

12 June 2021

Hon David Parker  
Minister for the Environment

Email: [d.parker@ministers.govt.nz](mailto:d.parker@ministers.govt.nz)

**Postal Address**

Private Bag 544  
Ngaruawahia, 3742  
New Zealand

0800 492 452

[www.waikatodistrict.govt.nz](http://www.waikatodistrict.govt.nz)

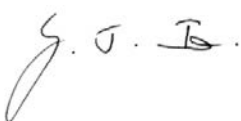
Dear Minister Parker

**APPLICATION FOR SECOND EXTENSION OF TIME PURSUANT TO CLAUSE 10A OF THE RESOURCE MANAGEMENT ACT 1991**

1. On 4 November 2019 you approved Waikato District Council's ("Council") application to extend the time for giving a decision on the Proposed Waikato District Plan ("PDP"), pursuant to clause 10A of Schedule 1 of the Resource Management Act 1991 ("RMA").
2. The approval extended the timeframe by 14 months from 18 July 2020 to 18 September 2021.
3. The purpose of this letter is to apply for a second extension of time for giving a decision on the PDP, pursuant to clause 10A of Schedule 1.
4. In my letter of 7 October 2019, I advised that Council had undertaken a comprehensive district plan review of the Waikato District Plan (2013) and the Franklin District Plan (2000) to form a single integrated district plan for the entire district.
5. Stage 1 of the PDP, incorporating all but one chapter, was publicly notified on 18 July 2018, while Stage 2 (natural hazards and climate change) was notified on 27 July 2020. The hearings for Stage 1 will be completed this month and the hearings for Stage 2 have been completed.
6. The independent hearing panel ("hearing panel") have made considerable progress in terms of getting through a large number of hearings and have prepared a number of draft decisions. Two decisions have been released ahead of the 18 September 2021 timeframe. This includes a 100-page decision on the submission by Ambury Properties Limited (the property arm of the Comfort Group) seeking the rezoning of land at Ohinewai, north of Huntly, to enable the Sleepyhead Estate to proceed. The submitter requested an early hearing and decision.
7. On 17 June 2021, the hearing panel wrote to Council requesting Council's support for a further extension and its approval to write to you requesting a further time extension of the PDP decisions. A copy of the letter is attached as Attachment 1 to this letter. The letter sets out in detail the reasoning why the panel do not consider the 18 September 2021 date to be achievable. In summary, the reasons include the:
  - a. Significant complexity of policy issues that expand multiple hearings;

- b. Translation of the notified PDP into the National Planning Standards format;
  - c. Delay of the notification of Stage 2 Natural Hazards due to COVID-19;
  - d. Significant time spent on the Ohinewai Sleepyhead rezoning decision;
  - e. Introduction of the National Policy Statement for Urban Development 2020 and the panel's obligation to give effect to it, to the extent allowed for within the scope of submissions;
  - f. Additional time required to fully integrate the provisions across the PDP; and
  - g. Significant amount of evidence filed for each hearing, particularly the rezoning hearings.
8. Council supports an extension to 17 January 2022 to issue decisions on the PDP and has resolved to make an application to you in accordance with clause 10A of Schedule 1 of the RMA.
9. While a second time delay is not ideal, both Council and the panel considers it is important to release a well-drafted and integrated district plan and believe that an extra four months is necessary to produce a single, integrated and holistic district plan for the Waikato District. The amendments to the district plan, reflecting the hearing panel's decisions, will be reformatted to comply with the National Planning Standards which were gazetted after the close of primary submissions.
10. We remain engaged with Ministry for the Environment officials, and should the application for extension be approved, we will ensure there is regular communication around our progress regarding the new deadline. We will be doing our very best to work efficiently and release decisions by 17 January 2022.
11. In support of Council's application for a further extension of time to 17 January 2022, please find attached the following:
- a. Attachment 2 outlining the planning timeframes and processes undertaken to date in relation to the district plan review; and
  - b. Attachment 3 which sets out the Council's responses to the matters required to be taken into account by Council pursuant to clause 10A(3) of Schedule 1.
12. Finally, I would like to highlight our commitment to continue working with Ministry for the Environment officials on resource management issues, including providing feedback on the national direction programme, where we have had direct discussions about Waikato District examples. We are also looking forward to engaging with the select committee inquiry into the resource management reform.
13. If you require any further information or clarification, please do not hesitate to contact me. I look forward to your response.

