

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Private Plan Change 42 to the Auckland Unitary Plan that proposes to introduce a new precinct for a regional landfill and resource consent applications for a regional landfill at Wayby Valley, both by Waste Management NZ Limited

DIRECTIONS OF THE CHAIRPERSON OF COMMISSIONERS

1. On 13 March 2020, Auckland Council (the **Council**) accepted for notification Waste Management New Zealand Limited's (**WMNZ** or the **Applicant**) request for a Private Plan Change 42 – Auckland Regional Landfill, Wayby Valley (**PPC42**) under Schedule 1 to the Resource Management Act 1991 (**RMA**) as well as Resource Consent applications that are being notified under section 95A of the RMA (together, **Applications**).
2. WMNZ seeks to obtain Resource Consents for the construction and operation of a new regional landfill facility within the Wayby Valley area, between Warkworth and Wellsford.
3. PPC42 seeks to introduce a new precinct into the Auckland Unitary Plan-Operative in Part (**Unitary Plan**) – the Regional Landfill Precinct Plan that would provide for (subject to a consent process) the Auckland Regional Landfill by way of specific identification and plan provisions.
4. The Applications were duly notified on 26 March 2020; submissions closed on 26 May 2020, at which point approximately 780 submissions were received on the resource consent applications, and approximately 200 received on the private plan change request. The summary of submissions was notified on 25 June 2020, with further submissions closing on 9 July 2020.
5. Under section 34A of the RMA, Council appointed Independent Hearing Commissioners Sheena Tepania (as Chair), Alan Watson, Michael Parsonson, David Mead and Wayne Donovan (**the Panel**), to hear submissions and make decisions in a joint hearing on PPC42 and the notified Resource Consent applications for the Auckland Regional Landfill.

Memorandum from the Applicant

6. Council received a Memorandum of Counsel dated 25 June 2020 on behalf of WMNZ seeking pre-hearing directions on the following:
 - (a) That late submissions up until 31 July 2020 be accepted.
 - (b) Urgent confirmation of hearing dates.

- (c) Directions regarding the identification of expert witnesses from all parties and conferencing and caucusing of those witnesses.
- (d) Directions relating to the timing of the provision of evidence and the Council's section 42A Report and, in order to be fair to all parties, that the standard timeframes be doubled.

Late submissions

- 7. The Council will accept submissions on both the plan change and the resource consent applications up until 31 July 2020. Submissions filed up to that date will be accepted, so as to provide certainty to submitters who may have been unable to file a submission before 26 May 2020 and also to allow time for those submissions to be considered by Council officers prior to finalising their section 42A Report.
- 8. After this time, the Panel will consider whether to accept late submissions as submissions are received in order to give submitters certainty and again, if necessary, at the commencement of the hearing.

Hearing dates

- 9. The hearing has been set down for 20 days beginning Monday 9 November and will continue as follows:
 - (a) Week 1: 9-12 November
 - (b) Week 2: 17-20 November
 - (c) Week 3: 24-27 November
 - (d) Week 4: 30 November - 3 December
 - (e) Week 5: 8-11 December.

A further three days from 16 – 18 December will be set aside as overflow days should the Panel require them.

- 10. The hearing will be held at the Warkworth Town Hall or a similar venue in the locality.

Identification of expert witnesses and conferencing

- 11. The Panel acknowledges the importance of early identification of experts and the benefits that expert conferencing can provide. However, given the timeframes for the provision of expert evidence, the acceptance of late submissions to 31 July and the fact that some submitters may not have engaged experts at this stage, the Panel is not issuing directions for formal expert conferencing at this point.
- 12. The Panel will hear the evidence of all the experts for different parties at the hearing and will then consider whether expert caucusing may be required to better define the issues. If the Panel believe that caucusing is necessary after hearing all the evidence, it will issue a direction at that stage.

13. That being said, this does not preclude parties from making their own arrangements to undertake expert caucusing and the Panel certainly encourages parties to do so.

