

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2025] NZEnvC 25

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First Schedule of the Act

BETWEEN TE RŪNANGA O MOERAKI,
KĀTI HUIRAPA RŪNAKA KI
PUKETERAKI, TE RŪNANGA O
ŌTĀKOU AND HOKONUI
RŪNANGA

(ENV-2024-CHC-36)

First appellants

AND TE AO MARAMA
INCORPORATED ON BEHALF
OF WAIHOPAI RŪNAKA, TE
RŪNANGA O ŌRAKA APARIMA,
AND TE RŪNANGA O AWARUA

Second appellants

AND TE RŪNANGA O NGĀI TAHU

Third appellants

AND OTAGO REGIONAL COUNCIL

Respondent

Court: Environment Judge P A Steven

Hearing: In Chambers at Christchurch

Date of Decision: 24 January 2025

Date of Issue: 24 January 2025



DECISION ON APPLICATION FOR WAIVER

- A: The application for waiver is granted.
- B: Real Group Limited and NZSki Limited are joined as a s274 party to this appeal.
- C: Costs are reserved, although not encouraged.

REASONS

Introduction

[1] This proceeding is an appeal by Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga; Te Ao Marama Incorporated on behalf of Waihopai Rūnaka, Te Rūnanga o Ōraka Aparima, and Te Rūnanga o Awarua; Te Rūnanga o Ngāi Tahu (together, ‘Kāi Tahu’) being an appeal against decisions of Otago Regional Council (‘ORC’) in relation to the non-freshwater parts of the Proposed Otago Regional Policy Statement 2021 (‘PORPS’).

[2] Real Group Limited (‘RealNZ’) and NZSki Limited (‘NZSki’) have applied under s281 Resource Management Act 1991 (‘RMA’) for a waiver of the time within which a person must give notice under s274 RMA that the person wishes to be a party to the proceedings.

[3] The s274 notices record that both RealNZ and NZSki:¹

¹ Notice of Real Group Limited’s wish to be party to proceedings pursuant to s274 RMA and notice of NZSki Limited’s wish to be party to proceedings pursuant to s274 RMA, both dated 21 January 2024.

- (i) made a submission regarding the subject matter of the proceedings; and
- (ii) has an interest in the proceedings that is greater than the interest the general public has because it is an appellant and a s274 party in respect of the non-freshwater provisions of the PORPS and because it owns and operates ski area infrastructure in the Otago Region.

The application for waiver

[4] The application records it is appropriate to grant this application for the following reasons:²

- (a) The RealNZ and NZSki submissions on the non-freshwater parts of the PORPS sought that ‘ski area infrastructure’ be included in the definition of Regionally Significant Infrastructure.³
- (b) The RealNZ and NZSki evidence supported inclusion of ‘ski area infrastructure’ in the definition of Regionally Significant Infrastructure.⁴
- (c) Neither the evidence in chief nor rebuttal evidence for the Appellants⁵ specifically addressed or rebutted the RealNZ and NZSki submission or evidence.
- (d) The Respondent’s section 42A Reply Report (evidence) on EIT-Energy, Infrastructure and Transport recommended inclusion of ‘ski area infrastructure’ in the definition of Regionally Significant Infrastructure.⁶
- (e) The Panel accepted the recommendation of the section 42A Reply Report.
- (f) As the inclusion of ‘ski area infrastructure’ was not specifically opposed in the hearing RealNZ and NZSki were of the understanding that no party opposed the inclusion of ‘ski area infrastructure’ in the definition of

² Application for waiver dated 21 January 2025 at [3].

³ 00206.015 Trojan (NZSki) and 00411.022 Wayfare (RealNZ).

⁴ Planning Evidence of Ben Farrell, 28 November 2022, Statement of Evidence of Paul Norris, 28 November 2022, Statement of Evidence of Paul Anderson, 28 November 2022.

⁵ Rebuttal Evidence of Sandra McIntyre, 14 December 2022.

⁶ Reply Report, Marcus Langman, 23 May 2023.

Regionally Significant Infrastructure, and only became aware of the appeal on its inclusion when reviewing the draft position paper for the Energy Infrastructure and Transport mediation, set down for 28 January 2025.