Yours faithfully



Gavin Ion  
**CHIEF EXECUTIVE**



PO Box 300 673 Albany  
Auckland 0752  
New Zealand  
+64 9 486 5773

17 June 2021

Reference: MDL000697

Mr Gavin Ion  
Chief Executive  
Waikato District Council  
Private Bag 544  
Ngaruawahia 3742

Dear Mr Ion

**Re: Timing of the Panel's decision on the Proposed Waikato District Plan**

As you will be aware, the hearings for the Proposed Waikato District Plan (PDP) are progressing well and we are currently hearing submissions relating to Hearing 25: Zoning Extents. We have undertaken 26 hearings so far, largely via Zoom, which is proving to be not only innovative, but also highly successful, participative and cost-effective.

While Clause 10(4)(a) of Schedule 1 of the Resource Management Act 1991 (RMA) requires a decision on a proposed plan no later than 2 years after the plan was notified, clause 10A sets out the process for obtaining an extension of time. We are aware that Council sought and was granted approval by the Minister of the Environment on 4 November 2019 to extend the timeframe to enable the decision to be made by 18 September 2021. We note this step was taken prior to the disruption caused by COVID-19.

The purpose of this letter is to convey the current situation regarding the Panel's ability to deliver a decision by the due date, explain the principal reasons for that not being the case, and to provide, what we believe, is a more realistic timetable. We respectfully request that Council seeks a further extension under clause 10A. This letter is from the seven members of the Hearings Panel.

The hearings will conclude on 14 July 2021, and from that point, the current timeline requires decisions to be released within 2 months. That timeframe is simply not achievable, despite the best efforts made by all involved.

There are various reasons for this, including the:

- significant complexity of policy issues that span multiple hearings. This complexity and interrelationship of matters means that we have not been able to draft decisions as individual hearings conclude due to the need to consider concepts holistically;
- translation of the notified PDP into the National Planning Standards format being highly complex and taking more time than initially forecast;
- delay of the notification of Stage 2 Natural Hazards due to COVID-19 affecting Council's opportunity to engage with iwi prior to public notification (as required by the RMA);
- significant time spent on the Ohinewai Sleepyhead decision which we issued on 24 May 2021;
- introduction of the National Policy Statement for Urban Development and the complexity of using scope provided by submissions to give effect to it;
- time required to fully integrate the provisions and ensure they are internally consistent was underestimated; and
- scale and level of detail of evidence and s42A reports that each of the Panel members must read in advance of each hearing. This has been particularly evident in Hearing 25: Zoning Extents, but has meant that time is diverted away from deliberating, drafting and reviewing decisions.

We have carefully considered the different ways in which we could speed up the process, including additional resources for writing the decisions. We are supported by a small but highly experienced team of planners and legal counsel (both within Council and consultants). We do not think that additional resources will result in a quicker process, particularly due to the inefficiencies of bringing new people into the process. We also considered the option of not implementing the National Planning Standards. Although the implementation of the National Planning Standards will be a difficult task which has added significant time to the hearings process, we consider that long-term it will save Council money and time by not requiring a subsequent notification of a restructured district plan. We are aware that such a notification could result in the re-litigation of matters we are currently considering through this PDP process.

We have considered a more realistic timeframe for delivery of a decision and it seems to us that there are two options, with the distinction between them relating to how they relate to, and are affected by, the Christmas holiday period:

#### Option 1: Deliver decision by 20 December 2021

The advantage of this option is that the decision can be notified within the 2021 calendar year. There may be criticism notifying the decision close to Christmas, and the appeal period will run during January while many of the submitters and their planners and lawyers are on leave. We note the appeal period excludes the period from 20 December to 10 January.

Option 2: Deliver decision by 17 January 2022

The advantage of this option is that the appeal period is completely clear of the Christmas shutdown required by the RMA, and for this reason option 2 is our preferred option.

While we do not propose a time extension lightly, we are aware that once the hearings are completed, our lasting legacy will be our decision. We are committed to producing a quality decision, where all the provisions are integrated and consistent throughout the plan. Additional time will allow us to produce a thorough and robust decision. We understand this will necessitate Council applying to the Minister for a further extension of time under clause 10A of Schedule 1 of the RMA. Whilst not ideal, we note the RMA does not prevent Council from applying for a further extension of time.

