

IN THE ENVIRONMENT COURT
AUCKLAND

ENV-2009-AKL-000350
ENV-2009-304-000452

IN THE MATTER of an appeal pursuant to Clause 13
of the First Schedule to the Resource
Management Act 1991

BETWEEN **WAIHEKE PROJECT
MANAGEMENT LIMITED**

Appellant

AND **AUCKLAND CITY COUNCIL**

Respondent

APPLICATION FOR WAIVER OF TIME LIMIT TO LODGE APPEAL

Dated: 11 April 2011

Cowper Campbell JC Campbell / BA Watts

BARRISTERS AND SOLICITORS

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APPLICATION FOR WAIVER OF TIME LIMIT TO LODGE APPEAL

Clause 13, First Schedule to the Resource Management Act 1991

To: The Registrar
The Environment Court
Auckland

1. William Jones (“Mr Jones”) applies for a waiver in the following proceedings:

Mr Jones’ own appeal, which arises out of topic ENV-2009-304-000452 within the appeal Waiheke Project Management Limited v Auckland City Council ENV-2009-AKL-000350.

Waiheke Project Management Limited’s (“WPML”) appeal is an appeal against a decision of the Auckland City Council in relation to the Proposed Auckland District Plan, Hauraki Gulf Islands Section 2006.

Topic ENV-2009-304-000452 within the WPML appeal relates to a decision to approve the inclusion of and amendments to the designation for the Owhanake Wastewater Treatment Plant in the Proposed Auckland District Plan, Hauraki Gulf Islands Section 2006. That decision was made by Auckland City Council in its capacity as the requiring authority. The Auckland City Council has since been succeeded by Watercare Services Limited as the requiring authority.

The only parties to topic ENV-2009-304-00452 are Mr Jones as a section 274 party, Waiheke Project Management Limited as the appellant, Watercare Services Limited as the requiring authority and Auckland Council as the territorial authority responsible for the Proposed Auckland District Plan, Hauraki Gulf Islands Section 2006.

2. Mr Jones is the following party to these proceedings:

- 2.1 Section 274 party to the appeal by WPML and, should waiver be granted, appellant.

3. Mr Jones seeks the following waiver:

- 3.1 Waiver of the statutory time limit in Clause 13 of the First Schedule for Mr Jones to lodge and serve an appeal against the requiring authority's decision with respect to the Owhanake Wastewater Treatment Plant designation in the Proposed Auckland District Plan, Hauraki Gulf Islands Section.
- 3.2 Mr Jones is a client of WPML. A submission on the Owhanake Wastewater Treatment Plant designation in the Proposed Auckland District Plan was lodged in the name of Mr Jones by WPML. The subsequent WPML appeal was lodged in WPML's name, but Topic ENV-2009-304-000452 within the WPML appeal is founded on the submission made in Mr Jones' name and claims legitimacy on that basis. In truth, Mr Jones, as the submitter, should have been named as the Appellant. Mr Jones, having now taken legal advice, seeks to rectify this issue with the proceedings.
- 3.3 Further, Topic ENV-2009-304-000452 within the WPML appeal does not properly articulate the relief sought by Mr Jones. With the benefit of legal advice, Mr Jones seeks to re-articulate the relief sought on his behalf by the WPML appeal.
- 3.4 The WPML appeal was lodged within the statutory timeframe and the parties are already aware of the issues it raises, having already been engaged in mediation with the assistance of Commissioner Oliver.
- 3.5 Section 281 of the Act sets out the Environment Court's functions with regard to waiving statutory the statutory time limits for the lodgement and service of appeals:

"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—*
- (i) the time within which anything shall be served;*
or
- (ii) the time within which an appeal or submission to the Environment Court must be lodged; ...*

- (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.*
- (4) *Without limiting subsections (2) and (3), the Environment Court may waive a requirement as to time under this section whether or not an application is made under this section before the requirement has been breached.*
- (5) *A Registrar may exercise a power in this section if conferred by the Principal Environment Judge either generally or in relation to a specific matter and, in either case, on such terms and conditions as the Principal Environment Judge thinks fit.”*

3.6 It is respectfully submitted that no party will be unduly prejudiced if the Environment Court grants the waiver sought by Mr Jones.

3.7 It will make no practical difference to the parties whether Mr Jones’ reasons for appeal are advanced as a client of WPML and through its appeal, or by way of Mr Jones’ own appeal.

