

**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

**AND**

**IN THE MATTER**

of Late Submissions

### **DECISION OF THE PANEL**

1. Under section 34A of the Resource Management Act 1991 (**RMA**), Auckland Council (the **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 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 RMA as well as Resource Consent applications that are being notified under section 95A of the RMA (together, **Applications**).
2. We have also been delegated the Council's powers under section 34A of the RMA in relation to procedural matters regarding those hearings, including the Council's powers under section 37 to waive or extend time limits in respect of the lodgement of submissions and further submissions and to deal with omissions and inaccuracies in submissions and further submissions.
3. The Applications were publicly notified on 26 March 2020 and the period for lodging submissions closed on 26 May 2020. The summary of submissions was

notified on 25 June 2020 and the period for lodging further submissions closed on 9 July 2020.

4. Counsel for WMNZ confirmed by way of Memorandum that in light of the Covid-19 restrictions, the Applicant would agree to any late submissions being filed no later than 31 July 2020, but reserved its position in respect of submissions filed after that date.
5. The first Direction issued on 14 July 2020 recorded the position that Council would accept submissions on both the plan change and the resource consent applications filed up until 31 July 2020 and after that date, the Panel would consider whether to accept any late submissions.
6. A Summary of Decisions Requested was notified on 20 August 2020 (**SDR**) with Further Submissions to close on 3 September 2020.

#### **Powers in Relation to Waiving and Extending Time Limits**

7. Late submissions may be accepted if a waiver or time extension is granted in accordance with sections 37 and 37A of the RMA. Section 37A sets out the matters that need to be considered. They are:
  - (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 our 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 the proposed plan; and
    - c) The Council's duty under section 21 to avoid unreasonable delay.
8. Importantly, the timeframes can only be extended to a time that exceeds twice the maximum period if the applicant requests or agrees (s.37A(2)(b)).

#### **Late submissions received after 31 July 2020**

9. Three submissions have been received by Council after the closing date of 31 July 2020. All three submissions are on PPC42. Two of the submissions are amended

submissions lodged after that date. In other words, in terms of the amended submissions, the original submissions were lodged in time, but the submitters subsequently lodged material to replace the original submissions in whole or in part, and that replacement material was received after 31 July 2020.

10. The three submissions require individual consideration.

#### Mr Alistair de Joux

11. On 4 August 2020 at 5.14pm, the Council received by email a submission on PPC42 from Mr Alistair de Joux without an application to waive the time for lodgement.
12. The submission seeks to add additional comments on the topic of alternative means of waste disposal including alternative technologies for the treatment of residual waste, to Mr de Joux' original submission dated 26 May 2020. That original submission is identified in the SDR as submission #111.
13. The reason given by the submitter for the delay in lodging this submission was outlined in his email to Auckland Council dated 31 July 2020 which stated that he intended to add to his original submission but was awaiting clearance from his colleague, Mr Andrew Short, to use some of his written material.
14. According to Mr de Joux, the written material to be added had been prepared by Mr Short "in relation to the resource consent application referenced in his comments." In providing this additional information, Mr de Joux noted his intention that these comments would assist the Commissioners in determining both the proposed plan change and the resource consent application.
15. We note that the Council received a submission from Mr Andrew Short in relation to PPC42, identified in the SDR as submission #375. The information contained within that submission is identical to the additional information now provided by Mr de Joux.
16. In relation to Mr de Joux' late submission we make the following findings:
  - The additional material expands upon Mr de Joux' original submission #111 and would be better to be tabled and/or presented to the Hearing Panel when his submission #111 is heard.

- Waiving the time limit to include this material as an addition to Mr de Joux' original submission #111 is unnecessary.

Aotearoa (NZ) Sustainability Foundation (ASF)

17. On 11 August 2020, Mr Dudley Ward, CEO of the Foundation, sent an email to Council headed "Submission for - Plan Change / Variation Number 42 - Attachments Update", without an application to waive the time for lodgement.
18. The submitter did not give any reason for the delay in lodging this submission. The text of the email makes it clear that Mr Dudley is attempting to replace Attachments 1-4 to ASF's original submission #378 and add further detail to, and evidence to support, this original submission.
19. In relation to ASF's late submission we make the following findings:
  - The additional material expands upon ASF's original submission #378 without adding any additional substance. It is material that would be better to be tabled and/or presented to the Hearing Panel when the Foundation's submission #378 is heard.
  - Waiving the time limit to include this material as an addition to Mr Ward's original submission #378 is unnecessary.

Grey Power, Otamatea Inc.

20. On 5 August 2020 at 4.59pm, the Council received a submission on PPC42 from Ms Beverley Aldridge headed "Submission", and without an application to waive the time for lodgement.
21. The submitter did not give any reason for the delay in lodging this submission. The submission opposes PPC42 and raises concerns with regard to:-
  - Landscape and Visual amenity;
  - Water quality;
  - Ecology;
  - Public Health; and
  - Traffic congestion.

22. While this late submission raises legitimate resource management issues, it addresses concerns that are already contained in other 'on time' opposing submissions before the Panel to consider, and therefore the late submission adds nothing new to the assessment of PPC42.
23. Accordingly, it is our view that an *adequate assessment of the effects of the proposed plan* can be made without accepting this late submission and consequently, the time limit for receipt of this submission will not be waived.

### **Decision on the late submissions**

24. In relation to section 37A(1)(a), the Applicant is a person directly affected by the extension or waiver. Directions regarding timeframes for the pre-circulation of evidence and the Council's section 42A Report were issued essentially doubling the statutory minimum periods, in line with the Applicant's request. These timeframes were set in consideration of the Applicant's agreement to any late submissions being filed **no later than 31 July 2020** and recording, as noted previously, that the Applicant would reserve its position in respect of submissions filed after that date.
25. While also considering the Council's duty to avoid unreasonable delay (s37A(1)(c)), we note that if we were to grant these waiver applications, and indeed any further waiver applications, the Council would be obliged to publicly notify a summary of the submissions and allow the lodgement of further submissions. Whether other persons consider themselves directly affected would be determined by that process.
26. However, that process places a further financial cost on the Applicant and the timing of the hearing is such that any delay may impact commencement of the hearing process which is presently scheduled to begin 9 November 2020 in Warkworth.
27. In considering section 37A(1)(b), it is our view that waiving the time for lodgement would not serve the community's interests.

28. Consequently, for the reasons set out above, it is our finding that an appropriate assessment of the effects of PPC42 can be made without extending the time limit to accept these late submissions.
29. On this basis those late submissions detailed above are not accepted.

Any enquiries regarding this Decision or related matters should be directed to Sam Otter, Senior Hearings' Advisor by email at [sam.otter@aucklandcouncil.govt.nz](mailto:sam.otter@aucklandcouncil.govt.nz).



**Sheena Tepania**

Chairperson on behalf of the Panel

24 August 2020