

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed District Plan Hearings of the  
Central Hawke's Bay District Council

**BEFORE** A Special Purpose Committee (Hearing Panel of  
Commissioners) appointed by the Central  
Hawke's Bay District Council

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**Second Memorandum and Direction of the Hearings Panel**

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**Introduction and Summary**

1. Officers involved with managing the Central Hawke's Bay Proposed District Plan process have referred two matters to the Hearings Panel for consideration:
  - a. Whether, in light of some submitters not having received notice of the availability of the summary of submissions, an extension of time for making further submissions should be made; and
  - b. Whether submitters who have self-identified as trade competitors might be excluded from pursuing their submission.
2. For the reasons set out below, we make the following directions:
  - a. The time within which further submissions must be made is extended to **9 November 2021**.
  - b. Submitters 98 – Hatuma Lime Company and 102 – Te Mata Mushrooms Land Company Ltd are directed, by **22 November 2021**, to provide further information as to whether, and in what respect, they would gain an advantage in trade competition through their submission, and whether, and in what respect, they would be directly affected by an effect of the Proposed District Plan.

**Matter 1 - Extension of time for Further Submissions**

***Background***

3. Central Hawke's Bay District Council publicly notified the availability of the summary of decisions sought on the Proposed District Plan on 11 October 2021. In accordance with cl 7(2), First Schedule Resource Management Act 1991, a copy of the public notice was served on all submitters, through their address for service, which in most cases was by email.
4. The Council used the 'mailchimp' programme to send the required email. This programme tracks when emails are sent and opened by each recipient. Around 20 October 2021, officers became aware that some submitters may not have received the email notice regarding the

availability of the summary. On further checking of the mailchimp tracking, it appears that, while emails were successfully sent to all recipients, and that Council had successfully discharged its responsibilities under the RMA, approximately 40 were not recorded as having opened the email.

5. On 20 October, officers sent follow-up emails (through Outlook) to those persons identified as not having opened the email. One recipient recorded that the original email was located in the 'junk' folder, and others state that they cannot locate it at all. Officers suspect that the email has been intercepted by some recipients' email filtering system and wrongly identified it as junk or spam.
6. While the Council met its statutory obligation by sending the email, and also provided information about the notification on the website and through the media, it wishes to ensure that all participants in the Proposed District Plan process have an appropriate opportunity to consider the summary and make further submissions if they consider that appropriate. They have therefore requested that the Hearings Panel make directions in relation to the time within which further submissions are required to be filed.
7. The Panel has the delegated power to extend timeframes in accordance with sections 37 and 37A RMA).
8. Officers have identified three options in terms of the group to which the extension would apply, namely:
  - a. The wider public;
  - b. All submitters who were required to be sent notice of the availability of the summary of submissions (123 persons);
  - c. Those submitters who were sent notice of the availability of the summary by email and there is evidence they did not receive it (approximately 40 persons).
9. We have considered all options when applying our discretion.

#### **Relevant matters**

10. In exercising our delegated authority to extend a timeframe, the following provisions are relevant.
11. Section 37(1) RMA provides:

***37. Power of waiver and extension of time limits-***  
*(1) A consent authority or local authority may, in any particular case, -*  
*(a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; ...*
12. The Panel may therefore exercise discretion to extend the period within which further submissions may be filed (the default period being 10 working days pursuant to cl 7(1)(c)).
13. The Panel cannot exercise this discretion until it has complied with the provisions of Section 37A if the Resource Management Act 1991 which states that a local authority must not waive compliance with a time limit in accordance with Section 37 unless it has taken into account:

*(a) The interests of any person who, in its opinion, may be directly affected by the ... waiver; and*

*(b) The interests of the community in achieving adequate assessment of the effects of the proposal, policy statement, or plan; and*

*(c) Its duty under Section 21 to avoid unreasonable delay.*

14. Further, under Section 37A (6), a local authority must ensure that every person who, in its opinion, is directly affected by the waiver of compliance with the time limit is notified of the extension.
15. Section 37A(2) provides that the time limit may be doubled, or that can be exceeded if the 'applicant or consent authority' agrees. We consider that if an extension is to be granted, doubling the default 10 working day period would be appropriate, so that the new date would be 9 November 2021. By 20 October 2021, all submitters were aware that the summary of submissions was available. The date of 9 November provides more than 10 working days for those parties to review the summary and prepare any necessary further submissions. A longer period would not, in our view, be justified.

### **Analysis**

#### **Interests of any person who may be directly affected by the extension of time**

16. The primary interests are of those submitters who wish to make further submissions but did not know the summary of submissions was available and that a closing date had been set. Extending the date will give those persons full opportunity to participate in the Proposed District Plan process.
17. All others would be further submitters who will benefit from having additional time provided.
18. Those submitters against whom further submissions are made may benefit from having further submissions made in support of their relief sought, or may be adversely affected by having further submissions oppose their relief sought. We do not consider this amounts to a material prejudice that should prevent us from extending the timeframe.

