

Proposed Auckland Unitary Plan
Waiver in respect of Extended Closing Date Submissions
Procedural Minute No. 2 by Chairperson of Independent Hearings Panel

Summary

The Auckland Council notified its Proposed Auckland Unitary Plan (**Proposed Plan**) on 30 September 2013. The Council's notified closing date for submissions, 28 February 2014, has now passed. This Procedural Minute records the decision by the Chairperson of the Independent Hearings Panel to waive compliance with the time limit for making submissions on the Proposed Plan in respect of all submissions lodged after 14 January 2014 and by 5pm on 28 February 2014 for the reasons set out below.

Background

On 17 December 2013 I issued the first Hearings Panel procedural minute (**Procedural Minute No. 1**). That Minute addressed an issue arising out of the modification by section 123(7) of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) of the closing date for submissions on the Proposed Plan otherwise prescribed by clause 5(3)(a) of Schedule 1 of the Resource Management Act 1991 (**RMA**). The issue is summarised in paragraph 4 of that Minute in the following terms:

... whether the modification to clause 5(3)(a) RMA Schedule 1 by section 123(7) LGATPA simply replaces the reference to 40 working days with a reference to 60 working days, leaving the words "at least" in place, or whether Parliament's intention was to fix the submission period at 60 working days and remove the Council's discretion to set a longer period. If the statutory setting of the time limit includes the words "at least", then the Council's setting of the closing date on 28 February 2014 is lawful; if not, then the closing date is set by statute on 14 January 2014.

I advised that, after the Council's notified closing date of 28 February 2014 had passed, I would make a prompt decision pursuant to section 135 of the LGATPA whether to waive compliance with the time limit for making submissions in respect of all submissions lodged between 14 January 2014 and 5 pm on 28 February 2014. I further indicated that, if there was no clear evidence of direct adverse effects on the interests of any person resulting from the lodgement of any submission after 14 January 2014, I was likely to grant waivers under section 135(2) to all relevant submissions.

This approach seemed to me to have the advantage of enabling the submission process on the Proposed Plan to proceed effectively and efficiently and to enable people to make properly considered and prepared submissions in light of the purpose of the RMA and its participatory nature. However, while I could indicate that, in the absence of any evidence of direct adverse effects on any person of granting such a waiver under section 135, I would be likely to grant waivers to all submissions

lodged by 5 pm on 28 February 2014, I could not make a decision to grant a waiver in advance of the closing date (whatever that date might in fact be).

Now that both alternative closing dates have passed I can proceed to make a decision. I do so on the assumption that the closing date for submissions on the Proposed Plan was 14 January 2014 and without commenting on the lawfulness or otherwise of the Council's decision to notify a later closing date. I make this procedural ruling for the avoidance of any doubt regarding the validity of those submissions lodged after 14 January and by 5 pm on 28 February 2014 (which I refer to as Extended Closing Date Submissions, rather than "late submissions").

I am advised by the Council that approximately 1400 submissions were lodged by 14 January 2014. The exact number of submissions lodged after that date and by 5 pm on 28 February is uncertain because at the date of this Minute they are still being registered, but is expected to be in the region of 5,500 to 8,000 submissions.

I understand that there may be submissions that were received by the Council after 5 pm on 28 February 2014 and I will deal with these separately.

Relevant matters

In making a decision on late submissions under section 135 "*in respect of each submission to which [the section] applies*" I must take into account the following matters specified in subsection (3):

- (a) *the interests of any person who or that, in [my] opinion, may be directly affected by the waiver; and*
- (b) *the need to ensure there is an adequate assessment of the effects of the proposed plan; and*
- (c) *the stage of the Hearing at which the Hearings Panel is provided with the submissions.*

I am also required to act in a manner that is in accordance with the purposes of both the LGATPA and the RMA.

Whatever the final number of Extended Closing Date Submissions, it is sufficiently large to make the review of individual submissions very onerous. Such review is unnecessary for the purposes of section 135 in any event. My consideration of the Extended Closing Date Submissions for those purposes extends only to the date they were lodged, and not to any matter of substance including any other basis on which they may be invalid. Any technical deficiency that might invalidate any submission will be identified either during the Council's review of all submissions undertaken for the purpose of preparing the summary required by clause 7 of RMA Schedule 1 or be raised by further submissions or be identified when the submissions are heard.

The only persons who could be said to have interests that may be directly affected by any waiver I might grant in respect of the Extended Closing Date Submissions are:

- (a) those submitters who lodged their submissions before 14 January 2014; and
- (b) the Council itself.

In Procedural Minute No. 1, I expressly invited persons who considered that they might be adversely affected by the indication I gave as to a likely waiver in respect of Extended Closing Date Submissions to make their concerns known to me as soon as possible. I received no communications in response to that invitation, and I am advised by the Council that it did not receive any such communication. On that basis, and in the absence of any other information to suggest that a waiver might have an adverse effect on such persons, I conclude that there are no adversely affected persons in the first category.

In relation to any adverse effects of a waiver on the Council itself, I note that the Council gave the Panel its unreserved and irrevocable undertaking not to oppose any Extended Closing Date Submissions on the basis of time, so the Council cannot raise any issue itself. In general terms, the extension of time is fully consistent with the Council's stated commitment to early and open engagement with the community in relation to the development of the first Auckland Unitary Plan, and its own decision to extend the submission closing date in order to enable as many people as possible to make submissions on the Plan once it was notified. The public interest in the submission and hearing process for the Proposed Plan will be better served by granting a waiver to the Extended Closing Date Submissions than by excluding them from that process.

In relation to the need to ensure that there is an adequate assessment of the effects of the proposed plan, the Unitary Plan process can only be enhanced by granting a waiver in respect of the Extended Closing Date Submissions. Those submissions are likely to comprise the majority of the submissions lodged on the Proposed Plan, and to leave their legal status in doubt would not promote the purpose either of the RMA or of the LGATPA.

As I indicated in Procedural Minute No. 1, any substantive issue that may arise between individual submitters or between any submitter and the Council as a result of submissions on the Proposed Plan is unlikely to be affected by a waiver in respect of the Extended Closing Date Submissions. The process is still at an early stage, with a summary of submissions and a further submission period yet to occur and the commencement of hearing sessions still many months away. I consider that this consideration supports the grant of a waiver in the current circumstances, in that all of the Extended Closing Date Submissions will be provided to the Hearings Panel at the very outset of the hearing process.

Decision

For the reasons set out above, I am satisfied that a waiver should be granted in respect of all submissions lodged on the Proposed Plan by 5 pm on Friday 28 February 2014.

Late submissions (lodged after 5 pm on 28 February 2014)

Notwithstanding the extended closing date set by the Council when it notified the Proposed Plan and the extensive communications strategy undertaken to ensure that the public were made aware of the submissions closing date in the weeks preceding that date, a number of submissions have arrived at the Council after 5 pm on Friday

28 February 2014. I will issue a further Procedural Minute in respect of those submissions in due course.

Dated at Auckland this 12th day of March 2014



Judge David Kirkpatrick
Chairperson
Auckland Unitary Plan Independent Hearings Panel