

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2019-CHC-076

IN THE MATTER Of an appeal pursuant to clause 14
of the First Schedule of the
Resource Management Act 1991

BETWEEN **WAYFARE GROUP LIMITED**

Appellant

AND **QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL IN SUPPORT OF APPLICATION
SEEKING WAIVER OF TIME TO FILE SECTION 274 NOTICE TO JOIN
APPEAL**

**GALLAWAY COOK ALLAN
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MAY IT PLEASE THE COURT

1. This application is filed on behalf of Aurora Energy Limited (**Aurora**) in support of an application for waiver of time for filing a section 274 notice in respect of the following proceedings:
 - (a) WAYFARE GROUP LIMITED v QUEENSTOWN LAKES DISTRICT COUNCIL ENV-2019-CHC-076 being an appeal against decisions on the Queenstown Lakes District Council Proposed District Plan (Stage 2) (**PDP Stage 2**).
2. This memorandum is filed in conjunction with an application for waiver of time and a section 274 notice to join the above named appeal.

Interest in the Appellants appeal

3. Aurora has an interest in the Appellants relief to delete section 25.8 Assessment Matters.
4. Aurora have an interest in this relief for the reasons set out in its section 274 notice, filed in conjunction with this memorandum.
5. Aurora is filing a late 274 notice to join the appellants appeal on the basis that relief agreed to in mediations on Topic 17 (Energy and Utilities) as part of the Queenstown Lakes District Council Proposed District Plan (Stage 1) (**PDP Stage 1**) has sought changes to assessment matters in Chapter 25 (Earthworks). The Appellant seeks to remove all assessment matters from Chapter 25 (Earthworks) which will have the effect of voiding the relief agreed to as part of Topic 17 and affect Aurora's interests.
6. At the time that Stage 2 appeals were filed it was not apparent to Aurora that the appeal would affect its interests.

Reasons for waiver

7. Aurora is an appellant in the PDP Stage 1 which has been ongoing since decisions were released in May 2018. Aurora appealed various provisions subject to the PDP Stage 1, including provisions

in Chapter 30 which relates to Energy and Utilities. Aurora sought amendments to protect and manage its electricity distribution infrastructure in the District, including corridor protection rules for Aurora's Regionally Significant lines.

8. Appeals on Chapter 30 were assigned to Topic 17 (Energy and Utilities).
9. Mediation on Topic 17 (Energy and Utilities) took place on 7 – 9 August 2019 and were successful with respect to most of Aurora's appeal point.
10. Decisions on PDP Stage 2 were released on 21 March 2019. The Appellant filed an appeal seeking various amendments to the PDP Stage 2 on 7 May 2019. The period for lodging section 274 notices ended on 5 June 2019.
11. As part of mediations on PDP Stage 1 the parties to Aurora's Stage 1 appeal agreed to alternative relief to resolve the appeal seeking corridor protection rules. That alternative relief involved amendments to the Assessment matters in Chapter 25 (Earthworks).
12. The Appellant seeks relief to delete section 25.8 from Chapter 25 (Earthworks) which includes all of the assessment matters in the Chapter. This will have the effect of voiding the relief agreed to as part of the Topic 17 Energy and Utilities mediation in PDP Stage 1. Given this Aurora wish to join the Wayfare appeal so it may particulate in any further mediations/hearings that may affect its interests in Chapter 25 Assessment Matters.
13. Mediation on Topic 17 Energy and Utilities concluded approximately two months following the deadline to file section 274 notices to join appeals on PDP Stage 2.
14. Aurora reviewed the appeals on PDP Stage 2 and was live to the effects that relief sought might have on Aurora's infrastructure. Aurora was not live to the fact that it might agree (at a mediation which was not yet directed) to alternative relief by way of

amendments to Chapter 25 (Earthworks) Assessment Matters. In essence, Aurora could not have known that the relief sought by the Appellant would affect its interests at the time that it was required to file 274 notice on Stage 2 appeals.

Prejudice

15. In these circumstances, Counsel for Aurora considers there will be no prejudice to other parties arising from the grant of the waiver of time because:
 - (a) Mediations for this topic have only been indicatively scheduled for March 2020 (approximately 5 and a half months from now) and as such preparation for that mediation generally is only in its very early stages and expert evidence preparation is unlikely to have commenced;
 - (b) Aurora's involvement in this appeal is very refined and only seeks to ensure that its relief as part of PDP Stage 1 is retained.
16. Counsel for Aurora have discussed with Counsel for the Appellant and the Council seeking their view on Aurora joining this appeal. Counsel for the Appellant and Counsel for the Council have advised that they do not object to Aurora joining this appeal.

Pre-hearing conference on Stage 2

17. A pre-hearing conference on case management of PDP Stage 2 has been set down for 24 September 2019. The minute from the Court dated 6 September 2019 permits parties to not attend the pre-hearing conference where they instruct other Counsel to appear on its behalf or abides by any directions or orders made at the pre-hearing conference.
18. Counsel for Aurora Energy Limited will not be attending the pre-hearing conference and have not instructed other Counsel to appear on its behalf. If the Court is minded to deal with this application for waiver at the pre-hearing conference then Aurora Energy Limited agrees to abide by any directions or orders made.



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B Irving / S R Peirce

Counsel for Aurora Energy Limited

Dated this 23rd day of September 2019

Cc: Wayfare Group Limited by its Solicitors

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Section 274 parties to Wayfare Group Limited appeal