

**IN THE MATTER**

of the Resource  
Management Act 1991

**AND**

**IN THE MATTER**

of Submissions and Further  
Submissions on the  
Proposed Wellington City  
District Plan

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**Minute 3:**

**Late Submissions and Further Submissions**

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## **Introduction**

1. Mr McCutcheon's Overview Section 42A Report records receipt of seven late submissions and six late further submissions in paragraphs 42 and 48 respectively. He recommends that these late submissions and further submissions be accepted.
2. In addition, the Hearing Panel has received an application from Counsel for the Board of Airline Representatives NZ Inc (**BARNZ**) for a waiver in respect of its late further submission, lodged 21 December 2022, that Mr McCutcheon does not discuss.
3. The purpose of this Minute is to make directions in respect of these late submissions and further submissions.

## **Jurisdiction**

4. Section 37 of the Act provides a general authority for the Council to waive time limits. The Council has delegated procedural powers relating to the PDP hearings to the Hearing Panel. That includes the power of waiver.
5. Section 37A of the Act states that the general power of waiver may only be exercised if the Council has taken into account:
  - (a) The interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
  - (b) The interests of the community in achieving an adequate assessment of the effects of (in this case) the PDP; and
  - (c) The Council's duty under Section 21 to avoid unreasonable delay.
6. Section 37A(2) provides further that a time limit may be extended for a time not exceeding twice the maximum time period specified in the Act, subject to an exception that does not apply in this case. There is no maximum time period for the lodging of submissions (the Act states only a minimum time period). There is, however, a time period for further submissions. Clause 7(1)(c) of the First Schedule fixes a maximum time of ten working days from the date public notice is given.

7. There is no requirement for a formal application for waiver to be made under section 37 or 37A<sup>1</sup> although, as discussed below, we have such an application from counsel for BARNZ.
8. As there are no rights of appeal in respect of decisions under Section 37, there is little case law to guide the decision-making process. We draw guidance, however, from the principles established on the context of the Environment Court's power to grant waivers under Section 281.
9. We note, in particular, the Court's observation in *Omaha Park Limited v Rodney DC*<sup>2</sup>, that the Act "*encourages participation (in an orderly way, certainly) in the decision-making process, with the general philosophy that the possible inconvenience, delays and costs cause are hopefully outweighed by better informed decision-making and better environmental outcomes*".

### **Late submissions**

10. Mr McCutcheon advises that six of the submissions in question (Submission #482: Living Streets Aotearoa; Submission #483: Hilary Carr; Submission #484: Escape Investments Limited; Submission #485: House Movers Section of the New Zealand Heavy Haulage Association Inc; Submission #486: Zealandia Te Māra a Tāne; Submission #487: The Thorndon Society Inc) were received one day out of time, on 13 September 2022, and that the final submission, that of Te Rūnanga o Toa Rangatira (Submission #488) was received on the following day, 14 September 2022.
11. It is difficult to conceive how any party to the PDP process might be prejudiced by submissions being lodged a maximum of two days out of time. We consider that the interests of the community in obtaining as much constructive feedback as possible on the PDP clearly favour grant of waiver and the delay of a maximum of two days could scarcely be considered unreasonable.
12. Accordingly, we accept Mr McCutcheon's recommendation and waive the failure to lodge the above submissions within the requisite time.