[5] RealNZ is already a party to two appeals on the Energy Infrastructure and Transport topic, namely Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest and Bird') and QLDC's appeals. This includes already being a party to Forest and Bird's appeal point on the definition of Regionally Significant Infrastructure (that addresses other limbs of the definition).

[6] Court-facilitated mediation of Group 4 – Energy, infrastructure and transport is scheduled for 28-31 January 2025.

Position of the other parties

[7] The application is not opposed. A number of parties to the appeal confirmed their respective positions either stating no opposition or explaining its own interest in the appeal did not relate to the aspect to which RealNZ and NZSki have an interest, so they will abide the decision of the court.⁷

[8] For completeness, I record no response was received from, the following

⁷ Emails of: Thea Sefton, for ORC to the registry (21 January 2025); Brandon Watts, for Queenstown Lakes District Council to the registry (21 January 2025); Simon Peirce, for Aurora Energy, Network Waitaki Limited and PowerNet Limited to the registry (21 January 2025); Gus Griffen, for Rayonier Matariki Forests Limited City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited to the registry (21 January 2025); Sarah Scott, for Port Otago to the registry (21 January 2025); Stephen Christensen, for Oceana Gold to the registry (21 January 2025); Miles Rowe, for BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited to the registry (21 January 2025); Rachel Murdoch, for Ara Poutama Aotearoa – Department of Corrections to the registry (21 January 2025); Michael Garbett, for Dunedin City Council to the registry (21 January 2025); Ellie Taffs, for Meridian Energy Limited to the registry (21 January 2025); Harriett Jopp, for Federated Farmers of New Zealand to the registry (21 January 2025); Pene Williams, for Director-General of Conservation to the registry (21 January 2025); Aidan Cameron, for Kai Tahu to the registry (22 January 2025); Lara Burkhardt, for Manawa Energy Limited to the registry (22 January 2025); Bridget Irving, for Maniototo Irrigation Company Limited, Waitaki Irrigators Collective Limited and Otago Water Resource User Group Incorporated 22 January 2025; May Downing, for Forest and Bird (22 January 2025); Chris Thomsen, for Beef + Lamb New Zealand Limited (22 January 2025).

parties who are therefore treated as having no opposition:

- (a) Cain Whanau;
- (b) Falls Dam Company Limited;
- (c) Otago Fish and Game Council and the Central South Island Fish and Game Council; and
- (d) Queenstown Airport Corporation Limited.

Section 281 of the Act

[9] Under s281(1)(a)(ii) RMA, a person may apply to the court for a waiver of the time within which a person may lodge a notice of interest under s274:

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—
 - ...
 - (ii) 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.

[10] When considering a waiver application, the court is first required to determine whether any of the parties to the proceeding would be unduly prejudiced should the waiver be granted. In *Omaha Park Limited v Rodney District Council*⁸ the court looked at the use of the phrase “undue prejudice” in s281, stating:⁹

Any party who believes that the notice period has passed, but then has to face a late arriving opponent, will be *prejudiced* in the sense of having lost a position of advantage ... the issue is whether the prejudice is *undue*. That means greater than that which would inevitably follow in every case from waiving compliance with

⁸ *Omaha Park Ltd v Rodney District Council*, ENC Auckland A046/08, 23 April 2008.

⁹ At 6.

the time limits.

[11] Second, if no party is unduly prejudiced, the court must determine whether it should exercise its discretion to grant the waiver. When 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 in the meantime and what effect introducing new parties might have on progressing the appeal to resolution.¹⁰

Consideration

[12] The application states the grant of the waiver would not prejudice the appellants or the respondent because the part of the appeal RealNZ and NZSki are interested in, being the definition of Regionally Significant Infrastructure, has not yet been mediated, and RealNZ already has standing to attend mediation on the definition of Regionally Significant Infrastructure given they are a s274 party to the Forest and Bird appeal.

[13] I am satisfied that the granting of this application for waiver will not unduly prejudice any party. On that basis, and as the application is unopposed, I grant the waiver sought.

Outcome

[14] Under s281 RMA, the application for waiver is granted and Real Group Limited and NZSki Limited are joined as a s274 party to this appeal.

[15] Costs are reserved, although not encouraged.



P A Steven
Environment Judge



¹⁰ At 7.