

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

Decision No. [2025] NZEnvC 146

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule to the Act

BETWEEN JEREMY BURDON

(ENV-2024-CHC-54)

(and other appellants listed in
Appendix 1)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Last case event: 30 April 2025

Date of Decision: 6 May 2025

Date of Issue: 6 May 2025

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

A: The application for waiver is granted.

B: UCES' withdrawal from Topic 2 matters is confirmed.

BURDON v QLDC – WAIVER



REASONS

Background

[1] This matter concerns appeals against a decision of the Queenstown Lakes District Council (QLDC) to introduce a Variation to the Proposed Queenstown Lakes District Plan (PDP) that addresses Priority Area Landscapes Schedules (Variation).

[2] Upper Clutha Environment Society Incorporated (UCES) is an interested party under s274 RMA to the appeal filed on the Variation by Glendhu Bay Trustees.¹

[3] UCES now seeks to join 13 other appeals on the Variation as an interested party. As the period of time for filing a notice under s274 has lapsed, an application for waiver is required to join the additional appeals.

The application for waiver

[4] On 2 April 2025 UCES filed a notice under s274 RMA to become a party to the following appeals:

- (a) ENV-2024-CHC-54 Burdon;
- (b) ENV-2024-CHC-55 Cardrona Cattle Company Limited;
- (c) ENV-2024-CHC-56 Gertrude's Saddlery Limited;
- (d) ENV-2024-CHC-57 Hawthenden Limited;
- (e) ENV-2024-CHC-59 Mee Holdings Limited;
- (f) ENV-2024-CHC-60 Mount Cardrona Station Limited;
- (g) ENV-2024-CHC-61 Passion Development Limited;
- (h) ENV-2024-CHC-62 The Milstead Trust;
- (i) ENV-2024-CHC-64 Phoon;

¹ ENV-2024-CHC-69 Glendhu Bay Trustees Limited v Queenstown Lakes District Council.

- (j) ENV-2024-CHC-65 Rock Supplies NZ Limited;
- (k) ENV-2024-CHC-66 Soho Ski Area Limited and Blackmans Creek Holdings;
- (l) ENV-2024-CHC-67 Glencoe Station Limited and Glencoe Land Development Company Limited;
- (m) ENV-2024-CHC-68 Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited.

[5] UCES' notice sets out its interest as being in "the amendments to the preamble in the landscape schedules proposed by the appeals, and any issue that in any way relates to these amendments", for example, Topic 1.

[6] The notice was accompanied by an application for waiver of the s274 time period. The waiver is sought on the following grounds:

- (a) UCES decided to become an interested party to only one of the appeals on the Variation (the Glendhu Bay Trustees' appeal). This was because UCES could not afford the costs of joining all 16 appeals that were filed on the Variation;
- (b) since then UCES has an improved financial state and reached a unanimous conclusion that it would be more consistent for UCES to become a s274 party to all of the appeals on the Variation that relate to the Topic 1 preamble issue;
- (c) UCES considers that the amendments proposed to the preamble are likely to severely limit the effectiveness of the Variation and are contrary to the findings in the court's earlier decisions.

[7] As part of its application for waiver, UCES also advised the court that it seeks to withdraw from the Topic 2 issue and will not be attending the Topic 2 mediation.

The parties' responses

[8] The following appellants (the Anderson Lloyd appellants) oppose the application by UCES:

- (a) Jeremy Burdon (ENV-2024-CHC-54);
- (b) Cardrona Cattle Company (ENV-2024-CHC-55);
- (c) Gertrude's Saddlery Limited (ENV-2024-CHC-56);
- (d) Mount Cardrona Station Limited (ENV-2024-CHC-60);
- (e) Catherine and Christopher Phoon (ENV-2024-CHC-64);
- (f) Rock Supplies NZ Limited (ENV-2024-CHC-65);
- (g) Soho Ski Area Limited and Blackmans Creek Holdings No. 1 LP (ENV-2024-CHC-66);
- (h) Glencoe Station Limited and Glencoe Land Development Company Limited (ENV-2024-CHC-67); and
- (i) Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited (ENV-2024-CHC-68).

