application for waiver of period to file a s 274 notice has been made in relation to this appeal.

² All filed on 13 August 2020.

³ Email from Marie Dysart dated 14 August 2020.

- (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.
- ...

[6] 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 has occurred in the proceeding and what effect introducing new parties might have on the progressing the appeal to resolution.⁴

Discussion

[7] The delay is insignificant and evidently due to a clerical error. While a pre-hearing conference recently took place, case management is still in its preliminary stages. Importantly, no party opposes NZCMA's application and I consider there is no prejudice to any party. I am prepared to grant the waiver as sought.

Outcome

[8] The application for waiver is granted and NZCMA is joined as a party to both appeals.



J E Borthwick
Environment Judge



⁴ *Omaha Park Ltd v Rodney District Council EnvC A46/08.*