#### **The interests of the community in achieving adequate assessment of effects of the proposed district plan**

19. It is in the interest of the community to test the provisions of the PDP and allowing a full opportunity for further submissions to be made will assist that process. It is also a matter of natural justice to allow the fullest participation in the development of policy under the RMA.

#### **The Council's duty under Section 21 to avoid unreasonable delay**

20. The extension of time for receipt of further submissions is not anticipated to cause unreasonable delay in terms of the next stage, which is preparation for hearings of submissions. As further submissions can only support or oppose relief sought, delay in receiving further submissions should not substantively delay officers from making a starting on their assessments.

### **Directions**

21. Having had regard to all matters above, on balance, we consider the most straightforward and fairest approach is to grant a blanket extension of time for the filing of further submissions to 9 November 2021.

22. While this will be a windfall to some who knew of the availability of the summary from 11 October, we do not consider any person will be disadvantaged by the extension of time. Having taken into account the matters set out in Section 37A RMA, and in accordance with the authority delegated to us, we have resolved to extend the time for filing of further submissions to 9 November 2021.
23. The Council is directed to notify all submitters of the revised date, through their address for service. While the revised date will be updated on the Council's website, we do not consider that the public is 'directly affected' as such and therefore do not require that the new date be the subject of public notice.

## **Matter 2 – Trade Competitors**

### ***Background***

24. Clause 6, First schedule RMA provides that, while any person may make a submission on the Proposed District Plan, "*if the person could gain an advantage in trade competition through the submission, the person's right to make a submission is limited by subclause (4).*" Subclause (4) provides:

*A person who could gain an advantage in trade competition through the submission may make a submission only if directly affected by an effect of the proposed policy statement or plan that—*

  - (a) adversely affects the environment; and*
  - (b) does not relate to trade competition or the effects of trade competition.*
25. These requirements are reflected in the prescribed form for submissions.
26. In preparing the summary of submissions, officers have identified 3 submissions<sup>1</sup> which have stated the submitters could gain an advantage in trade competition through the submission, 2 of which<sup>2</sup> have stated they are not directly affected by an effect of the Plan that adversely affects the environment. If that is correct, then those 2 submitters are not able to pursue their submission.
27. Officers have advised that the content of these submissions do not obviously raise issues of trade competition, and it may be that the submitters have misunderstood the requirements of clause 6(4) and (5).
28. Officers have identified the following options for dealing with the 2 submissions:
  - a. Treat the submissions as invalid on the basis of cl 6(4) without further enquiry; or
  - b. Determine whether there is jurisdiction to consider the submissions as a preliminary matter; or
  - c. Determine whether there is jurisdiction to consider the submissions as part of the hearings process.

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<sup>1</sup> Submitters 98 – Hatuma Lime Company, 102 – Te Mata Mushrooms Land Company Ltd, and 104 – Regeneration Holdings Ltd

<sup>2</sup> Submitters 98 – Hatuma Lime Company and 102 – Te Mata Mushrooms Land Company Ltd

29. Their preference is for option (b) on the basis that:
- a. It seems likely that the submitter has misunderstood the requirements so treating the submission as invalid without further enquiry would be unfair;
  - b. However, having self-identified as being excluded by cl 6(4), it would be inappropriate to treat the submission as valid without further enquiry;
  - c. The Panel should determine whether or not there is jurisdiction to proceed sooner rather than later, to avoid participants (including the submitters, any further submitters and Council) incurring time and cost in relation to a submission that may later be determined to be invalid.
30. The Panel agrees with that reasoning.

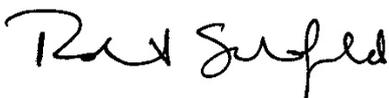
**Relevant matters**

31. Section 41C(2) RMA empowers us to *“request a person who has made a submission to provide further information”*.
32. We consider it appropriate for the relevant submitters to provide further information as to the reasons for their answers regarding their trade competitor status. It may be that the submitters realise the declarations were made in error. If that is the case, we would not anticipate an issue with a waiver being granted to correct the error on the submission form, however we will make that determination in due course if necessary.
33. In any event, the submitters should provide sufficient information on which to allow the Panel to consider whether the terms of clause 6(4) and (5) are satisfied, so that it can determine whether the submissions have been validly made.

**Directions**

34. Submitters 98 – Hatuma Lime Company and 102 – Te Mata Mushrooms Land Company Ltd are directed, by **22 November 2021**, to provide further information as to whether, and in what respect, they would gain an advantage in trade competition through their submission, and whether, and in what respect, they would be directly affected by an effect of the Proposed District Plan.

Special Purpose Committee: Independent Hearing Commissioners Schofield (Chair), Maaka, Lovell and Crs Atkin, Taylor and Burne.



Robert Schofield  
Chair  
21 October 2021