Provision of evidence

14. All expert evidence will need to be pre-circulated in order that the Panel can pre-read it and hearing time (in relation to that evidence), be devoted principally to questions the Commissioners may have of the expert witnesses.
15. Expert evidence briefs shall have a succinct executive summary at the front wherever practicable (it is accepted that some expert briefs of evidence do not lend themselves to succinct summary).
16. The hearing timetable provides the opportunity also for rebuttal evidence to be filed, to further promote an efficient hearing process.
17. The Panel encourages all parties (including Council) represented by counsel, to pre-circulate their opening legal submissions in advance of their timetabled hearing date (preferably at least three (3) working days prior to the day on which they will appear). All parties will be assisted if the Panel is able to pre-read those legal submissions and hearing time be devoted to any questions the Panel may have arising from such pre-reading. Oral submissions by counsel should reflect the fact that the Panel has read counsel's written submissions. In particular, it will not be necessary for counsel to read large sections of their written submissions aloud. Counsel are requested to lodge electronic copies of any cases on which they will rely at the same time as they lodge their legal submissions.
18. Sections 37 and 37A of the RMA provide that the statutory timeframes of the RMA can be doubled, subject to the provisos therein. The timeframes can also be further extended to a time that exceeds twice the maximum period if the applicant requests or agrees.
19. Considering the quantity and technical nature of the evidence for this hearing the Panel agrees with the Applicant's request to double the statutory timeframes and as such the timeframes for the pre-circulation of evidence and the Council's section 42A Report are directed as follows:
 - (a) The Council officer's section 42A RMA Report is to be made available to the Hearings' Advisor by **9am, Tuesday 22 September 2020**
 - (b) That the section 42A RMA Report be circulated to the Panel and the submitters and posted on Council's website, as soon as possible after receipt but in any event no later than **5pm, Thursday 24 September 2020**
 - (c) Pursuant to sections 41B(3) and (4) RMA, that the Applicant's expert evidence is provided to the Hearings' Advisor by **midday Thursday 8 October 2020**
 - (d) That the Applicant's expert evidence be circulated to the Panel and the submitters and posted on Council's website as soon as possible after receipt but in any event, no later than **5pm, Thursday 8 October 2020**
 - (e) Pursuant to sections 41B(3) and (4) RMA, that if any person who has made a submission/further submission intends to call expert evidence at the hearing

(generally being evidence given by a professional with specialist qualifications and experience) then that party is to provide that evidence to the Hearings' Advisor by **midday Thursday 22 October 2020**

- (f) That the submitters' expert evidence be circulated to the Panel and the submitters and posted on Council's website as soon as possible after receipt but in any event, no later **5pm, Thursday 22 October 2020**
- (g) We request that the Applicant's supplementary evidence, rebuttal statements and legal submissions be provided to the Hearings' Advisor by **9am on Wednesday 4 November 2020**.
- (h) Any submitter presenting non-expert evidence or submissions at the hearing is welcome to pre-circulate these should they wish to do so, noting for the avoidance of doubt, that it is not a requirement. "Non-experts" are persons who do not provide expert evidence at these types of proceedings. They will have the opportunity to present written or oral evidence at the hearing in the normal manner. They do not need to pre-circulate their own statements or representations before the hearing commences.

Format of the hearing

- 20. The Panel supports both hearing processes being held contemporaneously and seeks to ensure that submitters are able to hear the Applicant's representations and evidence prior to presenting their own cases.
- 21. To that end, the Panel would prefer the Applicant to present their opening legal submissions and evidence on both PPC42 and the resource consent applications before the submitters and therefore recommends the following format:
 - (a) Hearing Panel opens the hearing and accepts the section 42A Report as being read.
 - (b) WMNZ presents its opening legal submissions and evidence on both the **resource consent applications** and the **private plan change request**.
 - (c) Submitters make their representations and present their evidence on the resource consent applications and/or where applicable, also on the private plan change request.
 - (d) WMNZ presents any rebuttal evidence (of evidence presented for the first time at the hearing).
 - (e) Council staff address their section 42A Report and any updates arising out of the material presented after their section 42A Report was circulated.
 - (f) WMNZ presents its formal reply.
- 22. These Directions are to be circulated to all the parties to the hearing by the Hearings Advisor. That may be by email.
- 23. For further information on the format of evidence required please refer to the notification letter attached.

Any enquiries regarding these Directions or related matters should be directed to Sam Otter, Senior Hearings' Advisor by email at sam.otter@aucklandcouncil.govt.nz.



Sheena Tepania
Chairperson
14 July 2020