

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 044

UNDER

the Resource Management Act 1991

IN THE MATTER

of the decision on resource consent
applications to take and use an
allocation of water

AND

IN THE MATTER

of an application for waivers and
directions under s 281 of the Act

BETWEEN

I&P FARMING LTD & ORS

(ENV-2023-AKL-000028)

Applicant/Intending Appellants

Court: Environment Judge MJL Dickey

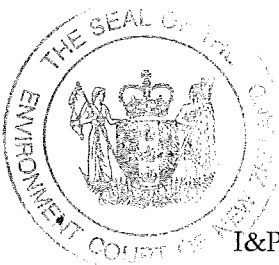
Hearing: On the papers

Date of Decision: 14 March 2023

Date of Issue: 14 March 2023

ORDER WAIVING TIME FOR LODGING APPEALS

A: Under s 281(1)(a)(ii) RMA the time for lodging any appeal against the Hawke's Bay Regional Council's 27 February 2023 decision on resource consent applications to take and use an allocation of water identified in the Hawke's Bay Regional Resource Management Plan is extended so that any such appeal must be lodged with the Environment Court by 3 May 2023.



REASONS

Introduction

[1] I&P Farming Ltd and others have applied for a direction or waiver in relation to any appeal that may be lodged with the Court against a Hawke's Bay Regional Council decision on resource consent applications to take and use an allocation of water under the Hawke's Bay Regional Resource Management Plan. The consent applications from I&P Farming Ltd and seven other applicants (**Applicants**) were declined by the Council in a decision dated 27 February 2023 (**Decision**). The timeframe for filing any appeal against the Decision has expired.

[2] The focus of many of the Applicants is currently on flood recovery within their farms and in the wider community. They have sought an extension of time to consider the Decision.

[3] Counsel does not consider that any other party will be prejudiced by the proposed extension of time sought because any timeframe for the parties to take steps will be calculated from the amended date for filing any appeal.

[4] The Council consents to the waiver.

Statutory framework and principles

[5] Section 281(1) of the RMA relevantly provides that a person may apply to the Court to:

- (a) Waive a requirement of this Act or another Act or a regulation about-
 - ...
 - (ii) the time within which an appeal or submission to the Environment Court must be lodged; or
 - ...
- (b) Give a direction about-
 - (i) the time within which or the method by which anything is to be served; or
 - ...

[6] Section 281(3) requires the Court to be satisfied in this case 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.

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

[8] The Court's jurisdiction under s 281 of the RMA is not confined to a proceeding already before the Court. An application for waiver and directions can be made as an originating proceeding.¹

Consideration

[9] I accept I & P Farming Ltd's advice that many of the potential appellants are currently unable to consider the Decision in a timely manner because they are focused on flood recovery on their farms and in their community following Cyclone Gabrielle.

[10] I understand that the Council consents to the waiver sought.

[11] I am happy to grant the application as both elements under s 281(3) have been satisfied. No party will be prejudiced by granting this application because all potential appellants will benefit from the waiver. It will better enable the Applicants to consider whether they wish to appeal and, if so, to make the necessary arrangements to do so. The s 274 period is calculated from the end of the appeal period and will therefore be calculated from the amended date for filing appeals.

Directions and waivers

[12] In accordance with s 281(1)(a)(ii) the application for waiver is granted, and the timeframe for lodging appeals against the Decision is extended until **3 May 2023**, 45 working days from 27 February 2023.

¹ *Re Auckland Council* [2016] NZEnvC 153, at [9]

[13] In accordance with s 281(1)(b)(i) I order the Council to serve a copy of the application and the Court's decision on all submitters to the applications for resource consent.



MJL Dickey
Environment Judge

