



Te Taiao Tonga

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### Minute issued by Commissioners

<b>Date:</b>	11 February 2019
<b>File Reference:</b>	APP-20181129
<b>Applicant:</b>	Southland District Council
<b>Activity(ies):</b>	To discharge treated wastewater to land and water.
<b>Subject:</b>	<i>Section 37 Timeframe Extension</i>

#### Summary:

This is an application for extension of statutory timeframe by the applicant, Southland District Council. Relevant grounds identified by the applicant include that it wishes to respond to issues and recommendations identified in the s42A RMA report. This may include potential amendment to scope of proposal, additional information required from the applicant or its consultants, and funding implications of same.

It is mandatory to grant a request by the applicant to suspend processing of a notified application, provided the applicant meets preconditions stated in s91A RMA. The applicant concedes that s91(3)(c) RMA applies, meaning that the application for extension cannot be "requested" under s91A RMA (more than 130 working days have already been excluded from time limits).<sup>1</sup> The applicant therefore relies on discretionary powers in s37 RMA to enable the extension under s91A RMA.

The language of s37 RMA appears to enable waiver as requested by the applicant (".. a consent authority may in any particular case.. extend a time period.. or waive a failure to comply..."). In our view, it may more be properly be seen as extension, but nothing turns on this. Relevant criteria are stated in s37A RMA. These include:

- (a) the interests of any person who, in its 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 a proposal, policy statement, or plan; and
- (c) its duty under section 21 to avoid unreasonable delay.

The applicant relevantly notes that:

- (a) all other submitters have withdrawn their request to be heard, meaning that only the applicant (and its witnesses) expects to be present at the hearing (with consent authority staff). That is

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<sup>1</sup> A total of 130 or more working days have been excluded from time limits under [section 88B](#) in relation to the application (which, under [section 88E\(8\)](#), includes time during which the application has been suspended).

- correct, although Commissioners note that any submitter has opportunity, prior to the hearing, to change their position and request opportunity to be heard;
- (b) discharge will continue to operate under status quo consent arrangements;
  - (c) resourcing concerns by the applicant;
  - (d) availability of Counsel for the applicant.

We accept the above matters meet the criteria in s37A RMA. In particular, providing sufficient information to Commissioners to ensure considered assessment of the proposal on its merits, in light of matters identified by the s42A RMA report, does not suggest unreasonable delay (given the request has been made by the applicant). The applicant should be aware that Commissioners may be concerned should the applicant seek a further time extension (without predetermining matters).

The applicant has not identified the timeframe requested and some logistical issues arise, in terms of identification of a suitable alternative hearing date. Any hearing should be within an additional 130 working days from date of applicant's request,<sup>2</sup> and preferably sooner. Accordingly, our directions are to extend until 13 May 2019, with hearing date to be allocated within 20 working days from 13 May 2019, but avoiding hearing dates on 20-22 May 2019.

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The s91A timeframe for application APP-20181129 is extended until 13 May 2019,  
AND

The s103A timeframe for completion of the hearing for application APP-20181129 is extended by 20 working days from 13 May 2019.



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David McLernon / Rob Enright  
**Signed by the Chairperson  
Independent Commissioners**

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<sup>2</sup> 1 Feb 2019. S37A(4)(a) allows a doubling of the relevant time period, unless the applicant otherwise agrees. We do not consider it appropriate to exceed that doubling, without a fresh assessment under s37 RMA.