

Southland Regional Council (Environment Southland)

Proposed Southland Water and Land Plan

DECISION OF HEARING COMMISSIONERS

Decision 2

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 Southland Water and Land 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.

TIMEFRAMES AND LATE SUBMISSIONS

4. Submissions on the proposed Southland Water and Land 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. The five submissions were considered valid.
7. On 30 November 2016, the Summary of Decisions Requested Report was notified.
8. Further submissions on the proposed plan are due to be lodged by 5 pm on 19 December 2016.

TRANSPOWER'S WAIVER APPLICATION

9. 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. It proposes to lodge its submission by Friday 16 December 2016 if it is granted a waiver.
10. Transpower says it inadvertently did not meet the time limit for lodging submissions on the proposed plan due to an administrative error and that it only became aware of this error after the timeframe for further submissions was notified.

11. 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.
12. 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.
13. I note that the Council has already notified its Summary of Decisions Requested. The time for filing further submissions has also commenced and will close on Monday, 19 December 2016.
14. I accept that Transpower has assets of regional and national significance in Southland. In the past it has actively participated in planning developments in Southland. The interests of the community in achieving adequate assessment of the effects of the proposed plan weigh in favour of granting Transpower's application.
15. However, I consider that persons who have already lodged their further submissions will be directly affected if I grant the application for waiver. Those submitters will not have had an opportunity to respond to Transpower's submission. Further, those submitters who have not yet lodged their further submissions will have insufficient time to consider Transpower's submission before the due date of 19 December 2016. The reality is, that if I grant Transpower's application, I will also have to extend the time limit for lodging further submissions (at least in respect to Transpower's submission). That will place a further burden on submitters who have already prepared and lodged their further submissions.
16. In addition, there are administrative consequences for Council staff if I grant the application. 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 the application.
17. I also have to consider the duty to avoid unreasonable delay. It is possible to delay re-notifying the summary of decisions requested until late January 2017, to ensure that submitters who are taking their summer holidays have a realistic opportunity to provide a further submission in respect of Transpower's submission. If that were the case, then the time for filing those further submissions would be in mid-February 2017. In those circumstances, I consider that the delay that would be caused by me accepting the late submission would be unreasonable given that the hearings are scheduled to commence in mid-May 2017.
18. After giving Transpower's memorandum of counsel careful consideration, I have decided against granting it a waiver.
19. Time limits exist for good reason. They contribute to a fair planning process for all submitters. Unlike the submissions the subject to of Decision 1, Transpower's submission is significantly out of time and the Summary of Decisions Requested has already been publicly notified. 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 Transpower's submission.
20. Finally, I note counsel for Transpower's comments in relation to Transpower's involvement in the development of the proposed Southland Regional Policy Statement. By way of assurance, I record that the hearing commissioners are cognisant of their duty to have regard to that proposed Policy Statement (and may have to give effect to it by the time that the hearing

commences), and also their duty to give effect to the National Policy Statement for Renewable Electricity Generation 2011, and the National Policy Statement on Electricity Transmission.

21. For all of these reasons, Transpower's application for a waiver is declined.

A handwritten signature in black ink, appearing to be 'Rob van Voorthuysen', written in a cursive style.

Rob van Voorthuysen (Chair)

15 December 2016