IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

Decision [2025] NZEnvC 268

IN THE MATTER OF	an appeal under clause 14 to the First Schedule to the Resource Management Act 1991
AND	an application under s 281 of the Act
BETWEEN	TE RŪNANGA O NGĀTI POROU KI HAURAKI INCORPORATED
	(ENV-2025-AKL-121)
	Appellant
AND	HAURAKI DISTRICT COUNCIL
	Respondent
AND	OCEANA GOLD (NEW ZEALAND) LIMITED
	Applicant

Court:	Environment Judge S M Tepania sitting alone under s 279 of the Act
Hearing:	On the papers
Last case event:	7 July 2025
Date of Decision:	13 August 2025
Date of Issue:	13 August 2025

DECISION OF THE ENVIRONMENT COURT ON APPLICATION FOR WAIVER

A: The application by Te Rūnanga o Ngāti Porou ki Hauraki Incorporated to file its appeal out of time is granted.

B: Te Rūnanga is to provide confirmation as to service or file an application to waive service requirements within 15 working days from the date of issue of this decision.

C: There is no order as to costs.

REASONS

Introduction

[1] This matter concerns an appeal by Te Rūnanga o Ngāti Porou ki Hauraki Incorporated (**Te Rūnanga**) against the decision of Hauraki District Council to approve the Oceana Gold (New Zealand) Limited (**Oceana**) Private Plan Change 6 – Extension of Martha Mineral Zone (**MMZ**) to the Hauraki District Plan (**PC6**).

[2] PC6 seeks to rezone 47 properties owned by Oceana so that the properties are included in the MMZ (**expanded zone**). The purpose of the proposed rezoning of the various properties to MMZ, and in doing so extending the extent of the MMZ, is because the MMZ enables an application for a resource consent to be made for surface mining as a discretionary activity, whereas the current zoning of the properties prohibits a resource consent application being made.

[3] The appeal period ended on 16 May 2025. Te Rūnanga filed its appeal on 23 May 2025, being five working days out of time. The appeal was accompanied by an application for a waiver of time to file the appeal. The application for waiver was also supported by further memoranda and affidavits of John Tamihere.[1]

[4] The Council and Oceana opposed the application for waiver. The Council's position was supported by an affidavit of its District Planner, Marina van Steenbergen.[2]

[5] The parties have agreed that the application can be determined on the papers.

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1 Affidavits affirmed on 15 June 2025 and 4 July 2025.
2 Affidavit affirmed on 26 June 2025.

Statutory framework and principles

[6] Section 281(1) of the RMA relevantly provides that:

> (1) A person may apply to the Environment Court to—
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> (a) waive a requirement of this Act or another Act or a regulation about—
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> …
>
> (ii) the time within which an appeal or submission to the Environment Court must be lodged; or
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> …
>
> (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—
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> (a) the appellant or applicant and the respondent consent to that waiver; or
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> (b) any of those parties who have not so consented will not be unduly prejudiced.

[7] 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 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).[3]

[8] It is for the person making the application to satisfy the Court that a waiver should be granted.[4] Whether prejudice is "undue" will depend on the circumstances of the particular case, but ordinarily such prejudice must be greater than that which would necessarily follow the granting of any waiver.[5] Relevant considerations are

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3 *Shirtcliff v Banks Peninsula District Council* EnvC C17/99, 19 February 1999.
4 *Blueskin Energy Ltd v Dunedin City Council* [2017] NZEnvC 57 at [15].
5 *Royalburn Farming Co Ltd v Queenstown Lakes District Council* [2010] NZEnvC 112 at [6].

the extent of the delay in filing an appeal and commitments that have been entered into on the basis that no appeal was filed in time.

The reasons for the application for waiver

[9] Te Rūnanga advised that it is the mandated iwi authority for Ngāti Porou ki Hauraki (**NPKH**). NPKH exercises mana whenua within its rohe, which includes the PC6 area. It submitted that it is in the interests of justice to grant the waiver on the following summarised grounds:

(a) Length of delay – the appeal is only five working days late. Counsel received instructions on the evening of 22 May 2025 and filed the appeal and application one day later.

(b) Reasons for the short delay – the chair of NPKH, John Tamihere, is also the President of Te Pāti Māori. Mr Tamihere was unable to organise the filing of an appeal prior to the appeal deadline as the Māori Pāti was dealing with parliamentary issues.

