

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2024] NZEnvC 206**

IN THE MATTER OF

appeals under s 174 of the Resource  
Management Act 1991

BETWEEN

**GENERAL DISTRIBUTORS  
LIMITED**

(ENV-2024-AKL-000145)

**THE NATIONAL TRADING  
COMPANY OF NEW ZEALAND  
LIMITED**

(ENV-2024-AKL-000152)

**GR & CC MCCULLOUGH TRUSTEE  
LIMITED**

(ENV-2024-AKL-000155)

Appellants

AND

**AUCKLAND TRANSPORT**

Respondent

Court: Environment Judge M J L Dickey<sup>1</sup>

Last case event: 19 August 2024

Date of Decision: 27 August 2024

Date of Issue: 27 August 2024

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**DECISION OF THE ENVIRONMENT COURT ON APPLICATION  
FOR WAIVER**

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<sup>1</sup> Environment Judge M J L Dickey is the Acting Judge in this matter in the absence of  
Environment Judge J A Smith.

Appeals against decision on Notice of Requirement W5 for the North-West Local Network  
Project



A: The application for waiver is granted. Viscount Investment Corporation Limited is joined as a party to the following appeals under s 274 of the Act:

1. General Distributors Limited v Auckland Transport (ENV-2024-AKL-000145);
2. The National Trading Company of New Zealand Limited v Auckland Transport (ENV-2024-AKL-000152); and
3. GR & CC McCullough Trustee Limited v Auckland Transport (ENV-2024-AKL-000155).

B: There is no order as to costs.

## REASONS

### Background

[1] Nineteen appeals have been filed against decisions by Auckland Transport on Notices of Requirement (**NoRs**) for the North-West Local Network Project, Auckland (the **Project**).

[2] Viscount Investment Corporation Limited (**Viscount**) applied for a waiver of time for filing a s 274 notice under s 281(1)(a)(iia) of the Resource Management Act 1991 (the **Act**). Viscount seeks to join the following appeals:

- (a) General Distributors Limited v Auckland Transport (ENV-2024-AKL-000145);
- (b) The National Trading Company of New Zealand Limited v Auckland Transport (ENV-2024-AKL-000152); and
- (c) GR & CC McCullough Trustee Limited v Auckland Transport (ENV-2024-AKL-000155).

***Section 274 of the Act***

[3] A person, subject to meeting other requirements, may become a party to proceedings by giving notice within 15 working days after the period for lodging a notice of appeal ends.<sup>2</sup>

[4] The period for giving notice to join the appeals under s 274 ended on 2 August 2024. Viscount filed an application for a waiver of time to file its notice on 8 August 2024.

***The application for waiver***

[5] The application for waiver is sought on the following grounds:

- (a) Viscount owns land at 122 Hobsonville Road, Hobsonville; and
- (b) has made its own appeal against Auckland Transport's decisions on NoR W5 (ENV-2024-AKL-000137).

[6] Viscount submits, therefore, that it has an interest in the appeals that is greater than the general public has.

[7] The appeals Viscount wishes to join all relate to properties on Hobsonville Road which are similarly affected by NoR W5.

[8] Viscount's application for waiver records that counsel was not the address for service in relation to appeals against Auckland Transport's decisions on the NoRs for the Project. Counsel only became aware of the appeals on 2 August 2024 when he received s 274 notices from The National Trading Company New Zealand Limited and GR & CC McCullough Trustee Limited to join Viscount's appeal against the decision on NoR W5.<sup>3</sup>

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<sup>2</sup> Section 274(1)(a).

<sup>3</sup> Notice of Wish to be Party to Proceedings by Viscount Investment Corporation Limited dated 8 August 2024 at [4].

[9] The Court understands that no parties oppose the application for waiver.

### **Section 281 of the Act**

[10] Under s 281 (1)(a)(iia) of the Act, a person may apply to the Court for a waiver of the time within which a person may lodge a notice of interest under s 274 of the Act.

#### **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-
 

...
  - (iia) the time within which a person must give notice under section 274 that the person wishes to be a party to the proceedings; or
- (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.

[11] There are two tests to be met by an applicant relying on s 281. The overarching test, derived from s 281(1), is whether the Court should exercise its discretion to grant the waiver or directions sought. What may be described as the threshold test relates to whether there is any undue prejudice to the parties to the proceeding as set out under s 281(2) and (3).<sup>4</sup>

[12] Therefore, the 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 to the proceeding will be unduly prejudiced if the waiver is granted. Secondly, if no

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<sup>4</sup> *Shirtcliff v Banks Peninsula District Council* EnvC C17/99, 19 February 1999.

party is unduly prejudiced, the Court must determine the waiver application on its merits.

### **Discussion**

[13] A number of guideline criteria for granting waivers to new parties under s 281 have been established.<sup>5</sup> These include considering relevant factors such as the following:

- (a) the length of the delay;
- (b) the reasons for the delay;
- (c) the scheme of the Act relating to public participation;
- (d) what has occurred in the proceeding; and
- (e) what effect introducing new parties might have on progressing the appeal to resolution.

[14] The parties do not oppose the application for waiver. I therefore find that the first part of the test is satisfied, with no party being unduly prejudiced by the granting of the waiver.

[15] The second part of the test addresses whether the waiver should be granted on its merits. Noting that Viscount's application and intended s 274 notice comes only four working days after the deadline to join the proceedings, I find that the delay is not significant.

[16] On 22 July 2024, the Court made directions for the Requiring Authorities to revert to the Court with a proposed way forward following consultation with the parties by 30 August 2024. Viscount's inclusion in the process as a s 274 party should not impede that consultation.

[17] I am inclined to accept that the delay was not entirely on Viscount's making. It

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<sup>5</sup> *Omaha Park Ltd v Rodney District Council* EnvC A046/08.

made an appeal against a decision on NoR W5, but its counsel was not made aware of the other appeals until 2 August 2024.

[18] Despite the delay, I grant the application for waiver on the grounds that:

- (a) there are no parties that oppose the waiver;
- (b) Viscount's delay in filing its s 274 notice was not significant and not entirely of its own making; and
- (c) I am satisfied that Viscount has an interest in the appeals that is greater than the general public has, given that it owns property on Hosbsonville Road and has made its own appeal to NoR W5. Further, no party raised an issue about its interest in the appeals.

### **Outcome**

[19] The application for waiver is granted. Viscount Investment Corporation Limited is joined to the following appeals under s 274 of the Act:

- (a) General Distributors Limited v Auckland Transport (ENV-2024-AKL-000145);
- (b) The National Trading Company of New Zealand Limited v Auckland Transport (ENV-2024-AKL-000152); and
- (c) GR & CC McCullough Trustee Limited v Auckland Transport (ENV-2024-AKL-000155).

[20] There is no order as to costs.



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**M J L Dickey**  
**Environment Judge**

