

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 034

IN THE MATTER OF

decision on application for waiver of
time to file a s 274 notice

BETWEEN

MCCALLUM BROS LIMITED

(ENV-2022-AKL-121)

Appellant

AND

AUCKLAND COUNCIL

Respondent

AND

PAKIRI G AHU WHENUA TRUST

(and others as set out in Appendix A)

Section 274 Parties

Court: Judge J A Smith sitting alone pursuant to s 279 of the Act

Hearing: On the papers

Last case event: 24 February 2023

Representatives: J MacRae and N Hopkins for McCallum Bros Limited
(Appellant)

L Bielby and K Fraser for Auckland Council (Respondent)

D van Mierlo, J Gooding and L Sutherland for Director-General
of Conservation (Applicant for waiver)

D Clapshaw (s 274 party)

J Campbell and S Schlaepfer for Environmental Defence Society
Incorporated (s 274 party)

D Nolan KC, J Campbell and N Williams for Friends of Pakiri
Beach Incorporated (s 274 party)

R Greenwood (s274 party)

J Carnie, K Littlejohn, S van Woerden for Mangawhai Harbour
Restoration Society Incorporated (s 274 party)

J Pou and T Ulrich for Manuhiri Kaitiaki Charitable Trust (s 274
party)



W Greenwood and W Brown for Pakiri G Ahu Whenua Trust
(s274 party)

M Downing for Royal Forest and Bird Protection Society of NZ
Incorporated (s274 party)

A Scharing and H Atkins for Tara Iti Golf Club Limited, Te Arai
Links; Te Arai North Limited; Te Arai Residents' Association
Incorporated; Te Arai South Holdings Limited (s 274 parties)

V Morrison-Shaw and O Haddon for Pakiri Te Whanau
Community Group Incorporated (known as Te Whanau o Pakiri)
(s 274 party)

Sherie Wikaira (s 274 party)

Date of Decision: 28 February 2023

Date of Issue: 28 February 2023

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

A: Under s 281 of the Resource Management Act 1991 the application for waiver of time for the Director-General of Conservation to join the proceeding ENV-2022-AKL-121 as a s 274 party is granted.

B: Costs are reserved.

REASONS

Introduction

[1] This appeal relates to an declined application for sand mining in the Pakiri offshore area. There are associated appeals relating to the inshore and midshore areas.

[2] The Director-General of Conservation has filed a late s 274 notice and sought a waiver of time under s 281 RMA. The interested party period ended on 20 June 2022 and this application was filed some seven months later on 19 January 2023.

Position of parties in relation to the application

[3] The Court notes there are a number of parties already involved in these appeals

and most have a common interest in all three applications (offshore, midshore and inshore).

[4] The majority of parties consent to the joinder of the Director-General of Conservation to the offshore appeal as a s 274 party.

[5] Originally Manuhiri Kaitiaki Charitable Trust opposed the application by the Director-General of Conservation but now supports it, and does not oppose the Director-General's involvement in the inshore or midshore applications.

[6] The application for joinder is not opposed by Auckland Council or McCallum Bros Limited.

[7] The application is opposed by Sherie Wikaira (s 274 party) who was ahi ka to land on the Pakiri coastline. This is Whanau land unrelated to the Ngati Manuhiri settlement.

[8] The other opposition is from the Pakiri G Ahu Whenua Trust and R Greenwood (s 274 parties). Their position is that they oppose all sand mining, inshore, midshore or offshore. They are concerned that the Director-General seeks to allow grant of the offshore consent. The Pakiri G Ahu Whenua Trusts states that it represents around 173 owners/beneficiaries (as well as Tara Iti (fairy terns) who nest on the beach. Mr W Greenwood also opposes the application in his own name, although this appears to be by virtue of the s 274 notice for Pakiri G Ahu Whenua Trust.

Consideration

[9] This Court has not heard the evidence in relation to the three applications. It is unclear to the Court at this stage why the applications have been broken down in the way they have. I conclude having read the applications there is likely to be a strong degree of crossover between the various areas, and bathymetric conditions and movement of sand are not likely to comply strictly with the demarcations provided for inshore, midshore and offshore sand mining areas.

[10] The Director-General of Conservation is opposed to the grant of any consent for inshore sand mining. Equally, they support the refusal of the Council to grant the midshore consent. Their position in relation to the offshore application is at this stage unclear to this Court.

[11] The parties, including the Director-General of Conservation, are already on a timetable to hearing and the evidence should clarify the positions of the parties.

Conclusion

[12] I understand the concerns of the Pakiri G Ahu Whenua Trust, Ms Wikaira and Mr Greenwood. However this is a complex case and the Court would be best assisted by having full information from the parties to the hearing. It would be difficult to demarcate what evidence for the Director-General might relate to offshore appeals if it was of general bathymetric or hydrological nature or relating to movement of sand which could easily cross all of the boundaries.

[13] Accordingly, I have concluded that notwithstanding the opposition of several of the parties, a waiver should be granted. I note that normally such a waiver would not be granted after this length of time. I have concluded that the waiver should, on an exceptional basis, be granted on this occasion for the following reasons:

- (a) the Director-General of Conservation is an original appellant;¹
- (b) it filed a s 274 notice in relation to the inshore application appeal by McCallum Bros Limited;²
- (c) it has participated in the judicial conferences;
- (d) it is difficult to demarcate how evidence could exclude any of the various areas and much of the evidence is likely to cover the general Pakiri coastline including the sources of sand and the movement into and within the area; and

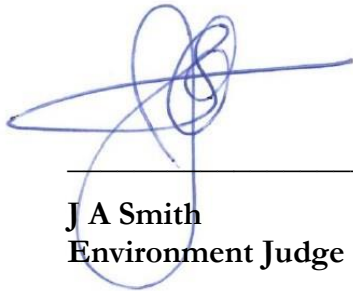
¹ ENV-2022-AKL-000234 (midshore consent application).

² ENV-2022-AKL-000220 (inshore consent application)

- (e) involvement of the Director-General in this aspect of the appeal will assist the Court to have the fullest information available to reach an appropriate decision.

Final comment

[14] This s 274 notice should have been filed well before January 2023. Costs may be an issue in due course. I reserve that issue for the time being, pending the substantive outcome on the appeals. This comment should not be taken as an indication that costs should or would be awarded in respect of this application for waiver.



J A Smith
Environment Judge



Annexure A
Section 274 parties

D CLAPSHAW

ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED

FRIENDS OF PAKIRI BEACH INCORPORATED

R GREENWOOD

MANGAWHAI HARBOUR RESTORATION SOCIETY INCORPORATED

MANUHIRI KAITIAKI CHARITABLE TRUST

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND
INCORPORATED

TARA ITI GOLF CLUB LIMITED

TE ARAI LINKS

TE ARAI NORTH LIMITED

TE ARAI RESIDENTS' ASSOCIATION INCORPORATED

TE ARAI SOUTH HOLDINGS LIMITED

TE WHANAU O PAKIRI

S WIKAIRA