

Southland Regional Council (Environment Southland)

Proposed Southland Water and Land Plan

DECISION OF HEARING COMMISSIONERS

Decision 3

INTRODUCTION

1. At its meeting on 3 August 2016 the Southland Regional Council (**Council**) under section 34A of the Resource Management Act 1991 (**Act**) appointed me, Rob van Voorthuysen, as Chair of the hearing panel on the proposed Southland Water and Land Plan (**proposed plan**).
2. The Council delegated to the hearing panel all the powers, functions and duties of the Council to hear submissions on the proposed plan, and to make recommendations to the Council on the submissions, including requiring and receiving reports in terms of section 42A of the Act, and exercising powers conferred by sections 41B and 41C of the Act and Clause 8AA of Schedule 1 of the Act.
3. The Council authorised me, as Chair acting alone, to exercise any powers, functions and duties delegated in respect of the conduct of the hearing, including those conferred by sections 41 to 42A, and Clause 8AA of Schedule 1 of the Act.

BACKGROUND

4. Submissions on the proposed plan were due to be lodged with the Council by 5 pm on 1 August 2016. Around 900 submissions were lodged in time.
5. The deadline was extended under section 37 of the Act till 5 pm on 8 August 2016.
6. The Council received five late submissions between 10 August 2016 and 30 September 2016. These submissions were the subject of the first decision of the hearing commissioners dated 10 October 2016. I granted a waiver of the submitters' failure to comply with the time limit.
7. On 12 December 2016, the Council received a memorandum of counsel on behalf of Transpower New Zealand Limited (**Transpower**) seeking to lodge a late submission on the proposed plan. In the second decision of the hearing commissioners dated 15 December 2016, I declined to waive Transpower's failure to comply with the time limit for lodging submissions.
8. The Summary of Decisions Requested Report was notified on 30 November 2016.
9. Further submissions on the proposed plan were due to be lodged by 5 pm on 19 December 2016.
10. Council received further submissions from the following persons after 5pm on 19 December 2016:
 - a. Don Nicolson;
 - b. Coasthaven Farms Ltd & Paterson Gavara Trust;

- c. Dairy Holdings Ltd;
 - d. DairyNZ;
 - e. Department of Conservation;
11. Some of the further submissions received within the correct timeframe (and three of the late further submissions referred above)¹ contained material errors (for example, incorrect references to provisions and submission points). Council has liaised with these submitters and suggested that they correct their further submissions and serve the corrected further submissions on all parties they were required to serve their further submission on.
12. Council received corrected further submissions from the following persons after 5pm on 19 December 2016:
- a. Balfour, Wendonside & Waikaia Group;
 - b. Ballance Agri-nutrients Ltd;
 - c. Beef + Lamb;
 - d. Dairy Holdings Ltd;
 - e. DairyNZ;
 - f. Department of Conservation;
 - g. Federated Farmers;
 - h. Fonterra;
 - i. Gore District Council, Invercargill City Council, Southland District Council;
 - j. Horticulture NZ;
 - k. Landpro;
 - l. Meridian;
 - m. Mid-Aparima Catchment Group;
 - n. NZ Deer Farmers Association.;
 - o. Pourakino Catchment Group;
 - p. Progressive Engineering;
 - q. Southland District Council ;
 - r. Southland Fish & Game Council;
 - s. Te Rūnanga o Ngāi Tahu;
 - t. Three Rivers Catchment Group; and
 - u. Transpower.
13. The corrected further submissions received out of time and listed in paragraph 12 above should properly be considered as late further submissions.

¹ Further submissions from Dairy Holdings Ltd, DairyNZ and Department of Conservation.

