

REPORT ON CONSIDERATION OF LATE SUBMISSIONS ON VARIATION 2 (ADDITIONAL HOUSING CAPACITY) TO THE 2GP

Department: City Development

EXECUTIVE SUMMARY

1. This report has been prepared in accordance with section 42A of the Resource Management Act 1991 (RMA) to assist the 2GP Variation 2 Hearing Panel with making a decision on which late submissions, if any, it should waive the failure to comply with the statutory time limit.
2. Variation 2 to the 2GP was publicly notified on 3 February 2021. The closing time and date for lodging submissions was 12.00am (midnight), 4 March 2021. To date a total of 4 late submissions have been received.
3. Where the Panel does decide to waive the failure to comply with the time limit and allow submissions, the content of those submissions (in particular, the decisions requested) will be included in the Summary of Decisions Requested and will be considered in subsequent hearing reports.

STATUTORY FRAMEWORK

4. This section of the report sets out the statutory framework within which the Variation 2 Hearing Panel must consider whether to allow late submissions. This framework is set out in sections 37 and 37A of the RMA. Section 37 deals with the power of waiver and extension of time limits. Section 37(1) states as follows:
 - (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) *wave a failure to comply with a requirement under this Act, regulations, or a plan for the time or method of service of documents.*
5. Section 37A sets out the requirements for waivers and extensions as follows:
 - (1) *A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document 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 extension or waiver; and*
 - (b) *the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and*
 - (c) *its duty under section 21 to avoid unreasonable delay.*
 - (2) *A time period may be extended under section 37 for—*
 - (a) *a time not exceeding twice the maximum time period specified in this Act; or*

- (b) *a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.*
- (3) *Instead of subsections (1) and (2), subsections (4) and (5) apply to an extension of a time limit imposed on a consent authority in respect of—*
- (a) *an application for a resource consent; or*
- (b) *an application to change or cancel a condition of a resource consent; or*
- (c) *a review of a resource consent.*
- (4) ...
- (5) ...
- (6) *A consent authority or a local authority must ensure that every person who, in its opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver.*
6. It is noted that there is no maximum time period specified in the RMA for submissions and therefore section 37A(2) does not apply.

BACKGROUND

7. Variation 2 to the 2GP was publicly notified on 3 February 2021 with the submission period concluding at 12.00am (midnight), 4 March 2021. Submissions could be made by email, hard copy or online. There were no known difficulties experienced with making submissions via these means.

DISCUSSION AND RECOMMENDATION

8. At the time of writing this report a total of 4 late submissions have been received and are listed below in Table 1.

<i>Submitter name</i>	<i>Submission number</i>	<i>Date received</i>	<i>Other matters to note</i>
Retirement Villages Association of New Zealand	S205	05/03/2021	A preliminary assessment indicates that all or some of this submission may be out of scope.
The Southern District Health Board	S244	05/03/2021	None
Justine Ragg	S312	12/03/2021	A preliminary assessment indicates that all of this submission may be out of scope.
Simon Roberts	S313	12/03/2021	A preliminary assessment indicates that all of this submission may be out of scope.

9. The matters set out in Section 37 of the RMA must be taken into account when deciding whether or not to waive a time limit.

10. I have considered the matters outlined in Section 37A(1)(a) and recommend that there would be no adverse effects on directly affected persons if a time limit waiver for the identified late submissions was given as the decision on late submissions will be made before the Summary of Decisions Requested is publicly notified for further submissions. However, I note a further decision will be required to consider whether some submissions should be struck out in whole or in part due to reasons of not being 'on' the variation. Section 41D of the RMA provides for the Panel to strike out submissions (or parts thereof) that disclose no reasonable or relevant case, such as for any submissions that are not on the matters covered by the variation. This decision will need to separately consider whether there is a real risk that people affected by the plan variation (if modified in response to the submission), would be denied an effective opportunity to participate in the plan variation process, my assessment above does not address this question.
11. I have also considered the matters outlined in Section 37A(1)(b) and recommend that there would be no adverse effects on the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan by granting the time limit waiver. I note again that this assessment does not extend to considering this question with regard to inclusion of submission points that outside the scope of Variation 2.
12. Waiver of the time limits will also not lead to any unreasonable delay.
13. I therefore recommend that the submissions listed in Table 1 have the time limits for submissions waived. I note that any communication on this waiver should make clear that some of these submissions may still be subject to a decision about scope with respect to Section 41D of the Act.
14. I also recommend that any submissions received after the date of the preparation of this report do not have the submission time limit waived as the preparation of the Summary of Decisions Requested is already underway and we cannot guarantee that additional submissions could be included in this without delaying the Variation 2 timetable.

OPTIONS Option One – Waive the time limit under s37 for the late submissions in Table 1 and do not waive the time limit under s37 for the late submissions received after the writing of this report (recommended option)

Advantages

- Simple approach;
- Administratively efficient;
- Enables all late submissions that comply with Section 21 of the RMA to be identified;
- All late submissions received at the time of writing this report have been received in sufficient time to be included in the Summary of Decisions Requested; and
- Overall, results in more late submissions having the time limit waived and therefore included in the Variation 2 process.

Disadvantages

- Does not include an assessment of late submissions in accordance with Section 37(1)(a) and (b) of the RMA and may result in some late submissions that do not meet the intent of the RMA being inappropriately included in the Variation 2 process.

Option Two – Allow all submissions received within 24 hours of the close of submissions

Advantages

- Enables some late submissions that comply with Section 21 of the RMA to be identified.

Disadvantages

- Does not include an assessment of late submissions in accordance with Section 37(1)(a) and (b) of the RMA and may result in some late submissions that meet the intent of the RMA being unfairly excluded from the Variation 2 process;
- Time consuming to adjust recording of submissions within the submission database and associated correspondence with affected submitters;
- Potential for appeals to the Environment Court by late submitters who consider they meet the intent of the RMA; and
- Potential adverse publicity if there are complaints by dissatisfied submitters.

Signatories

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