### **Further Submissions**

13. The six further submissions noted by Mr McCutcheon were:

<sup>1</sup> *Butel Park Homeowners Assn v Queenstown Lakes DC* (2007) 13 ELNZ 104,

<sup>2</sup> A46/98; quoted with approval in *Royal & Forest Protection Society Inc v Southland DC* [2015] NZEnvC 60

- Further Submission #131: Elayna Chhiba - received 4 December 2022;
  - Further Submission #132: Rachel Leilani – received 5 December 2022;
  - Further Submission #133: Stratum Management Limited – received 6 December 2022;
  - Further Submission #136: Escape Investments Limited – received 6 December 2022;
  - Further Submission #137: Rod Bray – received 5 December 2022;
  - Further Submission #138: Te Rūnanga o Toa Rangatira – received 12 December 2022.
14. Mr McCutcheon notes that although the time notified for filing a further submission expired 2 December 2022, the Council’s notice was framed incorrectly. It specified a period of nine rather than ten working days. The tenth working day was 5 December 2022. Accordingly, while technical ‘late’ in terms of the Council’s notice, Further Submissions #131 and #132 were filed within the time provided for in the First Schedule.
15. Although Mr McCutcheon did not note it as such, it appears that Further Submission #137 was in the same category.
16. Two of the other Further Submissions were filed one working day after the period provided for in the Act. The sixth Further Submission, that of Te Rūnanga o Toa Rangatira, was filed some five working days after expiry of the time period provided for in the Act. However, even this is, in our view, scarcely a significant breach of the Act’s requirements against a background where further submissions, by definition, cannot extend the scope of inquiry. It is therefore difficult to envisage how any party could be said to be prejudiced by their receipt.
17. We therefore accept Mr McCutcheon’s recommendation and waive the late receipt of each of the above further submission.
18. The position of BARNZ is a little more complex. It was received by the Council on 21 December 2022, after the Council had completed its summary of further submissions (presumably the reason Mr McCutcheon did not discuss it in his Overview Report). This further submission seeks only to support the submissions of Wellington International Airport Limited (**WIAL**). We asked

counsel for BARNZ to explain to us why we should grant leave. We also gave WIAL the opportunity to comment.

19. Counsel for BARNZ, Ms Chappell, advises that the failure to file its further submission in a timely way was her responsibility. She had not noted, from her Auckland base, that the further submission period had commenced, and only learned that fact after the time period had expired. Ms Chappell also notes that it was an extraordinarily busy period for many resource management practitioners.
20. As regards the position of the further submitter, Ms Chappell submitted that the airlines who make up BARNZ provide an important perspective on airport related matters because they ultimately bear the costs of any regulation impacting on the airport.
21. Lastly, Ms Chappell noted that no party would be prejudiced by late inclusion of BARNZ's Further Submission as the potential outcomes are no different from the submissions already filed, and hearings have not commenced.
22. Ms Chappell makes many valid points. We accept entirely that with RMA Reform in the public domain, the period prior to Christmas was indeed extraordinarily busy for RMA practitioners. Ms Chappell's failure to note that the Further Submission period was running was understandable in the circumstances.
23. We also accept that BARNZ has a different perspective to WIAL, and because of its makeup, might provide valuable input to the PDP hearings.
24. We likewise agree that there is no realistic potential for any prejudice for any party. The only directly affected party did not feel the need to comment. Any administrative inconvenience arising from the fact that Council had completed its summary of further submissions is in our view minor in the scheme of things.
25. The one point that gave us pause was whether, if we waived late receipt of BARNZ's Further Submission, the end result would be an extension of time of more than twice the maximum provided for in the Act.
26. As above, the maximum time period provided by the Act is ten working days. The 20th working day in this case was 19 December, and BARNZ's further submission was received on 21 December. However, 20 and 21 December are not working days for the purposes of the Act. The 21<sup>st</sup> working day was

11 January. Accordingly, this further submission was not received more than 20 working days after notification of the summary of submissions.

27. We therefore consider that we are able to waive this particular procedural failure.
28. As above, our view of the merits of the application suggest that we should do so. Accordingly, we accept also the late further submission of BARNZ into the PDP process and waive its late receipt.

A handwritten signature in blue ink, consisting of a large, stylized 'T' shape with a horizontal line extending to the right and a vertical line extending downwards.

**Trevor Robinson**  
**Chair**

**For the Wellington City Proposed District Plan Hearings Panel**

Dated: 25 January 2023