14. I refer to those persons referred to in paragraph 10 and 12 together as the **Late Further Submitters**.
15. Council also received a submission from Mr Abe de Wolde on 20 December 2016. Mr de Wolde is not a primary submitter on the proposed plan. Rather, it appears to me that his submission is intended to be a primary submission. Mr de Wolde did not provide any explanation as to why his primary submission was filed after the time for lodging primary submissions had closed, nor has he expressly requested that Council waives his failure to comply with the time for filing a primary submission.
16. As against this background, the following issues arise:
 - a. whether the Late Further Submitters' failure to comply with the time limit for lodging further submissions should be waived; and
 - b. whether Mr de Wolde's failure to comply with the time limit for lodging a primary submission should be waived.
17. Each of these issues is addressed in this decision.

RELEVANT PROVISIONS UNDER THE ACT

18. Section 37 of the Act provides that the hearing commissioners (in accordance with their delegated powers) may extend a time limit or waive a failure to comply with any time limits specified by or under the Act.
19. Section 37A sets out the matters that the hearing commissioners must take into account in exercising this discretion. These are:
 - a. the interests of any person who, in their opinion, may be directly affected by the extension or waiver;
 - b. the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
 - c. their duty under section 21 to avoid unreasonable delay.

DECISION ON LATE FURTHER SUBMISSIONS

20. Council received the late further submissions and corrected further submissions relatively soon after the further submission period ended. Further, as persons have no ability to submit on further submissions under the Act, I consider that no persons will be prejudiced by the late filing of these further submissions.
21. I consider that granting a waiver will promote the interests of the community in achieving adequate assessment of the effects of the proposed plan and will not cause any unreasonable delay
22. Accordingly, I waive the Late Further Submitters' failure to comply with the time limit for lodging their further submissions.
23. I also direct the Council to serve a copy of this decision on the Late Further Submitters, upload a copy to the Council's Website, and to update its further submission database, accordingly.
24. Whilst considering the issues addressed in this decision, I observed that some of the late further submissions received by Council, or parts of those late further

submissions, may not meet the criteria for further submissions pursuant to Clause 8, Schedule 1 of the Act. In particular:

- a. the further submission of Don Nicolson does not appear to relate to another general submission (rather it reiterates his own original submission); and
 - b. Part 1 of the further submission of Aratiatia Livestock Ltd may not follow the prescribed form or clearly identify which parts of Fish and Game's submission it opposes.
25. I make no findings on the validity of those late further submissions (or parts of those late further submissions) in this decision. Rather, I raise these issues now so that those submitters have an opportunity to address these issues at the public hearing of submissions on the proposed plan, in due course.

DECISION ON LATE SUBMISSION

26. In relation to Mr Abe de Wolde's original submission, I decline to waive Mr de Wolde's failure to comply with the time limit for lodging an original submission.
27. Mr de Wolde's submission is significantly out of time (the time for lodging primary submissions expired on 1 August 2016) and the Summary of Decisions Requested has already been publicly notified.
28. Persons who have already lodged their further submissions will be prejudiced by the waiver. They will not have had an opportunity to respond to Mr de Wolde's submission.
29. There are administrative consequences for Council staff if I waive the failure to comply with time limits. The Council will have to amend the Summary of Decisions Requested, give public notice, and serve a copy of the amended Summary on all submitters. There will also be additional administrative tasks such as notifying submitters of this decision, and extending the timeframes for the lodging of further submissions. There is a cost associated with these additional steps which weighs in favour of declining a waiver.
30. I also have to consider the duty to avoid unreasonable delay. If I waived Mr de Wolde's failure to comply with the time limit and the Summary of Decisions Requested was re-notified, then the time for filing those further submissions would be late-February 2017. In these circumstances, I consider that this delay would be unreasonable given that the hearings are scheduled to commence in mid-May 2017.
31. I consider the prejudice caused to the other submitters and the likely delay resulting from granting a waiver and extension outweighs the interest of accepting Mr de Wolde's submission.
32. For all of these reasons, I decline to waive Mr de Wolde's failure to comply with the time limit for lodging a primary original submission.



Rob van Voorthuysen (Chair)

8 February 2017