[9] The Anderson Lloyd appellants oppose the application on the following grounds:

- (a) the deadline for filing s274 notices in respect of the Variation was 26 August 2024. In August or September 2024, UCES sought an extension to the deadline for filing s274 notices to mid-October 2024. At that time, the court indicated that allowing the length of waiver sought would significantly and unreasonably disrupt efficient case management;²
- (b) eight months have passed since the deadline for filing s274 notices. It would be unfairly prejudicial to allow UCES to join the appeals at this late stage after the parties have lodged legal submissions and the

² Minute of the Environment Court 5 September 2024 at [7].

court has made its preliminary determination in respect of the jurisdiction issue;

- (c) UCES has stated its interest is limited only to Topic 1 and that it seeks to withdraw from the Topic 2 issues and not attend the Topic 2 mediation;
- (d) Topic 1 is described by QLDC in its memorandum of 29 January 2025 as relating to:
 - (i) the application of the schedules, including to plan development, plan implementation and to particular zones and overlays;
 - (ii) the terminology of the capacity and rating descriptions;
 - (iii) definitions for capacity ratings and listed activities; and
 - (iv) general text.
- (e) UCES is already entitled to attend the Topic 1 mediation because it is a party to the Glendhu Bay Trustees' appeal, which includes appeal points on Topic 1 matters. It does not need to join any other appeal in order to attend the Topic 1 mediation; and
- (f) there is no merit in UCES joining the remaining 13 appeals given its clearly stated interest is restricted to Topic 1.

Section 281 RMA

[10] Under s281(1)(a)(iia) 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 RMA.

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 s281. The overarching test, derived from s281(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 s281(2) and (3).³ Secondly, if no party is unduly prejudiced, the court must determine the waiver application on its merits.

Discussion

[12] There has been a considerable length of delay in this case, with the s274 notice having been filed approximately eight months out of time. However, time is but one of the matters to which the court must turn its mind in considering undue prejudice. A contextual analysis of these matters extends to what the effect of introducing new parties might be on progressing appeals to resolution. A further factor for consideration is the scheme of the RMA relating to public participation.⁴

[13] The topic of interest to UCES is clearly unresolved. While it is currently set down for mediation, it is unlikely that adding UCES to the other 13 appeals will cause any significant delay. UCES is already aware of, and involved in, all the

³ *Shirtcliff v Banks Peninsula District Council* EnvC C17/99, 19 February 1999.

⁴ *Omaha Park Ltd v Rodney District Council* EnvC A046/08.

case management aspects of Topic 1 to date as a result of being party to the Glendhu Bay Trustees' appeal.

[14] I am also satisfied that adding UCES to the appeals will not undermine the court's preliminary decision on scope.

[15] Accordingly, I find that there is no undue prejudice to any party in allowing UCES to join the appeals as a party under s274.

[16] As to whether the waiver should be granted on its merits, I bear in mind that UCES' delay in filing additional s274 notices was due to their financial constraints. It would have been open to UCES to have filed notices in time and applied for waiver of the filing fees. I appreciate they may not have been aware that they could have made such a request. UCES is already involved in Topic 1 and it is an efficient use of the court's resources to recognise that their interest in Topic 1 goes beyond the Glendhu Bay Trustees' appeal at this stage of the case management process.

[17] Considering those factors, I adjudge that the merits favour grant of the application for waiver.

Outcome

[18] The application for waiver is granted.

[19] The withdrawal of UCES from Topic 2 matters is confirmed.



J J M Hassan
Environment Judge



APPENDIX 1

ENV-2024-CHC-55	Cardrona Cattle Company Limited
ENV-2024-CHC-56	Gertrude's Saddlery Limited
ENV-2024-CHC-57	Hawthenden Limited
ENV-2024-CHC-59	Mee Holdings Limited
ENV-2024-CHC-60	Mount Cardrona Station Limited
ENV-2024-CHC-61	Passion Development Limited
ENV-2024-CHC-62	The Milstead Trust
ENV-2024-CHC-64	Phoon
ENV-2024-CHC-65	Rock Supplies NZ Limited
ENV-2024-CHC-66	Soho Ski Area Limited and Blackmans Creek Holdings No. 1 Limited Partnership
ENV-2024-CHC-67	Glencoe Land Development Company Ltd & others
ENV-2024-CHC-68	Coneburn Preserve Holdings Limited & others