3.8 The part of the WPML appeal described as Topic ENV-2009-304-000452 states:

“The part of the decision that I am appealing is:

Notice of Requirement by Auckland City Council for Owhanake Wastewater Treatment Plant (Map Reference 1-14).

5.2 *Submissions opposing the designation of the Owhanake Treatment Plant site.*

5.6.2 *Panel’s analysis and recommendations.*

The current consents for the site were the result of a publicly notified process and the proposed conditions of the designation match those provided for in the approved land use consent for the site. Any expansion of the site’s activities would be required to go through a further ARC consent process. The RMA does not allow for compensation to be paid for direct District Plan provisions. As such, it is the Panel’s view that the issue of potential effects would be adequately dealt with through the

consent process to ensure that compensation would not be necessary.

The reasons for the Appeal are as follows:

- *The Council being the landowner of the site under designation failed to consult with the landowner at 52 Delamore Drive, Waiheke Island, as required by the RMA and the Council's own policy regarding affected parties and neighbours.*
- *The proposed designation and proposed further works will cause immediate and severe effects for the landowner.*
- *These effects include a substantial economic harm to the value of his land and the effects of noise, smell and visual pollution to his proposed dwelling.*

I seek the following relief:

- *The Council meet and consult with the owner of 52 Delamore Drive, Waiheke Island to discuss the potential effects of the designation and possible remedies to lessen or negate these effects.*
- *If these remedies cannot be achieved then the Council should compensate the landowner reasonably and fairly."*

- 3.9 The stated reasons for the appeal include the effects of the proposed further works on the property at 52 Delamore Drive, Waiheke Island, including "noise, smell and visual pollution." The second and third bullet points contain the same grounds of appeal that Mr Jones wishes to advance in his own appeal as grounds (a) and (b). There is therefore nothing novel about these aspects of Mr Jones' appeal. It is submitted that no prejudice can arise.
- 3.10 However, Mr Jones does wish to include one new ground of appeal, relating to the inclusion of Condition 2.2 in Table A7.2 of the Proposed Auckland District Plan, Hauraki Gulf Islands Section. Condition 2.2 was not notified or requested by submissions, therefore there was potentially no scope to approve its inclusion. It is submitted that as a matter of scope, this question could have been raised by Mr Jones irrespective of whether it was included in his reasons for appeal. Moreover it is a matter about which the Court and the parties need to be aware. It is respectfully submitted that the sooner such an issue is confronted, the better for all parties. It is an issue that will arise either in the context of the WPML appeal or as part of Mr Jones Appeal. There is therefore no prejudice to the parties in granting the waiver.

3.11 The difficulty with the relief sought in the part of the WPML appeal cited above is that it potentially does not provide any scope for adverse effects to be addressed. Instead the relief sought relates to consultation and compensation. Mr Jones now appreciates that the Court does not have the power to order consultation or monetary compensation. Consequently Mr Jones seeks to amend the relief sought by his appeal as follows:

“Mr Jones seeks the following relief:

That adverse effects resulting from approval of the designation be avoided, remedied or mitigated in relation to the property at 42 Delamore Drive, Waiheke Island, either by:

- (a) declining the designation; or*
- (b) the imposition of appropriate conditions.”*

- 3.12 It is submitted that this amendment will do nothing more than provide the necessary scope to address the grounds of appeal that were clearly expressed in the WPML appeal.
- 3.13 It is submitted that in the particular circumstances of this application, granting the waiver will not prejudice the parties, set an adverse precedent or undermine the public interest in the efficient progress of proceedings.
- 3.14 Instead, granting waiver for Mr Jones' appeal will encourage the parties to address the grounds of appeal on their merits rather than addressing the possible technical deficiencies in the WPML appeal document. Such an outcome is more in keeping with the Act's purpose and general policy of enabling the participation of affected persons.

 (Counsel)

JC Campbell / BA Watts
Solicitor for William Jones

Date: 11 April 2011

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Note to applicant

You must lodge the original and 1 copy of this application with the Environment Court. The application must be signed by you or on your behalf.

You must serve a copy of this application on all other parties to the proceedings within 3 working days after lodging this application with the Environment Court.

Within 10 working days after lodging this application, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this application.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements in this form.

Advice

If you have any questions about this application, contact the Environment Court in Auckland, Wellington, or Christchurch.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Auckland address of the Environment Court is:

Level 2
41 Federal Street
(cnr Wyndham and Federal Street)
Auckland 1010
Its postal address is:

DX CX 10086
Auckland

And its telephone and fax numbers are:

Telephone: (09) 916 9091

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