

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2025] NZEnvC 072

IN THE MATTER OF

an appeal under s 174 of the Resource
Management Act 1991

BETWEEN

STEVE AND SOFIA NUICH
TRUSTEE LIMITED

(ENV-2024-AKL-148)

FUTURE-KUMEU
INCORPORATED

(ENV-2024-AKL-156)

FBL PROPERTIES LIMITED

(ENV-2024-AKL-157)

Appellants

AND

WAKA KOTAHI NEW ZEALAND
TRANSPORT AGENCY

Respondent

Court: Environment Judge J A Smith

Hearing: On the papers

Last case event: 4 March 2025

Date of Decision: 11 March 2025

Date of Issue: 11 March 2025

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



A: In accordance with s 281(1)(a)(iia) of the Resource Management Act 1991 a waiver of time for Auckland Council to file its s 274 party notices is granted.

B: There is no order as to costs.

REASONS

Introduction

[1] Twenty appeals have been filed against decisions of Waka Kotahi New Zealand Transport Agency on Notices of Requirement for the North-West Local Network Project, Auckland.

[2] The section 274 period for these appeals ended on or around 2 August 2024.

[3] On 19 February 2025, Auckland Council filed notices of wish to be party to proceedings under s 274 of the RMA. Under s 281 RMA, Auckland Council seeks a waiver of the time limit to lodge the s 274 notices to join the following appeals:

- (a) ENV-2024-AKL-000148 Steve and Sofia Nuich Trustee Limited v Waka Kotahi New Zealand Transport Agency;
- (b) ENV-2024-AKL-000156 Future-Kumeu Incorporated v Waka Kotahi New Zealand Transport Agency; and
- (c) ENV-2024-AKL-000157 FBL Properties Limited v Waka Kotahi New Zealand Transport Agency.

Application for waiver of time

[4] The interested party notices are roughly six months out of time.

[5] The Council is interested in part of the proceedings. The Council wishes to participate in the proceedings in light of its role as the recommending unitary authority responsible for the Auckland Unitary Plan Operative in part. The Council's Commissioners recommended that the five NZTA notices of requirement that comprise part of the North West Project be confirmed subject to conditions:

- (a) NoR S1: Alternative State Highway;
- (b) NoR S2: SH16 Main Road;
- (c) NoR S3: Rapid Transit Corridor;
- (d) NoR KS: Kumeu Rapid Transit Station; and
- (e) NoR HS: Huapai Rapid Transit Station.

[6] Specifically, the Council is interested in the following parts of the proceedings:

- (a) How the relief sought through the appeals relate to, and impacts on flood risk;
- (b) Whether the notices of requirement introduce routes that will direct traffic into areas subject to flooding and will form a framework for future development that will be subject to flooding; and
- (c) Whether the conditions are adequate to avoid, remedy or mitigate the adverse effects of the notices of requirement.

[7] The Council neither supports nor opposes the relief sought in any of the appeals.

[8] The Council advised that more recently, new information, concerning flood risk reduction options in Kumeū-Huapai, has become available that is highly relevant to the relief sought in the appeals. The Council also has a general interest in the conditions applying to the notices of requirement.

[9] The application for waiver of time is made on the following grounds:

- (a) Although the Council's s 274 notices are filed out of time, there is no undue prejudice to the Appellants or to the other parties given the early stage of the proceedings;
- (b) The granting of a waiver to allow the Council to file its notice will not

delay or materially extend any mediation, alternative dispute resolution process, or hearing;¹ and

- (c) The Council (through its Healthy Waters & Flood Resilience Department) recently completed a comprehensive assessment of flood risk reduction options in Kumeū-Huapai in January 2025, which is new information that is relevant to the relief sought in the three appeals.

Case management and parties' positions

[10] The appeals were set down for Court-assisted mediation on 21 February 2025. The mediation proceeded with Auckland Council in attendance on the understanding that any agreements made were subject to the waiver being duly granted.

[11] Prior to the mediation, the Respondent and the Appellants to the appeals advised as follows:²

For the record neither NZTA or AT object to the late filing and waiver, nor do they object to the attendance of Council at mediation (in fact this is supported in the circumstances relating to these proceedings).

I can confirm that neither F-K Inc nor FBL Properties Ltd object to the late filing and waiver and also support the attendance of Council at mediation.

I need to confirm instructions, but it is unlikely that Nuich will have a concern with the waiver or Council attending mediation.