(c) Limited prejudice to other parties – no other appeals have been filed and it is unlikely that significant steps have as yet been undertaken in reliance on the plan provisions. It is settled law that undue prejudice requires "prejudice greater than that which would necessarily follow in every case from waiving compliance with the time for appealing".[6] Further, Te Rūnanga submitted that it is the prejudice (if any) to the parties to this proceeding that is relevant for the Court to consider under s 281(2), not unspecified third parties.[7]

(d) Progress to date and effect of introducing new parties – Te Rūnanga submitted that the time and cost implications of granting the waiver are a necessary consequence of any appeal. The Court has previously found "the fact that a grant of a waiver of time would mean that a valid

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6 *Baker v Wellington City Council* (1992) 2 NZRMA 113, at pp.116-117; and endorsed in *Edwards v Kāpiti Coast District Council* EC Wellington, W37/99, 9 March 1999, at [9]; and *Waste Management NZ Ltd v Auckland Council* [2016] NZEnvC 198, at [13].

7 *McKenzie v Rodney District Council* EC Auckland A094/01, 18 September 2001, at [38].

appeal would exist is not grounds in itself to find the applicant is unduly prejudiced".[8]

(e) Flaws in plan change process – NPKH has advised that there was no meaningful engagement undertaken with them through the plan development process. This resulted in NPKH being unable to prepare a cultural impact assessment and Oceana, and consequently the hearing panel, being unaware of the cultural values and impacts of PC6 on NPKH.

(f) Lack of recognition of NPKH as mana whenua – the Council's position that NPKH is not mana whenua has led to a flawed process. The fact that the Council maintains its position that NPKH is not mana whenua, despite the significant amount of evidence to the contrary, reinforces the need for the Court to allow the appeal. In support of its submission Te Rūnanga referenced the High Court's observation in *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* that:[9]

> …indifference to a claim by an iwi to mana whenua and what that means to to that iwi, is the antithesis of recognising and providing for their relationship with that whenua.

(g) Prejudice to NPKH – PC6 rezones properties to allow applications for mining to occur in areas where such applications were previously prohibited. Te Rūnanga submitted that such mining activity will have significant environmental and cultural effects, including the loss of mauri, degradation of wai Māori, noise and vibration effects on fauna, taonga species and wairua, and desecration of cultural landscapes and values. It will impact on NPKH's ability to carry out kaitiakitanga and its material future interests in land associated with and adjacent to the Waihī School (which is anticipated as part of a Treaty Settlement).

(h) Public interest – Te Rūnanga submitted that the public interest is better

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8 *Edwards v Kāpiti Coast District Council* W37/99, EC Wellington, 9 March 1999, at [10].

9 *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768.

served by enabling a late appeal, so that the procedural and substantive concerns of NPKH can be fully ventilated through an appeal process.

(i) RMA Part 2 – Sections 6(e), 7(a) and 8 contain strong directions that must be borne in mind at every stage of the decision-making process and that they apply to both substantive and procedural decisions. To appropriately recognise and provide for NPKH's relationship with its whenua and to give the requisite degree of consideration to NPKH's kaitiakitanga interests and the principles of the Treaty, Te Rūnanga submitted that NPKH should be given an opportunity to have its reo heard.

(j) Scheme of the Act relating to public participation – Te Rūnanga submitted that there is no requirement to "fully engage" in the Council hearing process in order to appeal, any submitter who made a submission has a right of appeal whether or not they participated in the Council-level process. It submitted that a lack of participation should not be regarded as a lack of interest, nor disrespect. It is simply a reflection of an iwi representative body who has not settled their Treaty claims and lacks resourcing, relying on iwi members volunteering their time.

The Council's response

[10] The Council opposes the grant of the waiver on the grounds that:

(a) NPKH's rohe does not encompass the area subject to PC6. The Council maintains that NPKH's assertion that its rohe includes the PC6 area relied on a map from Te Kāhui Māngai Directiory (**TKM**) hosted by Te Puni Kōkiri. The Council noted that that directory does not depict the subject land, in the immediate vicinity of the Martha Pit in Waihī, as falling within the rohe of NPKH. The Council's identification of mana whenua for the purposes of PC6 included Ngāti Hako, Ngāti Tara Tokanui and Ngāti Tamaterā. Those iwi were notified as mana whenua parties.

(b) NPKH was provided sufficient notice and opportunity to participate. Notification was sent on 13 February 2024, accompanied by the Notification Summary and Public Notice. The Council submitted that NPKH did not attend or participate in the hearing, nor did it table any material in support of its submission. It now seeks to appeal the outcome of the Private Plan Change Request with which it chose not to engage at the appropriate procedural stage.

