

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991

BETWEEN TE RARANGA A TE KUIHI TRUST
(ENV-2023-AKL-000184)

Appellant

AND KAIPARA DISTRICT COUNCIL

Respondent

AND DARGAVILLE RACING CLUB
INCORPORATED

Applicant

MINUTE OF THE ENVIRONMENT COURT

(21 November 2023)

Introduction

[1] On 31 October 2023, Te Raranga a Te Kuihi Trust (**Te Kuihi Trust**) lodged an appeal against the decision of Kaipara District Council approving Private Plan Change 81 - Trifecta Development Area (Dargaville Racecourse).

Waiver of time for filing of appeal

[2] The notice of appeal states Te Kuihi Trust received notice of the decision on 7 September 2023.



[3] Any appeal to the Environment Court against a decision on a Private Plan Change must be lodged with the Court within 30 working days of service of the notice of decision of the local authority.¹

[4] The Court calculates the last day for filing of the appeal was 19 October 2023. The appeal was therefore filed out of time.

[5] Te Kuihi Trust have sought a waiver of time with respect to timeframe to lodge an appeal. The waiver application states:

While we received an email from Kaipara District Council (KDC) on 7th September regarding the decision on PPC81 we:

1. Noted that the decision was publicly notified on 18 September in the Mangawhai Focus publication.
2. We attempted on several occasions on the week of 16th October, and were unsuccessful, to contact KDC to confirm the last date of appeal.
3. During this period we were preparing the appeal notification.
4. We finally spoke to KDC District Planner on 31 October and he confirmed that we had until the 1st November to lodge the appeal and be within the time frame.

This indicated to us that we were timely in the filing of our appeal rather than being outside the statutory time frame.

Parties' positions

[6] KDC has no objection to the waiver application.

[7] Dargaville Racing Club will abide the Court's decision on the waiver application. Dargaville Racing Club advised that an email was sent by KDC to the applicant and submitters on 7 September 2023, attaching:

- (a) the public notification advert of the decision that would be published from 12 September 2023;
- (b) the Minute of Decision from the Council meeting held 30 August 2023;

¹ Clause 14(4) of Schedule 1, RMA.

- (c) a list of all submitters contact details should any person wish to lodge an appeal with the Environment Court; and
- (d) Form 7 for use if any person planned to lodge an appeal with the Environment Court.

[8] KDC's email stated that persons had 30 working days from the date they received this notification of Council's decision to appeal against the decision by lodging an appeal with the Environment Court.

Legal framework

[9] Section 281(1) RMA provides that a person may apply to the Court to waive a requirement of the Act about the time within which an appeal to the Environment Court must be lodged.

[10] Section 281(2) RMA is an overarching provision stating that the Court shall not grant an application under s 281 unless it is satisfied that there is no prejudice to any party to the proceeding.

[11] Section 281(3) RMA requires the Court to be satisfied that:

- (a) the appellant or applicant and the respondent consent to the waiver; or
- (b) any of those parties who have not so consented will not be unduly prejudiced.

[12] Therefore, consideration of applications under s 281 is a two-step process. First, the Court is required to make a determination as to whether or not the parties consent to the waiver. In this case one party (at least) abides. While this may be sufficient, out of an abundance of caution, we consider the second /alternate ground.

[13] Will parties to the proceeding be unduly prejudiced if the waiver is granted? "Undue prejudice" means prejudice that is greater than that which would necessarily

follow in every case from the granting of a waiver.² Finally if either test is met the Court must determine the waiver application on its merits.

Evaluation

[14] The Court notes that if the period for lodging appeals was calculated from 18 September 2023, being the date Te Kuihi Trust claims the decision was publicly notified, the appeal would have been filed in time. However, the date of public notification is not the date for calculating the appeal period. Clause 14(4) of the first schedule of the Act states that any appeal to the Environment Court must be lodged with the Court within 30 working days of service of the notice under clause 11. The date of service was 7 September 2023. The appeal was lodged seven working days late.

[15] Neither the Respondent nor the Applicant have raised a concern that they will be unduly prejudiced if the waiver is granted and have not raised opposition to the application. I am also satisfied there will be no undue prejudice to any party to the proceeding. Certainly, no concerns have been raised by the Council or Racing Club. The delay of filing the appeal was not excessive. For these reasons, the application for waiver of time for lodging the appeal is granted.

Regularising of the appeal

[16] Te Kuihi Trust have not yet regularised the appeal. Te Kuihi Trust are to file the following by **5:00pm 28 November 2023**:

- (a) two hard copies of each of the documents that were filed electronically with the Court;
- (b) an electronic and two hard copies of the following documents (noting that the Council's Minute of Decision provided does not otherwise set out the Hearing Panel's recommendations that were adopted by the Council):

² *S K Reilly v Northland Regional Council & Far North District Council* A 038/1993.

- Report to Kaipara District Council Meeting 30 August 2023 – Decision on Provisions and Matters raised in Submissions
 - Attachment A – Commissioners recommendation on Proposed Plan Change 81
 - Attachment B – Trifecta Development Area Final Provisions chapter
 - Attachment C – Trifecta Development Area Map 10 and 10A

- (c) a list of the names and the addresses of the trustees of Te Raranga a Te Kuhi Trust;
- (d) written notice of the date of service for each person served with a copy of the notice of appeal; and
- (e) account details so that a refund of the overpaid amount of the filing fee may be arranged.

Section 274 period

[17] The s 274 period will be extended due to the late filing of the appeal and waiver now granted.

[18] The s 274 period is extended to **5:00pm, 12 December 2023**.

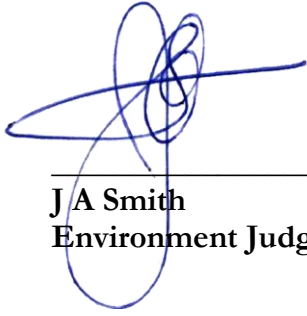
[19] A copy of this Minute will be sent by the Registry to all submitters and further submitters to Plan Change 81 so they are aware of the extend date for filing a s 274 notice should they wish to join the appeal.

Case management directions

[20] The appeal is assigned to the Judge managed track.

[21] The parties are to advise by **5:00pm 18 January 2024** if they agree to the matter being referred to Court-assisted mediation. If the parties do not agree to the matter

proceeding to Court-assisted mediation, a Judicial Conference will be held to discuss progress to a hearing.



J A Smith
Environment Judge

