

MINUTE OF HEARINGS COMMISSION

DRISCOLL FAMILY TRUST: APPLICATION 20181765

REQUEST TO EXTEND TIMEFRAME PURSUANT TO SECTION 37 RMA

1. On 23 October 2019 the Commission received a request from Environment Southland ('the Council') for the Commission to exercise its powers under delegated authority to extend the timeframe for the hearing of the above application.

2. The application was lodged on 10 October 2018 and submissions closed on 23 August 2019. Two submissions were received on the application.

3. On 21 October, Ms Lacey Bragg, the Council's Consents Coordinator, explained that owing to resourcing issues, it would not be possible to hold the hearing in November as originally anticipated. Accordingly it would not be possible to comply with the requirements of section 103(2) RMA, which states as follows with respect to the time limit for the completion of the hearing of a notified application:

(2) If public notification was given, the hearing must be completed no later than 75 working days after the closing date for submissions on the application.

4. The Chair was advised that the Council sought to extend the time for issuing a decision to 150 working days. Section 37A(2) states:

(2) A time period may be extended under section 37 for –

(a) a time not exceeding twice the maximum time period specified in this Act; or

(b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.

5. The Chair requested that the Council consult with the applicant, or his representative, to determine their response to an extension of time as requested. It is understood that discussions took place between Dr Michael Durand, the Council's Consents Manager and Dr Mike Freeman, the applicant's consultant. The Chair also requested that a formal request be made to the Commission for an extension to the timeframe, accompanied by the applicant's response.

6. This formal request from Mr Alex Erceg for the Council was received by the Commission on 23 October 2019. In it, Mr Erceg stated that:

The subject application is complex in nature with a level of uncertainty surrounding the adverse effects of the proposal and as such adequate time is required to undertake and complete an adequate assessment of the proposed activities.

7. Mr Erceg also explained that his current workload commitments included the processing of several other publicly notified consent applications and that Council resources are also stretched to assist commissioners and other parties prior to hearings, the exchange of evidence, and the

facilitation of hearings. He stated that it would not be feasible to hold the hearing, (allowing for the preparation of a section 42A report) prior to 3 February 2020.

8. The Commission also received an accompanying letter (emailed, dated 23 October 2019) from Dr Mike Freeman, the applicant's consultant. In this letter, while he acknowledged the staff's difficulties with respect to workload, he did not consider this was a valid reason in itself to significantly delay the hearing. He said that the Council had been aware of resourcing issues for some time previously. He drew attention to the adverse effects of delays on his client in terms of forward planning, in regard to matters such as breeding and feed/pasture/crop arrangements. However, he accepted that the Council needed time to deal with the queue of notified resource consent applications and stated that:

*Taking all these matters into account **we suggest it would be reasonable to limit any extension to an absolute maximum of 120 working days.** This would ensure that the scheduled hearing is closed by approximately 4 March 2020. For a one-day hearing we think that the time period between the hearing and the closure of the hearing is reasonable.*

9. In his memorandum to the Commission requesting the extension, Mr Erceg accepted it would be reasonable to limit the extension to a maximum of 120 working days.

10. Section 37A(1) states:

(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 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.

11. Section 37A(4) states:

(4) A consent authority may extend a time limit under section 37 only if –

(a) the time period is extended does not exceed twice the maximum time period specified in this act; and

(b) either –

(i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter); or

(ii) the applicant agrees to the extension; and

(c) the authority has taken into account the matters specified in subsection (1).

12. On the information available to us, we are not able to conclude that special circumstances apply in this case, in terms of the scale or complexity of the application. However, the Commission notes that the Applicant has agreed in writing to an extension to the date that the hearing must be completed to 120 working days, thus satisfying one of the two tests under section 37(4)(b). The

extension also falls within the limit of 150 days permissible in terms of the requirements of section 103A(2) and section 37(4)(a).

13. Turning to the matters under section 37(1), we acknowledge that the party directly affected in this case is the applicant, and note from Mr Freeman's letter that while an extension to 120 working days is not welcomed by the applicant, given the circumstances in this case it is acceptable. We are entirely satisfied that the interests of the community will be better served if the Council's officers have sufficient time to produce a robust report on the application. In these circumstances we do not consider that an extension to the timeframe is inconsistent with the duty to avoid unreasonable delay under section 21 RMA.

14. We draw to the parties' attention however, that a hearing is concluded at the time that the applicant exercises their right of reply. This will require an appropriate level of consultation between the applicant, the Council, and potentially submitters to clarify relevant matters, and particularly any potential conditions, should a grant of consent be recommended. There will be little time available, even within the extended time frame, should issues arise during the hearing which require further information to be provided.

15. The Commission hereby resolves that pursuant to section 37 RMA, the Council be granted a waiver to extend the time to complete the hearing of the application to a maximum of 120 working days from the date that submissions closed on the application, this being counted from 23 August 2019.



Robert Charles Nixon

Chair, Hearings Commission

24 October 2019