(c) there is no material impact on NPKH's current or future land interests. The Council disagreed with NPKH's assertion that PC6 will impact its material future interests in land near Waihī School. Its decision explicitly excluded land in the vicinity of Waihī Central School and the Town Centre from rezoning to MMZ. It submitted that claims based on the possibility of Treaty settlement redress do not confer mana whenua status or procedural rights within the statutory planning framework.

(d) the Council's consultation and cultural assessment was robust. The Council highlighted that the PC6 application contains an extensive cultural matters section. It identifies mana whenua engagement, including with NPKH, and outlines how the proposed provisions aim to recognise cultural values and the significance of Pukewa Maunga (Martha Hill).

(e) granting the waiver would prejudice the interests of other parties who have participated in good faith and in accordance with statutory timeframes.

(f) there is no explanation from NPKH as to why it failed to engage fully despite being notified, nor is there evidence of exceptional circumstances justifying its delay.

Oceana's response

[11] Oceana agrees with the points raised in the Council's memorandum. It opposes the grant of the waiver on the grounds that:

(a) NPKH does not have mana whenua status for the PC6 area; and

(b) granting the waiver would cause undue prejudice.

[12] In support of its position it referred to the following excerpt from the Court's decision in *Church v Hawke's Bay Regional Council*:[10]

> [10] The negative nature of the test is to be noted — the Court may not grant a waiver unless it is satisfied that there will be no undue prejudice. It will always be the case that some degree of prejudice will arise if a party has received the grant of a resource consent and, after the appeal time has apparently elapsed, then finds that a waiver has been granted and an appeal then has to be dealt with. The issue is whether the prejudice is undue.

[13] It also cited the following statement by the Court in *Baker v Wellington City Council*:[11]

> Factors which have contributed towards findings of undue prejudice have included the amount of money involved or at risk (Terekia v Gisborne District Council Decision W109/95); the level of expenditure already committed to a project (Vink v Hikurua Holdings (High Court Auckland M1748/89; 8/11/90 Jeffries J)); and the fact that an applicant has waited longer than the statutory period for appealing before taking steps to exercise the consent (Terekia, supra).

[14] Oceana submitted that there is undue prejudice in the present case because Te Rūnanga's appeal "was completely out of left field" and raises matters not raised in its submissions on PC6, matters already addressed in the panel's decision. Unlike submitters whose concerns were addressed in the recommendations, NPKH chose not to participate in the hearing. Oceana therefore considers it unduly prejudicial for Oceana and the Council and for the other submitters to now have to relitigate (or await the relitigation of) these issues.

[15] PC6 allows Oceana to undertake demolition of residential buildings in the expanded zone as a permitted activity and Oceana has begun planning for the demolition of one residence it owns within the expanded zone as part of a programme of regeneration of its housing stock in Waihī. Oceana submitted that, if the appeal proceeds and demolition cannot be advanced as a permitted activity in

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10 *Church v Hawke's Bay Regional Council* [2012] NZEnvC 20 at [10].

11 *Baker v Wellington City Council* [1997] ELHNZ 5.

the meantime, there will be resulting delay and additional cost to Oceana in obtaining authority for the demolition and, further, inconvenience to third party owners of a neighbouring property if they move into their new neighbouring home before demolition work is completed.

[16] Oceana submitted that NPKH's reason for its failure to appeal within the statutory timeframe does not justify the granting of a waiver.

[17] Oceana's view is that NPKH's failure to participate in the first instance hearing and its failure to appeal within the statutory timeframe is suggestive of some degree of disrespect for the statutory processes set out in the RMA and therefore should not be rewarded by granting the waiver sought.

[18] Oceana noted that there are no other appeals on PC6 and the effect of granting the waiver application would be to commence a proceeding that would otherwise not occur, with associated time and cost implications for Oceana and the Council. Oceana submitted that this is quite different to a scenario where an appeal is already underway and new parties are seeking to join. It considers this to be a factor that should weigh more heavily against granting a waiver.

Evaluation

[19] There are two tests to be met by an applicant relying on s 281. The first test, derived from s 281(1), is whether the Court should exercise its discretion to grant the waiver or directions sought. The second test relates to whether there is any undue prejudice to the parties to the proceeding as set out under s 281(2) and (3).[12]

[20] Therefore, the consideration of applications under s 281 is a two-step process. Firstly, the Court is required to make a determination as to whether or not the parties to the proceedings will be unduly prejudiced if the waiver is granted. Secondly, if no party is unduly prejudiced, the Court must determine the waiver application on its merits.

