

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 218

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

TE KOTAHITANGA O TE ATIWA
TRUST, TE RŪNANGA O NGĀTI
MUTUNGA, TE KĀHUI O
TARANAKI IWI TRUST, TE KĀHUI
MARU TRUST, NGĀ MAHANGA A
TAIRI HAPŪ, MANUKORIHI HAPŪ
AND NGĀTI TAWHIRIKURA
HAPŪ

(ENV-2023-AKL-000101)

Appellants

AND

NEW PLYMOUTH DISTRICT
COUNCIL

Respondent

Court: Environment Judge MJL Dickey
Hearing: on the papers

Last case event: 28 September 2023

Date of Decision: 13 October 2023

Date of Issue: 13 October 2023

DECISION ON APPLICATION FOR WAIVER

A: The application for waiver is granted.

TE KOTAHITANGA O TE ATIWA TRUST & OTHERS V NEW PLYMOUTH
DISTRICT COUNCIL



REASONS

Introduction

[1] Heritage Taranaki Incorporated have applied for a waiver of time in relation to its section 274 interested party notice to join an appeal by Te Kotahitanga o Te Atiawa Trust, Te Rūnanga o Ngāti Mutunga, Te Kāhui o Taranaki Iwi Trust, Te Kāhui Maru Trust, Ngā Mahanga a Tairi Hapū, Manukorihi Hapū and Ngāti Tawhirikura Hapū (**the Mana Whenua Appellants**). The appeal is 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 interested party notice under section 274 has expired on 24 July 2023. Heritage Taranaki Incorporated filed a notice to join the appeal on 11 September 2023 with further submissions.¹ The notice is therefore out of time by 36 working days.

[3] Heritage Taranaki Incorporated has sought an extension of time to consider its notice and provided grounds by an email on 18 September 2023, stating the following:

“As an organisation, we did not go into this space without careful consideration and much debate. Being a close community in Taranaki, our committee felt strongly about upholding our mission as an organisation dedicated to advocating for preservation; however, we are also cognisant of the ambitions of mana whenua. Therefore, there were two rounds of discussions with our committee which delayed our response.

Additionally, this is our first time filing as an interested party in an appeal and it wasn’t clear what some of the deadlines were and what we were requesting. We are an all volunteer committee. While we did seek limited legal advice (which also led to a delay in responding), we had to navigate this process outside of our work and family commitments.”

¹ Further submission in support of, or in opposition to, submission on notified proposed policy statement or plan, change or variation dated 11 September 2023.

[4] The Mana Whenua Appellants filed a memorandum on 27 September 2023 consenting to the application for waiver of time in respect of the section 274 notice.

[5] On 28 September 2023 the Council also advised the Court that it is not opposed to the application.

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-

...

(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

...

(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 find that the length of the delay is insignificant because the proceeding is not close to resolution and there is no deliberateness in the delay. I accept Heritage Taranaki Incorporated's advice that it was genuinely unclear about the deadlines.

[10] The Mana Whenua Appellants and the Council consent to the waiver sought.

[11] I grant the application as both elements under s 281(3) have been satisfied. No party will be prejudiced by granting this application.

Directions and waivers

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

[12] A copy of the notice and this decision is to be served on all those listed in the notice of appeal as requiring service.



MJL Dickey
Environment Judge