

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

Decision No. [2020] NZEnvC 140

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14(1) of the First Schedule of the Act
BETWEEN	THE PRESERVATION COALITION TRUST (ENV-2018-CHC-285) Appellant
AND	DUNEDIN CITY COUNCIL Respondent

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

Hearing: In Chambers at Christchurch

Date of Decision: 31 August 2020

Date of Issue: 31 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 Robert Duffy, Ben Ponne and Philip Cunningham is granted and they are severally joined as s 274 parties to the proceeding.

REASONS

Introduction

- [1] This proceeding relates to an appeal by The Preservation Coalition Trust ("PCT") in relation to the Dunedin City Council's proposed District Plan.



[2] The s 274 period ended in January 2019. Robert Duffy, Ben Ponne and Philip Cunningham ("the Prospective Parties") have now filed notices under s 274 of the Resource Management Act 1991 to join the proceeding, together with an accompanying application for waiver to file out of time.¹

[3] PCT has filed a third amended notice of appeal² and the s 274 notices have been filed in response to that. The Prospective Parties believe the extent of the relief now sought by PCT impacts them in a manner which they could not anticipate from PCT's submissions on the District Plan or from PCT's original notice of appeal.

[4] PCT has confirmed that it does not oppose the Prospective Parties' application for waiver.³ No opposition has been received⁴ from any other party so accordingly this application is treated as unopposed.

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;

...

(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. Firstly, the court must 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

¹ All filed on 25 August 2020.

² Dated 18 August 2020.

³ Record of Telephone Conference on 31 July 2020.

⁴ Opposition was to be filed by 3.00pm Friday 28 August 2020.



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 progressing the appeal to resolution.⁵

Discussion

[7] PCT's third amended notice of appeal has been set for a hearing to determine whether the relief sought is within scope. In support of their application the Prospective Parties say that the relief sought impacts them in a way which they did not anticipate having regard to PCT's original submission or first notice of appeal and they wish to be heard in the forthcoming hearing into scope. Although the delay in filing the s 274 notices is significant, given the limited progress made in getting this appeal to a hearing (or even mediation), I do not consider that any party will be unduly prejudiced by granting the waiver. Importantly, no party opposes the Prospective Parties' application. Given that I am, therefore, prepared to grant the waiver as sought.

Outcome

[8] The application for waiver is granted and Robert Duffy, Ben Ponne and Philip Cunningham are severally joined as parties to this proceeding.


J E Borthwick
Environment Judge



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