

EXTENSION OF TIME LIMIT UNDER SECTION 37 OF THE RESOURCE MANAGEMENT ACT 1991

Background

Proposed Plan Change 22 (Outstanding Natural Features and Landscapes) was publicly notified 5 September 2009.

In total 118 submissions were received by the close of submission period 6 November 2009. Submissions received were both in support and opposition to the plan change.

Further submissions were received from 17 submitters by the close of the further submission period 31 March 2010.

The majority of submitters indicated that they wished to be heard in support of their submissions.

The Resource Management Act 1991 Clause 10 First Schedule requires that a local authority must give its decision on the plan change no later than two years after notifying the proposed plan.

The two year period from the time of notification has expired, an extension of this time limit is sought under Section 37 of the Resource Management Act to enable the proposed plan change to proceed through to the notification of a decision.

The Act enables a request for an extension of time under section 37 to be made whether or not the time period has expired.

Resource Management Act 1991

37 Power of waiver and extension of time limits

- (1) A consent authority or local authority may, in any particular case,—
- (a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; or
 - (b) waive a failure to comply with a requirement under this Act, regulations, or a plan for the time or method of service of documents.

37A Requirements for waivers and extensions

- (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.
- (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.

- (4) A consent authority may extend a time period under section 37 only if—
- (a) the time period as 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).
- (5) A consent authority may extend a time period under section 37 so that the extended period exceeds twice the maximum time period specified in the Act only if—
- (a) the applicant agrees to the extension; and
 - (b) the authority has taken into account the matters specified in subsection (1).
- (6) A consent authority or a local authority must ensure that every person who, in its opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver.

Considerations

An extension of the time limit for making decisions on this plan change has been requested under Section 37 of the Resource Management Act 1991 to enable the Commissioners to consider and hear the extensive and comprehensive information, to properly address the complexity of the issues raised and to provide time for the Commissioners to undertake an adequate assessment of the proposed plan change and issue a decision.

The extension of time sought has been necessary due to a number of delays which have been allowed to occur to enable additional information to be available to the Commissioners or to be incorporated into the Officer's recommendations and response to the submissions.

Since the closure of further submissions the Council has responded to the submissions received by commissioning a peer review of the Outstanding Natural Features and Landscapes. The timing of the peer review was delayed to allow consideration of the decisions on the One Plan (the combined Regional Policy Statement and Regional Plan of the Horizons Regional Council) which were released in August 2010 and specifically related to the identification of outstanding natural landscapes and features.

The timing of the peer review was also delayed to allow consideration of the New Zealand Coastal (2010) that was issued and came into effect 3 December 2010 and included requirements in relation to Outstanding Natural Features and Outstanding Natural Landscapes in the coastal environment.

The timing of the hearing was also delayed to coincide with the conclusion of the mediation on the One Plan, where the provisions relating to the outstanding natural landscapes were appealed and the Horowhenua District Council were a section 274 party to several appeals. Although not all appeal points were successfully resolved through mediation the delay has allowed the outcome of mediation to be considered and incorporated into the Officers section 42A report. The last day of mediation held in relation to the Outstanding Landscape provisions of the One Plan was 27 September 2011.

It is acknowledged that there are landowners who will continue to be potentially affected by proposed Plan Change 22, which has legal effect due to being notified prior to the Resource Management (Simplifying and Streamlining) Amendment Act 2009 which came into effect 1 October 2009. Whilst this does extend the period of uncertainty for landowners subject to the proposed provisions of Plan Change 22, it is hoped that

the extension of time sought now would provide the opportunity to reduce the potential number of appeals and ultimately the length of time before the Plan Change becomes operative and landowners have certainty over the plan provisions that apply to their land.

It is considered that the interests of the community in achieving an adequate assessment of the effects of this proposed plan change are best served by extending the time to allow the appointed independent Commissioners to come to terms with the complexity of this plan change, the large number of submission points, and for the outcomes of the One Plan mediations to be considered and incorporated into the recommendations to the Commissioners.

Independent Commissioners were appointed by Council at the 7 September 2011 meeting of the Horowhenua District Council. The commissioners were given full authority to hear and determine the Plan Change. The date for the hearing of submissions has been set, with the hearing scheduled to take place 14-17 November 2011. The deliberations of the Commissioners will take place at the closure of the hearing. Commissioners will prepare and issue the decision avoiding any unreasonable delay. It is noted that the decision of the Commissioners is required to be adopted by Council before it is publicly notified.

The extension of time sought would not exceed twice the maximum time (two years in this case) specified in the Act.

Pursuant to delegated authority under Section 34A of the Act and having considered the matters required by Section 37A(1) of the Act, the time limit in which a decision can be made on proposed plan change 22 (Outstanding Natural Features and Landscapes) to the Horowhenua District Plan be extended from 5 September 2011 until 30 June 2012, for the following reasons:

- (i) The extension will not adversely affect the interest of any persons; and
- (ii) The interests of the community in achieving adequate assessment of the effects of the proposal; and
- (iii) There will be no unreasonable delay in hearing submissions and issuing a decision on the plan change.

Pursuant to the powers delegated to the Environmental Services Manager by the Horowhenua District Council, the time limit for notification of the decision be extended until 30 June 2012.

Dated this // day of November 2011.



Tony Thomas
Environmental Services Manager
HOROWHENUA DISTRICT COUNCIL

