

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

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**Procedural Minute No. 8 by Chairperson of  
Independent Hearings Panel**

**Waiver for Late Further Submissions**

29 August 2014

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Date: 29 August 2014  
Signed: 

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**Proposed Auckland Unitary Plan**

**Waiver for Late Further Submissions**

**Procedural Minute No. 8 by Chairperson of Independent Hearings Panel**

1. The Summary of Decisions Requested (SDR) report, collating the relief sought in the 9425 primary submissions made on the Proposed Auckland Unitary Plan, was notified by the Auckland Council on 11 June 2014.
2. Pursuant to section 123(8) of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) which modifies clause 7(1)(c) of Schedule 1 to the Resource Management Act 1991 (RMA), the closing date for further submissions was 30 working days after that public notice was given, which was stated by the Council to be at 5pm on 22 July 2014.
3. I am advised that some 3500 further submissions were lodged by that time, while 282 further submissions were received by the Auckland Council after 5pm on 22 July 2014 and by 13 August 2014.

**Time for Lodging Further Submissions**

4. As a preliminary matter, there appears to have been an error in the Council's calculation of the 30 working day period for the closing of further submissions. Pursuant to section 35(2) of the Interpretation Act 1999:

*A period of time described as beginning from or after a specified day, act, or event does not include that day or the day of the act or event*

5. Accordingly, the period for lodging further submissions commenced on 12 June 2014 being the day after public notice was given of the summary of submissions, and the 30 working day period therefore concluded on 23 July 2014.
6. There is also the question whether the time limit for lodging further submissions can be specified to a part of the day, rather than applying for the whole 24 hours. Under the common law, fractions of a day are to be disregarded, but that general position can be supplanted by statutory provision. Both the LGATPA and the RMA express the relevant time periods in terms of working days. Those are defined in section 2 of the RMA, but not in a way that indicates whether it means part of a day. In the absence of any clear statutory indication in this case, that means that the further submissions received by the Council before midnight on 23 July 2014 (by my count totalling 145 of the 282 classified as "late" by the Council) are in time and so no waiver is required in respect of them.

**Power to Grant Waivers**

7. I have the power pursuant to section 165(c) of the LGATPA to decide whether to accept any late further submissions. Pursuant to section 135

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and in respect of further submissions received after the closing date for those submissions, I must decide whether to waive the requirement to provide the submissions before that closing date in respect of each submission. It appears from this requirement that I must make such decisions whether any application for waiver is made or not.

8. In making my decision, section 135(3) requires that I “*must take into account:*
  - (a) *the interests of any person who or that, in the chairperson’s 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.”*
9. My decision under section 135 would be final and there is no right of objection or appeal against it.
10. As well as those specific factors listed in section 135 of the LGTAPA, I also have to act in a manner that is appropriate in light of the purposes of both the LGTAPA and the RMA.

#### **Discussion**

a. *Interests of persons directly affected*

11. Unlike primary submissions which can be made on any aspect of a proposed policy statement or plan, the scope for further submissions is substantially limited by clause 8 of Schedule 1 to the RMA in two ways:
  1. The persons who can make further submissions must either represent a relevant aspect of the public interest or have an interest in the proposed policy statement or plan greater than the interest that the general public has; and
  2. The further submission must be limited to a matter in support of or in opposition to the relevant primary submission.
12. The clear purpose of these restrictions is to afford persons who have some particular interest greater than that of the general public an opportunity to address a particular issue raised in a primary submission. It is not intended simply to be a second round of general submissions. It is also doubtful that it is intended to result in a plethora of further submissions from every primary submitter who seeks to engage in a kind of preliminary skirmishing, on paper, with every other primary submitter with whom they may agree or disagree.
13. To that end, in response to reasonable concerns about the scale of the further submission exercise and for the reasons set out in Procedural Minute #5 dated 18 July 2014, I directed:

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21. *A primary submitter is entitled to be heard on any submission that challenges the relief sought in the primary submission, whether that primary submitter has lodged a further submission on that other submission or not.*
14. My intention in making that direction was that it should reassure primary submitters that they will get the opportunity to address related primary submissions without having to lodge further submissions in respect of them. That should ensure that the interests of such persons are able to be considered in the hearing of submissions.
15. There is however a residual concern that if a primary submission has introduced some new proposal which affects other persons, then there should be some reasonable basis on which such affected persons can be heard. To the extent that the direction in paragraph 21 of the Procedural Minute #5 may be insufficient to ensure that a person who is directly affected by such new material and has no other means of addressing that new material, then a specific application for a waiver to lodge a further submission on that point could still be made. This concern warrants a direction which enables those potential further submitters (likely to be a relatively small number) to make a specific application for waiver if they consider that is necessary.
16. However, I also note that any primary submission which raises new material which might take potentially affected persons by surprise could also be invalid as not being on the Proposed Auckland Unitary Plan as notified and therefore outside the scope of what a submission on the PAUP may properly contain. That may also be a ground of further submission by a directly affected person. Procedural Minute #6 dated 5 August 2014 has sought information from the Council in relation to this.
17. The range of possible circumstances is too wide for it to be appropriate for the Panel to attempt to produce a standard waiver based on a hypothetical example. If any person whose late further submission is not granted a waiver considers that they are directly affected by new material in a primary submission, then they should bring that to my attention as soon as possible.
- b. Need to ensure adequate assessment of effects of PAUP*
18. Given the limited scope of further submissions, it is most unlikely that the adequacy of assessment of effects would be limited by refusing a waiver.
- c. Stage of the Hearing*
19. I am advised that the Auckland Council staff responsible for managing the lodgement of further submissions were not aware of any problem with that system during the course of 22 July 2014, so that the lateness of the further submissions does not appear to have been the result of that system. I assume that the same situation applied the next day, on 23 July 2014.

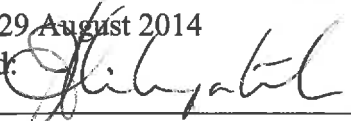
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20. I have been advised that the time required to sort and code the further submissions received after 22 July 2014 would delay the provision of relevant information to the Panel pursuant to s127(1) of the LGATPA which is due to occur on 5 September 2014. This in turn would delay the commencement of pre-hearing processes and that delay would be likely to have a knock-on effect and delay the hearing process.
21. If, however, those persons who lodged their further submissions by 23 July 2014 were entitled to do so, then any delay resulting from that must be accepted as a necessary consequence of the legislation.
22. For the sake of maintaining the schedule of the Panel, which depends on the provision of information by the Council, and in the absence of any apparent countervailing interest, I decide that this matter counts strongly against the grant of any waivers in respect of the further submissions that are in fact late.

**Decision**

23. The time for lodging further submissions ended at midnight on 23 July 2014.
24. The 145 submissions received by the Council by that time are valid and no waiver is required in respect of them.
25. No waiver is granted in respect of those submissions lodged after midnight on 23 July 2014.
26. Despite the direction in the preceding paragraph, if any person who lodged a further submission that was received by the Council after midnight on 23 July 2014 can show that they are directly affected by new material in a primary submission and have no other means of addressing that new material, then I will entertain a specific application for a waiver to lodge a late further submission on that point.

Date: 29 August 2014 Signed: 
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