

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

Third Memorandum and Direction of the Hearings Panel

Introduction

1. Two matters have been referred to the Panel for directions, namely:
 - a. Whether waivers should be granted in respect of further submissions which were lodged after the extended closing date; and
 - b. Confirmation of whether submissions by Hatuma Lime Company and Te Mata Mushrooms can be accepted, given the indication in their submissions that they could gain an advantage in trade competition and are not directly affected by an effect of the PDP that adversely affects the environment.
2. Resolutions in respect of each matter are set out below.

Late Further Submissions

3. The Proposed District Plan (PDP) was publicly notified and open for submissions on 28 May 2021 with the closing date for submissions being 6 August 2021.
4. The Summary of Submissions on the Proposed District Plan was notified for the filing of further submissions on 11 October 2021. Since the closing date for further submissions (extended to 9 November 2021 (Ref Minute 2)), the Council has logged the receipt of a number of late further submissions.
5. The Panel has the delegated power to consider late submissions in accordance with sections 37 and 37A of the Resource Management Act 1991 (RMA).
6. This Minute addresses further submissions that were received by Council after 5.00pm on Tuesday 9 November 2021, and encompasses all submissions that might be received from that date up to 5pm on Wednesday 17 November 2021.

Procedure for Receipt of Late Submissions

7. In exercising our delegated authority to consider a waiver of time for the lodging of further submissions, the following provisions are relevant.
8. 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; or

(b) waive a failure to comply with a requirement under this Act, regulations, or plan for the time or method of service of documents ...
9. The Panel may therefore exercise discretion to receive further submissions made out of time by waiving, in those cases, the failure to comply with the deadline for the close of further submissions on the PDP.
10. The Panel cannot exercise this discretion until it has complied with the provisions of Section 37A of 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.
11. 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.

Analysis

12. Interests of any person who may be directly affected by the waiver

The interests of the persons who have made further submissions out of time will be served by the grant of a waiver, in that they will have the opportunity to have their views on submissions on the PDP considered by the Panel in due course.

No person is considered to be adversely affected by the grant of a waiver of time. Hearings are not scheduled to commence until 2022, and no person will be prejudiced in terms of their preparation for hearing by the acceptance of late further submissions. It is not considered that accepting further submissions up to 17 November will have any material effect on any other person.

13. The interests of the community in achieving adequate assessment of effects of the proposed district plan

The further submissions raise matters that can be addressed through the hearings process on the PDP and that are within the scope of matters raised by other submissions. It is in the interest of the community to test the provisions of the PDP and these further submissions 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.

14. The Council's duty under Section 21 to avoid unreasonable delay

The receipt of the late further submissions is not anticipated to cause an unreasonable delay in terms of the processing of the Proposed District Plan generally. There is no risk to the Council's ability to meet its duty to avoid unreasonable delay.

15. A local authority must ensure that every person who, in its opinion, is directly affected by the waiver of compliance with a time limit is notified of the extension

The only persons considered to be affected by the waiver at this stage are the persons who made the late further submissions. These further submitters would be notified in writing that a waiver has been granted in respect of their further submission.

16. The Panel note the requirement for further submitters to serve their further submission on the original submitter within 5 working days, and assume this requirement has been complied with.

Consideration of Submissions raising Trade Competition Issues

17. Our Second Memorandum and Direction of the Hearing Panel noted that three submissions had identified that these submitters could gain an advantage in trade competition and two of those stated they were not directly affected by an effect on the environment. We directed that the submitters should have the opportunity to provide further information before we decided whether their submissions should be heard.

18. On 17 November 2021, Ms Price provided a letter on behalf of the two submitters in question, Hatuma Lime Company and Te Mata Mushroom Land Company Ltd, recording that sections 3 and 4 (which relate to clause 6(3) and (4) of Schedule 1, Resource Management Act 1991) had been incorrectly filled in on the submission forms for both submitters.

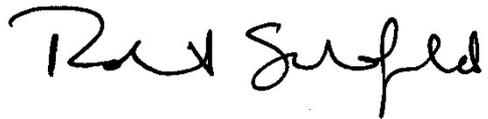
19. Having read her explanation, we are satisfied that neither submitter could gain an advantage in trade competition by their submission, and both submissions can continue to be heard in the usual way.

RESOLUTION

1 - 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 accept all late submissions that have been received by Council before 5pm on 17 November 2021.

2 – Having taken into account Ms Price’s explanation in her letter dated 17 November 2021, we note the error in the submission forms filed for Hatuma Lime Company and Te Mata Mushroom Land Company Ltd and record our view that neither company is precluded from pursuing its submission by Clause 6(3) or (4), First schedule, Resource Management Act 1991.

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

A handwritten signature in black ink, appearing to read 'Rob Schofield', written in a cursive style.

Robert Schofield
Chair
18 November 2021

Late further submissions

Further Submitter No	Further Submitter Name	Date received
FS25	Federated Farmers of New Zealand	9/11/2021
FS24	New Zealand Motor Caravan Association	9/11/2021
FS27	Livingston Properties Limited	10/11/2021
FS26	Jeff Phillips	10/11/2021
FS28	Liz Munroe	11/11/2021
FS29	Water Holdings Hawke's Bay	16/11/2021
FS1	Tukituki Water Security Project	16/11/2021