

Memorandum

To: Michelle Ward, General Manager -Climate Land and Oceans
Copy to: Jillian Kennemore (Project Leader), Teresa Calmeyer (Team Leader)
From: Michaela Aspell (Advisor, Land & Oceans Applications)
Date: 17 September 2020
Subject: ORC Plan Changes – Waiver for time service for late submissions

Purpose

1. This memo seeks your decision on waiving the time for service for five late submissions that were received by the Environmental Protection Authority (EPA) in relation to the call for submissions on the Otago Regional Council Omnibus Plan Change.

Background

2. The Instrument of Delegation signed by the CE on 6 March 2020¹ delegates to yourself, as General Manager Climate Land and Oceans, the powers under section 37 of the Resource Management Act 1991 (RMA) including to extend a time period or to waive a failure to comply with a requirement for the time or method of service of documents.
3. The Otago Regional Council Omnibus Plan Change was called in by the Minister for the Environment as part of a Nationally Significant Proposal under Section 142(2) of the RMA on 8 April 2020.
4. On 6 July 2020 we publicly notified the Minister's direction on the Omnibus Plan Change (Plan Change 8 and Plan Change 1) and the public were invited to make a submission on the plan changes for 30 working days from the date of notification. The submission period closed on 17 August 2020.
5. The following submissions were received after the submission period closed:
 - a. Submission #80110 (Emma Crutchley) – received by the EPA on 22 August 2020 (5 working days late)
 - b. Submission #80113 (Remarkables Peak) – received by the EPA on 8 September 2020 (16 working days late)
6. The following submissions were received in part within the submission period but further information was required to make the submissions complete. The further information was received after the closing date of 17 August 2020:
 - a. Submission #80108 (Lynne Stewart) – received in full on 19 August 2020 (2 working days late)

¹ [Instrument of Delegation Resource Management Act 1991 Signed 6 March 2020 by Dr Allan Freeth \(EPA Chief Executive\)](#)

- b. Submission #10030 (Beatrice Lee) – received in full on 2 September 2020 (12 working days late)
- c. Submission #80109 (AB & BJ Groundwater) – received in full on 2 September 2020 (12 working days late)

Legal Context

- 7. Section 149E(3) of the RMA requires submissions to be in the prescribed form and served on the EPA within the time allowed in subsection (9).
- 8. The time allowed under subsection (9) is 30 working days after the day on which public notice of the direction is given.
- 9. In accordance with s 37(1)(b) of the RMA a consent authority may, in any particular case waive a failure to comply with a requirement under this Act, regulations, or in a plan for the time or method of service of documents.
- 10. Section 37A(1) of the RMA provides that a consent authority must not extend a time limit or waive compliance with a time limit or method of service in accordance with s 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. In accordance with s 37B(ba) of the RMA, the EPA has the powers of a consent authority for the purposes of s 37 and 37A while carrying out its functions under Part 6AA, except in respect of the time periods and requirements under section 146(1). As stated in paragraph 2, this power is delegated from the Chief Executive to yourself.
- 12. In accordance with s 37A(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.

Reasons for late submissions

- 13. The following outlines the reasons for the late submissions identified in paragraphs 5 and 6:
 - a. Submission #80110 (Emma Crutchley) – received by the EPA on 22 August 2020.
 - i. This submission was received by the applicant, Otago Regional Council, on 17 August 2020 but, due to an email error, was not received by the EPA until 22 August 2020.
 - b. Submission #80113 (Remarkables Peak) – received by the EPA on 8 September 2020
 - i. The submitter explained in an email (refer Appendix One) that the recent Level 3 restrictions in Auckland had prevented them from making their submission earlier, stating

“I realise that the submission is being sent outside the closing date for submissions and request that it be accepted as the principal of the company was in Auckland throughout Auckland’s most recent Level 3 COVID-19 shutdown and was [not] able to get to Queenstown and attend to normal business.”

- c. Submission #80108 (Lynne Stewart) – received in full on 19 August 2020
 - i. This submission was received in part on 17 August 2020. The submitter was asked to provide further details to their submission as required by the prescribed form. This further information was received on 19 August 2020.
- d. Submission #10030 (Beatrice Lee) – received in full on 2 September 2020
 - i. This submission was received in part on 17 August 2020. The submitter was asked to provide further details to their submission as required by the prescribed form. This further information was received on 19 August 2020.
- e. Submission #80109 (AB & BJ Groundwater) – received in full on 2 September 2020
 - i. This submission was received in part on 16 August 2020. The submitter was asked to provide further details to their submission as required by the prescribed form. This further information was received on 19 August 2020.

Requirements for waivers

- 14. I do not consider that any person would be directly affected by the waiver as there will not be any implications or prejudice for the process going forward. Similarly, I do not consider there will be any effect on the interests of the community nor will the waiver cause any delay to the process.

Form of submissions

- 15. For completeness, I note that some submissions the EPA received were not in the EPA form and were sent via email or a different EPA form (i.e. for hazardous substance approval).
- 16. In accordance with r 4 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003, a form is not invalid only because it contains minor differences as long as the form used has the same effect and is not misleading. Although the submissions referred to in the above paragraph were not in the prescribed form, I consider they had the same effect and do not consider that they are misleading and therefore do not suggest that a waiver of this requirement is necessary.

Recommendations

17. I recommend that you:

- a. **Agree** to waive the requirement in s 149E(3)(b)(i) for the following submissions, in accordance with s 37 and the powers delegated to you:
- i. Submission #80110 (Emma Crutchley) [yes / no]
 - ii. Submission #80113 (Remarkables Peak) [yes / no]
 - iii. Submission #80108 (Lynne Stewart) [yes / no]
 - iv. Submission #10030 (Beatrice Lee) [yes / no]
 - v. Submission #80109 (AB & BJ Groundwater) [yes / no]



Michelle Ward
General Manger - Climate Land and Oceans
Environmental Protection Authority

Date: 17 September 2020