

IN THE MATTER

of the Resource Management
Act 1991

AND

IN THE MATTER

of hearing submissions and
further submissions on the
Proposed Waikato District Plan

SECOND DIRECTIONS FROM HEARING COMMISSIONERS

26 June 2019

Introduction

1. These Second Directions are provided to all submitters on the Proposed Waikato District Plan (“**proposed plan**”) in order that the preparation for the hearing of submissions, and the hearings themselves, are fair to all parties and are conducted efficiently.
2. Our First Directions of 21 May 2017:
 - a. Requested Council staff to compile a Schedule of late submissions, the dates on which they were received, a brief summary of the relief sought and a recommendation, with reasons, as to whether or not the Hearing Panel should accept each of the later submissions, and to file this by 14 June 2018.
 - b. Invited any submitter who wished to raise any legal or jurisdictional matter that they considered needed to be resolved before the hearings commenced, to file these in writing by 21 June 2019.
3. The purpose of these Second Directions is to address both of these matters.

Late Submissions

4. The period for lodging submissions on the proposed plan ended on 9 October 2018.
5. The Council’s report dated 14 June 2019, identified 25 submissions received after this date, as summarised, in date order, in Table 1 below.

Table 1: Late Submissions Summary

Submitter Name	Submission Number	Date Submission Received
Colleen Earby	555	10 October 2018
Alan Kosoof	556	10 October 2018
Bronwyn Kosoof	557	10 October 2018
KiwiRail Holdings Limited	835	10 October 2018
Kearvell Family Trust	867	10 October 2018
Huib Volker	868	10 October 2018
Patrick Day	760	11 October 2018
Ian & Helen Gavin	865	11 October 2018
Lisa Graham	866	11 October 2018
Angeline Greensill	942	12 October 2018
Linda Young	828	15 October 2018
Whenua Holdings Waikato Limited	829	15 October 2018
Brodict Farms Limited	944	15 October 2018
Raglan Naturally	831	16 October 2018
Kyung Koo Han & Sun Kyuang Kang	961	18 October 2018
Ngati Tamainupo	962	19 October 2018
Stonehill Trustee Limited	971	23 October 2018
Carol & Gordon Corke	968	28 October 2018
Debbie McPherson	969	28 October 2018
Peter Pavich	967	29 October 2018
Margaret O'Brien	970	31 October 2018
Amy & Andrew de Langen	977	29 November 2018
Andrew Wilson	981	23 January 2019
Hynds Pipes Limited	983	5 April 2019
Turangawaewae Trust Board	984	7 May 2019

6. Having evaluated each late submission against the requirements of sections 37 and 37A of the Resource Management Act 2019 (“**RMA**”), Council staff:
 - a. Observed that 21 of the 25 late submissions was received in the days immediately following the closing of the submission period;
 - b. Considered that there was no prejudice to any person directly affected by the late submissions being accepted, as the further submission period had not expired and affected landowners could lodge a further submission; and
 - c. Recommended that each of the late submissions be allowed.

7. We are satisfied that submissions received on or before 31 October 2018 should be accepted, for the reasons outlined by Council staff.
8. We are not prepared, however, to automatically accept the late submissions received after that period, given the timeframes involved.
9. We therefore invite the following submitters to advise us, in writing, of the reasons why their respective submissions were filed so late, and why they consider that it should be accepted:
 - a. Amy & Andrew de Langen;
 - b. Andrew Wilson; and
 - c. Hynds Pipes Limited.
10. Such advice is to be provided **no later than 5pm Friday 5 July 2019**, either by:
 - a. **Email** <mailto:Districtplan@waidc.govt.nz>
 - or
 - b. **Hard copy**

Either

Mailed to: The District Plan Hearings Administrator
 Waikato District Council
 Private Bag 544
Ngaruawahia 3742

Attention: Sandra Kelly

or

Delivered to: The District Plan Hearings Administrator
 Waikato District Council
 15 Galileo Street
Ngaruawahia 3720

Attention: Sandra Kelly
11. In respect of the Turangawaewae Trust Board late submission, Council staff have advised that “Council has no record of receiving [that] submission, although the submitter did attempt to lodge it.”
12. We therefore invite the Turangawaewae Trust Board to advise us, in writing, of the attempt(s) made to lodge their submission and why they consider that it should be accepted. Such advice is to be provided in accordance with the timeframe and process set out in paragraph 10 above.

13. On receipt of the material referred to in paragraphs 9 and 12 above, we will determine whether to accept those late submissions.

Legal / Jurisdictional Issues

14. Two planning consultants raised jurisdiction matters with us (Mr Brian Putt and Mr John Manning) although their clients were not identified. Additionally, counsel for Havelock Village Limited and Tata Valley Limited, and Ambury Properties Limited filed memoranda.