[12] After the mediation took place on 21 February 2025, the Court sought responses from all parties who had not previously advised their position on the waiver application. No opposition has been raised.³ Furthermore, counsel has confirmed that both Steve and Sofia Nuich Trustee Limited and Atlas Concrete Limited do not

¹ The Council understood that in-person mediation was scheduled for 21 February 2025 and was available to attend.

² Email on behalf of Steve and Sofia Nuich Trustee Limited dated 20 February 2025; Email on behalf of Future Kumeu Incorporated and FBL Properties Limited dated 19 February 2025; Email on behalf of New Zealand Transport Agency and Auckland Transport dated 19 February 2025.

³ Email on behalf of Jenny's Investment Trust dated 28 February 2025; Email from Molly Whittington dated 25 February 2025; Email on behalf of The National Trading Company of New Zealand dated 25 February 2025; Email on behalf of the Boric interests dated 25 February 2025.

oppose the waiver.⁴

Section 281 of the Act

[13] 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; or

...
- (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.
- (3) Without limiting subsection (2), the Environment Court shall not grant an application under this section to waive a requirement as to the time, within which anything shall be lodged with the court (to which subsection (1)(a)(ii) applies) unless it is satisfied that—
 - (a) the appellant or applicant and the respondent consent to that waiver; or
 - (b) any of those parties who have not so consented will not be unduly prejudiced.

[14] There are two tests to be met by an applicant relying on s 281. The overarching test, derived from s 281(1), is whether the Court should exercise its discretion to grant the waiver or directions sought. What may be described as the threshold test relates to whether there is any undue prejudice to the parties to the proceedings as set out under s 281(2) and (3).⁵

[15] Therefore, the consideration of an application under s 281 is a two-step process.

⁴ Email dated 4 March 2025.

⁵ *Shirtcliff v Banks Peninsula District Council* EnvC C17/99, 19 February 1999.

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. Secondly, if no party is unduly prejudiced, the Court must determine the waiver application on its merits.

Discussion

[16] A number of guideline criteria for granting waivers to new parties under s 281 have been established.⁶ These include considering relevant factors such as the following:

- (a) the length of the delay;
- (b) the reasons for the delay;
- (c) the scheme of the Act relating to public participation;
- (d) what has occurred in the proceeding; and
- (e) what effect introducing new parties might have on progressing the appeal to resolution.

[17] No party has raised opposition with the application for waiver. This is a significant project with a number of appeals. To date the parties have attended mediation with the Council present. I find as a fact that there has been no delay to the mediation or preliminary steps of the appeal notwithstanding the significant delay in filing notice. I therefore find that the first part of the test is satisfied, with no party being unduly prejudiced by the granting of the waiver.

[18] The second part of the test addresses whether the waiver should be granted on its merits.

[19] The delay of six months is significant. The delay is explained by the new

⁶ *Omaha Park Ltd v Rodney District Council* EnvC A046/08.

information provided in the January 2025 flood risk reduction report. This information is important and may be directly relevant to the project. I accept that explanation as a basis for the delay.

[20] It is preferred that the Council is directly involved rather than the report being relied on by other parties. The report may draw further interest, and public participation is advanced by the Council involvement as it represents ratepayers of Auckland.

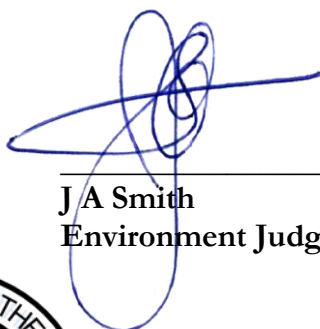
[21] The progress of the appeal will not be adversely affected by the involvement of the Council. While Court-assisted mediation has taken place, Auckland Council were present. A further report of parties is due to be filed on 14 March 2025, providing the Court with an update on progress towards resolution of the appeals. No substantive steps have occurred without Auckland Council's involvement, such that granting the waiver will have an effect on the progress of the appeal.

[22] For the above reasons, I conclude that Auckland Council can engage in the process. I do not consider there will be undue prejudice to parties and am satisfied that the waiver should be granted on its merits.

Outcome

[23] In accordance with s 281(1)(a)(iia) of the Resource Management Act 1991 a waiver of time for Auckland Council to file its s 274 party notices is granted.

[24] There is no order as to costs.



J A Smith
Environment Judge | Kaiwhakawā o te Kōti Taiao