We are happy to discuss this with you or with your councillors if you think that would be helpful.

Yours sincerely,



PH Mitchell  
Mitchell Daysh Ltd

Chair of the Independent Hearings Panel  
for and on behalf of the Independent Hearings Panel

[phil.mitchell@mitchelldaysh.co.nz](mailto:phil.mitchell@mitchelldaysh.co.nz)

## **Attachment 2: Planning Process to Date**

### **Policy Development**

- As a result of the 2010 local government reorganisation of the Auckland Region, Council currently administers one district plan made up of two distinct sections - the Waikato section, incorporating the operative Waikato District Plan (2013), and the Franklin section incorporating the relevant sections of the former Franklin District Plan (2000).
- In 2014, Council resolved to undertake a full review of the district plan (Waikato and Franklin sections) to produce one single District Plan for the Waikato District.
- There were significant delays in obtaining flood modelling results needed to give effect to the Waikato Regional Policy Statement.
- In February 2018, Council resolved to stage the District Plan review to ensure that the natural hazards chapter (Stage 2) did not delay Council in making progress with all other provisions.

### **Stage 1 (all provisions except natural hazards and the effects of climate change).**

- Stage 1 was publicly notified on 18 July 2018.
- The duration of the submission period was doubled to enable the public sufficient time to lodge submissions, given this was a significant review with substantial change in policy direction for some areas.
- Council received 990 submissions which cover a number of highly complex topics.
- As a smaller Council with limited resources to summarise the submissions, it took 4 months to summarise the 10,000 submission points received and audit them for accuracy.
- Due to the release of other local area planning documents (known as 'Blueprints') for consultation, Council sequenced the notification of the summary of submissions to avoid confusion for the public.
- Council initially called for further submissions from 29 April 2019 and doubled the duration for receiving further submissions to 27 May 2019, again to enable the public sufficient time to lodge submissions.
- Council then encountered several technical issues, resulting in some submissions not being available on the Council's website. Additionally, a small number of errors were identified in the summary of submissions.
- Consequently, Council notified a revised summary of submissions on 18 June 2019, and for fairness doubled the duration for receiving further submissions until 16 July 2019.

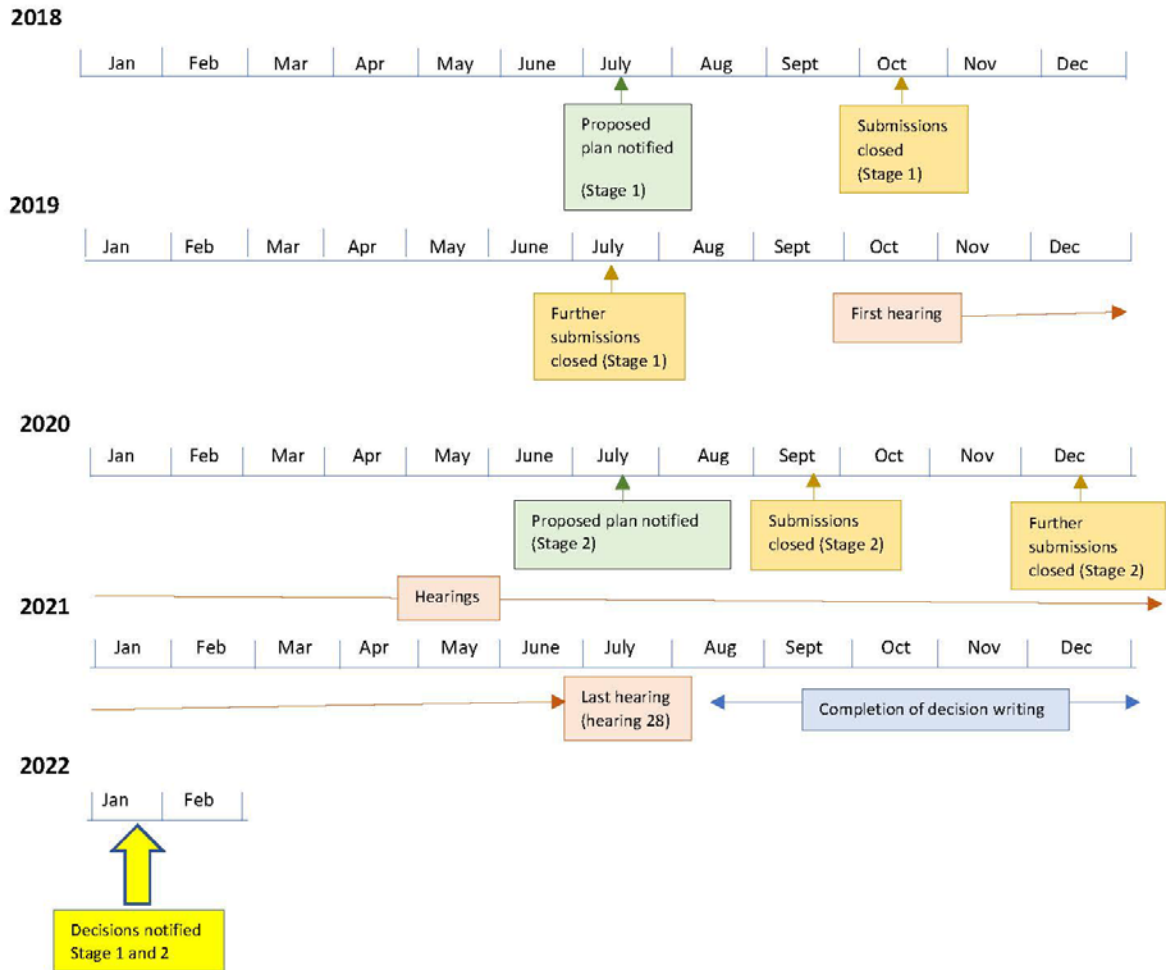
### **Stage 2 natural hazards and the effects of climate change**

