

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2023] NZEnvC 214**

IN THE MATTER

of an appeal against a proposed policy  
or plan under clause 14 of Schedule 1 of  
the Resource Management Act 1991

BETWEEN

POWERCO LIMITED

(ENV-2023-AKL-0000154)

Appellant / Applicant

AND

NEW PLYMOUTH DISTRICT  
COUNCIL

Respondent

Court: Environment Judge MJL Dickey

Hearing: On the papers

Last case event: 20 September 2023

Date of Decision: 3 October 2023

Date of Issue: 3 October 2023

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**DECISION ON APPLICATION FOR WAIVER**

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**A: The application for waiver is granted.**



## REASONS

### Introduction

[1] Powerco Ltd has applied for a waiver of time in relation to its appeal under clause 14(1) of Schedule 1 of the Resource Management Act 1991 (**the Act**) that was lodged with the Court against the New Plymouth District Council (**the Council**)’s decision on the Proposed New Plymouth District Plan (**Proposed Plan**).

[2] The timeframe for filing any appeal against the decision has expired on 26 June 2023. Powerco Ltd filed a notice of appeal on 24 August 2023. The notice is therefore out of time by almost two months.

[3] Powerco Ltd has sought an extension of time to consider its appeal and provided grounds of its application, including the following:<sup>1</sup>

- (a) Powerco Ltd’s electricity distribution assets are critical to the ongoing supply of electricity to the New Plymouth area. To ensure continuity of that supply and the ability to ensure that the supply meets the current and future needs of the community, Powerco Ltd must be able to access, operate, install, maintain, upgrade and modify its assets without limitation or undue constraint;
- (b) Powerco Ltd was actively involved in the Proposed Plan process, making submissions, further submissions and providing evidence at hearings;
- (c) Powerco’s failure to lodge an appeal within time was as a result of an erroneous understanding, based on advice from its consultant planner, that the permitted activity area threshold in one specific rule (NU-R13) of the Proposed Plan would authorise the majority of its minor utility structures as permitted activities;
- (d) Powerco Ltd accepts that responsibility for this oversight

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<sup>1</sup> Application for waiver under section 281 of the Resource Management Act 1991 dated 24 August 2023 at [4].

ultimately rests with Powerco Ltd. However, rule NU-R13 imposes onerous obligations by requiring relatively routine and small-scale network utility activities to obtain resource consent. This will result in a significant administrative burden on Powerco Ltd and the Council, with negligible environmental benefits.

- (e) As outlined in *Te Mana Moana o Ngāti Irapuaia Trust v Bay of Plenty Regional Council*,<sup>2</sup> consideration of a waiver application involves 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. Powerco Ltd explained in the application the reasons why the waiver should be granted in relation to the two steps.
- (f) Powerco Ltd informed the Council of the issue and Powerco Ltd's intention to lodge an appeal and waiver application on 21 August 2023 and understands the Council will provide its position on the waiver application directly to the Court.

[4] Powerco Ltd submits that no other party will be prejudiced by granting the proposed waiver.<sup>3</sup>

[5] The Council consents to the waiver.<sup>4</sup>

### **Statutory framework and principles**

[6] Section 281(1) of the RMA relevantly provides that a person may apply to the Court to:

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

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<sup>2</sup> *Te Mana Moana o Ngāti Irapuaia Trust v Bay of Plenty Regional Council* [2023] NZEnvC 160.

<sup>3</sup> Powerco Ltd's reasons are set out in the Minute of the Environment Court dated 8 September 2023 at [3].

<sup>4</sup> Memorandum of Counsel on behalf of the Respondent dated 15 September 2023.

(ii) the time within which an appeal or submission to the Environment Court must be lodged; or

...

(b) Give a direction about-

(i) the time within which or the method by which anything is to be served; or

...

[7] Section 281(3) requires the Court to be satisfied in this case that:

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

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

[8] Section 281(2) is an overarching provision stating that the Court shall not grant an application under s 281 unless it is satisfied that there is no undue prejudice to any party to the proceeding.

### **Consideration**

[9] I accept Powerco Ltd's advice that no other party will be unduly prejudiced by the granting of the waiver. I agree that the proceeding has not substantively advanced since conclusion of the appeal period, the appeal seeks minor technical changes to only two provisions in the Network Utilities Chapter of the Proposed Plan, Powerco Ltd was involved throughout the submissions and Council hearing on the Proposed Plan and constantly noted its understanding that NU-R13 included an area threshold of "15m<sup>2</sup>" and the changes Powerco Ltd seeks to NU-R13 are not inconsistent with submissions by the other parties on this rule.

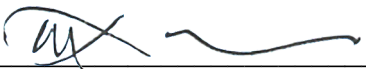
[10] I understand that the Council consents to the waiver sought.

[11] I am happy to grant the application as both elements under s 281(3) have been satisfied. No party will be prejudiced by granting this application. The s 274 period is calculated from the end of the appeal period and will therefore be calculated from the

amended date for filing appeals.

**Directions and waivers**

[12] In accordance with s 281(1)(a)(ii) the application for waiver is granted.



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**MJL Dickey**  
**Environment Judge**