15. We address each of these below.

Mr Putt

16. We understood Mr Putt's concerns to be as follows:
 - a. Our Directions seemed premature given that submitters have not yet been provided with the final form of the Summary of Submissions;
 - b. We should review the evidence timetabling and obligations they seek to impose to make them "user friendly";
 - c. Providing 10 working days following the receipt of the Council's section 42A report for submitters to file evidence is insufficient;
 - d. Because the Council has had since October 2018 to consider and respond to submissions they have an unfair advantage over submitters in the time available for submitters to respond; and
 - e. Additionally, there is no provision made for Council to rebut/respond to evidence from submitters, who do not wish to be ambushed by the Council at the hearing. It would be sensible for any additional evidence to be provided at least 5 working days prior to the hearing.
17. Regarding a) – d) above, we consider that the process we have established is both fair to all parties and efficient and we are not persuaded that any changes are required.
18. Regarding point e) above, our Directions of 21 May 2018 may have been ambiguous in that paragraph 26 only referred to rebuttal evidence from submitters being able to be filed at least 10 working days prior to each hearing. We had intended for the Council to also be subject to that obligation – i.e. that all rebuttal evidence, either from the Council or submitters, is to be filed at least 10 working days prior to the commencement of each hearing. However, we consider that Mr Putt's proposal to stagger the provision of rebuttal evidence (with the Council staff following the submitters) has merit. We therefore direct that:

If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.

Mr Manning

19. Mr Manning raised two concerns, namely:
- a. That although the link to the original submissions on the Council's website was not operational on 7 June 2019, he understood that the summary of submissions sometimes incorrectly identified submitters and the relevant contact person – an example being Tainui Group Holdings Limited; and
 - b. Citing the example of Ms Te Aho's role as a Director of Tainui Group Holdings Limited (and being clear that he was not suggesting anything untoward) the table that showed the Commissioners' "Relationships with Submitter Parties and Actions Proposed" needed to be amended to also refer to all relationships with a submitter, including those with agents or contact persons.
20. Regarding a) above, the Commissioners are not responsible for managing the Council's website and/or release of information as part of the Schedule 1 process under the RMA. However, we understand that the Council is aware of the issues raised by Mr Manning and is addressing them.
21. In respect of b) above, the Commissioners are satisfied that the protocols for disclosing and acting on actual or perceived conflicts is appropriate and that no changes are required. However, although Ms Te Aho's role as a Director of Tainui Group Holdings Limited was cited in the "Register of Interests" table, this was not carried through to the subsequent table setting out the Commissioners' "Relationships with Submitter Parties and Actions Proposed". This was addressed in our First Minute of 13 June 2019, where we stated that Ms Te Aho would "take no part in hearing Tainui Group Holding Limited's submission or deliberations concerning it".

Counsel for Havelock Village Limited (submitter number 862) and TaTa Valley Limited (submitter number 574)

22. Havelock Village Limited is seeking to rezone land adjoining Pokeno township from Rural to Residential, while TaTa Valley Limited is seeking to rezone land southwest of Pokeno from Rural to a bespoke Resort Zone. Counsel were concerned that various submitters were seeking that the proposed plan be withdrawn in its entirety or any hearing of submissions be deferred – the justification cited including the need for updated flood hazard mapping and assessments, implementing the new National Planning Standards and better alignment with other planning studies like the Hamilton to Auckland Spatial Plan.
23. In the event that any submitter raised such matters as a preliminary matter, counsel wished to record their interest in that issue and suggested that a pre-hearing meeting be convened. Counsel recorded that they opposed any withdrawal of the proposed plan or deferral of the hearings and considered that the relevant issues can be addressed as part of the substantive hearings.
24. No party has raised withdrawal of the proposed plan or deferral of the hearings as a preliminary matter in response to our First Directions. Accordingly, while counsel's concerns are noted (as are those in some written submissions) we are satisfied, based on the

information put before us in response to our First Directions, that the substantive hearings can proceed as contemplated.

Counsel for Ambury Properties Limited

25. Ambury Properties Limited is, in general terms, seeking to:
 - a. Rezone Rurally zoned land at Ohinewai to a combination of Industrial, Business and Residential zoning, as specified in a proposed structure plan; and
 - b. Incorporate objectives and policies into the proposed plan to create a framework for the structure plan.
26. Based on their understanding that:
 - a. Stage 1 hearings will commence in September 2019;
 - b. Stage 2 is to be publicly notified in March 2020;
 - c. Hearings on Stage 2 will commence in early 2021;
 - d. Decisions (on the entire plan) will be issued late in 2021; and
 - e. Their submissions will likely be heard as part of the Stage 2 hearings, because of natural hazard considerations;

counsel requested that:

 - a. Its submission be heard in May 2020; and
 - b. A decision on its submission be released by mid 2020.
27. Counsel's memorandum considered whether we had jurisdiction to take the approach they requested, and whether, on the merits, we should adopt that approach. They considered that their proposal was open to us to adopt and that we should adopt it. The reasons cited on the merits were to the effect that delays would put the proposal in jeopardy, given the expiry of existing leases in Auckland, the inability to find a suitable alternative facility in Auckland and because if unsuccessful in its request for a relatively prompt hearing, the economic and social benefits for the Waikato District would be lost.
28. We are mindful of the fact that Ambury Properties' proposal has arisen out of its own submission on the proposed plan, rather than being a part of the notified version. As such, other than as a result of whatever consultation Ambury Properties, or Council staff, may have undertaken, the further submission process will be the first opportunity for interested/affected parties to express their views on the proposal.
29. Absent an understanding the scale/extent of any further submissions, we think it premature to make a decision on hearing timetables on the Ambury Properties' submission. Rather, we consider the appropriate course of action is to convene an urgent pre-hearing meeting as

soon as possible following the closing of further submissions and for all submitters and further submitters and the Council to have the opportunity to participate.

30. If Ambury Properties is not satisfied with what we have set out above, they should lodge a further Memorandum.



P H Mitchell (Chair)

26 June 2019