

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2013-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First
Schedule of the Act

BETWEEN

**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Appellant

AND

NORTHLAND REGIONAL COUNCIL

Respondent

MEMORANDUM OF COUNSEL IN SUPPORT OF APPLICATION FOR WAIVER

27 November 2013

Environmental Defence Society
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TO: The Registrar
Environment Court
AUCKLAND

1. This memorandum relates to the notice of appeal filed by the Environmental Defence Society Incorporated (“EDS”) on 14 November 2013 relating to part of the decision of Northland Regional Council on the Proposed Northland Regional Policy Statement. It is filed in support of the application for waiver of time for serving copies of the notice of appeal.
2. Clause 14 of Schedule 1 of the Resource Management Act 1991 requires EDS to serve a copy of the notice in the prescribed manner. Regulation 7(1)(c) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 requires a copy of the notice of appeal to be served on every person who made a submission on the provision or matter to which the appeal relates, within 5 working days after the notice is lodged.
3. EDS provided copies of the notice of appeal by either post or email. The service method is set out in the spreadsheet provided by email to the Court.
4. The copies of the notice of appeal which were posted were sent on 19 November 2013. Due to an error in our office, the copies of the notice of appeal which were emailed were not sent on 19 November 2013 as planned. This error was identified on 25 November 2013 and copies of the notice of appeal were sent on that day. This was two working days late.
5. The matters to be considered when deciding whether to grant a waiver were set out in *Shirtcliff v Banks Peninsula District Council* (EC Christchurch, C17/99, 19 February 1999):
 - 5.1. Will any of the parties to the proceeding be unduly prejudiced?
 - 5.2. Should the court exercise its discretion to grant the waiver?

6. In *Omaha Park Limited v Rodney District Council* (EC Auckland, A046/08, 23 April 2008) Judge Thompson commented on the phrase “undue prejudice”, stating:

“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, and of having to face whatever opposition might be mounted. The section accepts that as a given. The issue is whether the prejudice is undue. That means prejudice greater than that which would inevitably follow in every case from waiving compliance with the time limits.”

7. Undue prejudice has been found to arise where it would re-open a matter that had been settled at mediation (*Hurunui District Council v Canterbury Regional Council* (EC Christchurch, C090/08, 11 August 2008)).
8. EDS respectfully suggests that any prejudice to submitters could be addressed by granting a waiver to any section 274 notices filed within 2 working days of the deadline. EDS submits that this would not result in any undue prejudice on any party given that no steps have been taken to date to progress the appeals towards resolution.
9. In *Omaha Park Limited v Rodney District Council* (EC Auckland, A046/08, 23 April 2008) Judge Thompson set out the factors relevant to this evaluation, including:
 - 9.1. The length of the delay,
 - 9.2. The reasons for the delay,
 - 9.3. The scheme of the Act relating to public participation,
 - 9.4. What has happened in the proceeding in the meantime,
 - 9.5. What effect introducing new parties might have on progressing the appeal to resolution.

10. EDS submits that this Court should exercise its discretion to grant the waiver for the following reasons:

10.1. The delay of two working days is minimal,

10.2. The delay was caused by human error,

10.3. Allowing EDS's appeal to continue would be consistent with the public participatory nature of plan making process under the Resource Management Act 1991, and

10.4. As the period for filing section 274 notices has not yet closed no steps have yet been taken to progress the proceedings.

DATED at Auckland this 27th day of November 2013



Nicola de Wit