[21] The Council and Oceana submit that allowing the appeal will cause undue

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

prejudice. Undue prejudice means prejudice greater than that which necessarily follows in every case from granting a waiver.[13]

[22] I am not satisfied that the Council has made out how allowing Te Rūnanga's appeal will cause it to be unduly prejudiced. I also concur with Te Rūnanga that its decision not to participate in the Council-level hearing does not bar it from lodging its appeal. That is not a requirement for Schedule 1 appeals, nor is it a requirement to consult with parties prior to filing an appeal.

[23] Oceana has pointed to time and costs implications that would necessarily flow from waiving compliance with the time for appealing. The Court has established that factors which may contribute towards a finding of undue prejudice include the amount of money involved or at risk; the level of expenditure already committed, and the fact that an applicant (or in this case, requestor) has waited longer than the statutory period for appealing before taking steps to exercise the consent.[14]

[24] Oceana has not provided the Court with any specific information as to the amount of money involved or the degree of risk. As observed by the Court in *Edwards*, it may well be prudent business practice not to rush into commitments without making allowances for technical mistakes as to time, as has occurred in this case.[15]

[25] For the above reasons, I find that no party occasioned will be unduly prejudiced by the grant of the waiver of the time requirement for lodging the appeal. The principal effect of undue prejudice might accordingly be on some other submitters who, not having filed an appeal themselves, might not be aware of the existence of an appeal which they could support or oppose. I address that issue below.

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13 *Reilly v Northland Regional Council* (1992) 2 NZRMA 414.

14 *Edwards v Kapiti Coast District Council* ENC Wellington W37/99, 9 March 1999, at [9], referencing *Noel Leeming Appliances v North Shore City Council* (1992) 2 NZRMA 113; *Reilly v Northland Regional Council* (1993) 2 NZRMA 414; and *Shardy v Wellington City Council* Decision W83/92, as noted by His Honour Judge Sheppard in *Baker v Wellington City Council* A 121/97, and cited by His Honour Judge Jackson in *Shirtcliff v Banks Peninsula District Council* C17/99.

15 *Edwards v Kapiti Coast District Council* ENC Wellington W37/99, 9 March 1999, at [12].

[26] *Omaha Park Ltd v Rodney District Council*[16] helpfully provides a list of some factors the Court may take into consideration in determining whether to exercise its discretion in granting a waiver under s 281:

(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 happened in the proceedings in the meantime; and

(e) what effect introducing new parties might have on progressing the appeal to resolution.

[27] I accept Te Rūnanga's submission that the delay in filing its appeal is minor. Further, I accept that NPKH is staffed by volunteers that must balance voluntary work|mahi with other paid work|mahi, and that this affected NPKH's ability to file its appeal in a timely manner. I am prepared to extend some leniency to Te Rūnanga on the basis that it relies on a voluntary workforce and consider its reasons for delay to be adequate.

[28] One of the central tenets of the RMA is public participation. The reasons for this are two-fold, first to recognise and protect as appropriate the particular rights and interests of those affected and more general public interests and, second, to enhance the quality of the decision-making.[17] Having regard to the public participatory principles underlying the RMA, and the importance of recognising the relationship of Māori with their ancestral lands in accordance with s 6 of the Act, I consider that there is merit in allowing NPKH's appeal.

[29] While there have been a number of submissions around NPKH's mana whenua status, I am not inclined to further address those submissions or make a determination on the matter at this time. NPKH was notified as a potentially affected party, made a submission on PC6 raising its concerns about the plan change

16 *Omaha Park Ltd v Rodney District Council* ENC Auckland, A046/08.
17 *Westfield (NZ) Ltd v North Shore City Council* [2005] NZSC 17.

in a general way, then refined its relief in its purported appeal. Notwithstanding the minor delay, there is nothing about NPKH's appeal or the way that NPKH has participated in the Council process that undermines its standing as a potential appellant under Schedule 1 of the RMA.

[30] For the reasons above, I hereby grant the application for a waiver of time for the filing of NPKH's appeal.

[31] The application does not seek a waiver of the service requirements captured under clause 14 of Schedule 1, nor is there any indication that other submitters on PC6 have been served with a copy of the appeal. I therefore make directions for Te Rūnanga to either provide confirmation that service has been completed on other submitters or make an application to waive service requirements.

Outcome

[32] The application by Te Rūnanga o Ngāti Porou ki Hauraki Incorporated to file its appeal out of time is granted.

[33] Te Rūnanga is to provide confirmation as to service or file an application to waive service requirements within 15 working days from the date of issue of this decision.

[34] There is no order as to costs.

S Tepania

S M Tepania
Environment Judge | Kaiwhakawā i te Kōti Taiao