- Council publicly notified Stage 2 and Variation 1 to the PDP on 27 July 2020 and submissions closed on 23 September 2020.
- Council received 189 submissions and 33 further submissions.
- Hearings for Stage 2 and Variation 1 were held in May 2021 and are now completed.

### **Hearing and decision-making**

- Council appointed a pool of seven Commissioners: Phil Mitchell (Chair), Paul Cooney (Deputy Chair), Dynes Fulton, Linda Te Aho, Weo Magg, and Crs Janet Gibb and Jan Sedgwick.
- 45 hearings have been completed with the last hearing scheduled for 13 July 2021.
- Council has contracted independent decision writers to assist the panel in drafting the decisions as the hearings progress.

## Attachment 2: Planning Process to Date continued



## Attachment 3: Affected Persons and Interests of Communities

1. Pursuant to clause 10A(3) of Schedule 1 of the Act, before applying for an extension, Council must take into account:

- (a) the interests of any person who, in its opinion, may be directly affected by an extension; and*
- (b) the interests of the community in achieving adequate assessment of the effects of the proposed plan; and*
- (c) its duty under section 21 to avoid unreasonable delay.*

2. In relation to sub-clause (3)(a) above:

- Council has taken into account the interests of persons, who, in its opinion, may be directly affected by the extension. Council considers all persons who submitted on the Proposed District Plan may be directly affected by the extension of time sought. However, Council does not consider any individual submitters to be more affected than any other submitters. This issue affects the whole of the district.
- Council has, in particular, taken into account the interests of the communities who have worked with Council to develop the Proposed District Plan, particularly the townships in the northern part of the district (i.e. Tuakau and Pokeno), where growth has occurred at a faster rate than the Franklin District Plan anticipated, and there is a strong need for the further re-zoning of land in order to meet our obligations under the National Policy Statement for Urban Development 2020.

3. In relation to sub-clause (3)(b):

- Council has taken into account the interests of the community in achieving adequate assessment of the effects of the proposed plan. It is considered that the interests of the community are better served by having a single, integrated, holistic decision resulting in a single comprehensive district plan and an extension will allow this.

4. In relation to sub-clause (3)(c) above:

- Council has taken into account its duty to avoid unreasonable delay under section 21. Council has considered the minimum extension of time required to enable it to meet its functions under section 31 of the RMA. A four-month extension of time will ensure a quality decision, where all the provisions are integrated and consistent throughout the plan.
- While a further delay may not be viewed favourably by some in the community, it is imperative that decisions on the Proposed District Plan are robust, well considered and reflect the new planning instruments that have come into force since the Proposed District Plan was notified.
- Council is confident that these revised timeframes are appropriate and will be met.