



Level 9, Southern Cross Building
59 – 67 High Street

~~Level 9, Southern Cross Building~~

PO Box 3399, Auckland 1140

Ph 09 302 0300

~~Ph 09 302 0300~~

Matter no. JON153-100

Direct line 302 8980

www.cowpercampbell.co.nz

Email ian.cowper@cowpercampbell.co.nz

The Registrar
Environment Court Auckland
DX CX 10086
AUCKLAND

Attention Commissioner M Oliver

11 April 2011

ENV-2009-AKL-000350 – WAIHEKE PROJECT MANAGEMENT LIMITED V AUCKLAND CITY COUNCIL – APPLICATION FOR WAIVER TO LODGE NEW APPEAL ON BEHALF OF WILLIAM JONES

Following Court assisted mediation held on 24 February 2011, we were engaged by Mr Jones to represent him in the above proceedings and to file amended papers with the Court to deal with deficiencies in the present Notice of Appeal in the name of Waiheke Project Management Limited (“WPML”).

We propose to remedy the issues with the WPML appeal by lodging a fresh appeal in Mr Jones’ own name. The grounds of the Jones appeal will not expand on the WPML grounds of appeal except to raise one potential jurisdictional point. The main change in terms of the substance of the appeal will be in terms of the relief sought by the appeal, which will now align with the grounds of appeal. The lodgement of Mr Jones’ appeal will, as we understand, facilitate the withdrawal of the last topic remaining in the WPML appeal, meaning it should be able to be withdrawn completely. As Mr Jones’ appeal will be lodged outside the statutory timeframe, the appeal is accompanied by an application for waiver in that regard.

We considered whether it would be more appropriate to first substitute Mr Jones for WPML and then apply to amend the existing notice of appeal, or to apply for a waiver to file an entirely new appeal in Mr Jones’ own name.

In particular, we considered the comments of the High Court in *Transit New Zealand v Pearson* [2002] NZRMA 318. In that decision the High Court ruled that there was no power to amend resource management appeals in a way that makes new complaints or expands the relief sought. The Court ruled that amendments to appeals should be limited to the giving of particulars, the correcting of irregularities or omissions and for reduction in the scope of an appeal. The High Court’s rationale was that where there is an increase in the scope of an appeal in terms of the grounds of appeal or the relief sought, the scheme of the RMA requires that members of the public who may be interested in the broadened scope of the appeal be provided with an opportunity to participate.

In the present case Mr Jones’ appeal will have a broadened scope. We therefore consider that, unfortunately, there is no option but to have the new appeal go through the usual procedures of lodgement and service. Mr Jones was the only submitter on the designation. In practical terms we do

The Registrar, Environment Court Auckland
11 April 2011

not think that this will occasion any delay. Further, the existing parties are already engaged with each other and can continue to negotiate and/or mediate.

Yours faithfully
Cowper Campbell



B.I.J. Cowper
Partner

CC: Shaun McAuley, Auckland Council
Private Bag 92300
AUCKLAND 1143
By email shaun.mcauley@aucklandcouncil.govt.nz

Francelle Lupis
Watercare Services Limited , c/- Russell McVeagh, PO Box 8, Shortland
Street
AUCKLAND 1140
By email francelle.lupis@russellmcveagh.com