

Proposed District Plan
Strategic Planning and Policy
Far North District Council
Kaikohe 0440

Your reference

Our reference
1414650

By email pdp@fndc.govt.nz

17 September 2024

Ara Poutama Aotearoa the Department of Corrections - Application for waiver of time limit to lodge further submission on the Far North Proposed District Plan

- 1 Ara Poutama Aotearoa the Department of Corrections (**Ara Poutama**) respectfully seeks a waiver of the time limit to lodge a further submission on the Far North Proposed District Plan (**PDP**) under section 37(1)(b) of the Resource Management Act 1991 (**RMA**).
- 2 Ara Poutama is a submitter (#158) and a further submitter (#42) on the PDP.
- 3 The time period to lodge further submissions on the PDP closed on 4 September 2023. Ara Poutama lodged a further submission on 3 November 2024 which was rejected by the Independent Hearings Panel (**Panel**) for being out of time. Ara Poutama was not provided with the material taken into account by the Commissioners opposing its waiver application, or given an opportunity to respond. In order to enable a proper process and consideration of these issues, Ara Poutama now re-lodges its further submission afresh (in the same form) alongside this application for waiver.

Application for waiver

- 4 Under section 37A of the RMA, the Council must not waive compliance with a time limit in accordance with section 37 unless it has taken into account:
 - 4.1 the interests of any person who, in its opinion, may be directly affected by the waiver; and
 - 4.2 the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement or plan; and
 - 4.3 its duty under section 21 to avoid unreasonable delay.
- 5 The following reasons are submitted for the waiver to be granted:
 - 5.1 Ngāwhā Generation Limited (**NGL**), the submitter, will not be directly affected by a waiver. While it may be directly affected by the content of the further submission, that is not an effect of granting this waiver to accept this further submission out of time.¹

¹ As per section 37A(1)(a) RMA.

- 5.2 It is in the interests of the community in achieving adequate assessment of the effects of the PDP to have Ara Poutama participate on the issue (in addition to other matters it has submitted and further submitted on).² Ara Poutama's further submission enables it to fully participate in planning matters which have a potential significant effect on its established and nationally significant activities.
- 5.3 Of most significance, granting a waiver does not cause any delay to the PDP hearing process.³ The PDP process relevant to this further submission has yet to progress to the hearing stage, and the NGL rezoning request is to be heard during Hearing 19, scheduled for August 2025. This allows more than sufficient time for submitters to respond to Ara Poutama's further submission, and then for Ara Poutama to respond to any responses received. Granting a waiver in these circumstances will therefore not prejudice NGL or any other submitters. It is essential that claims of prejudice are considered in the context of the statutory tests relevant to a waiver application, as opposed to general prejudice claims regarding the content/relief sought in the substance of the further submission.
- 5.4 Regarding time waiver applications, it is a general principle that the RMA:⁴
- Encourages participation (in an orderly way, certainly) in the decision-making processes, with the general philosophy that the possible inconvenience, delays and costs caused are hopefully outweighed by better informed decision-making and better environmental outcomes.
- 5.5 It is submitted that there is no inconvenience, delay, or additional costs caused by the late lodgement of this further submission here. Even if there were, the principle of participation under the RMA would need to be considered.
- 5.6 The RMA emphasises the participatory nature of proceedings, therefore to exclude parties without good reason would be contrary to the clear provisions of the RMA.⁵ It is submitted that there is no good reason, in light of the above, to not accept Ara Poutama's late further submission.
- 5.7 It is submitted that it would be prejudicial to refuse granting a waiver to Ara Poutama in these circumstances. This is because:
- (a) NGL's submission seeks relief that might potentially impact Ara Poutama's operations as authorised by the existing designation. The prejudice to Ara Poutama if it is unable to participate in the PDP process on this issue which may directly affect the adjacent significant designated prison population, which is essentially an authorised residential use, is real.
 - (b) Ara Poutama was not directly notified of the re-zoning sought and that the Council's GIS tool was unclear that this re-zoning had been sought in NGL's submission.
 - (c) The Panel received information from NGL which it relied on in its decision to reject Ara Poutama's late further submission dated 3 November 2023, that was not disclosed to Ara Poutama. This raises concerns regarding

² As per section 36A(1)(b) RMA.

³ As per section 37A(1)(c) RMA.

⁴ *Omaha Park Ltd v Rodney District Council* ENC Auckland A046/08 at [16].

⁵ *Howick Residents & Ratepayers Association Inc v Manukau City Council* ENC Auckland A001/08 at [14].

transparency and procedural fairness, as Ara Poutama was not given any opportunity to view or respond to that information in light of the established tests for waiver applications as noted above.

- 5.8 Significantly, the Environment Court recently dealt with a very similar situation where it granted an application for a waiver for filing a late section 274 notice.⁶ In that case:
- (a) The party applying for the waiver (**the Trust**) owned the land immediately adjoining land that was sought to be rezoned. The Trust was not made aware of the rezoning appeal, nor the submissions upon which it was founded, due to an oversight in recognising the Trust as a potential affected party.⁷ Here, the Court held that the "sins of the advisor should not be visited on the client."⁸
 - (b) The Court acknowledged that while the notice was filed almost a year late, this was "but one of the matters to which the Court must turn its mind to in considering undue prejudice", and while many aspects of the rezoning appeal had been resolved, the Court held that the fact remained that the appeal had not been progressed as it related to the matter on which the Trust sought to be heard.⁹
 - (c) Further, the Court held that because the Trust owned the land immediately adjoining to the land sought to be rezoned, it therefore had an interest in the appeal greater than the interest of the general public.¹⁰
 - (d) It was in light of these factors that the Court granted the waiver in this case.

6 For the reasons outlined above, Ara Poutama seeks that a waiver be granted and that its further submission be accepted by the Council.

Yours sincerely



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⁶ *Bridge v Central Hawkes Bay District Council* [2024] NZEnvC 191.

⁷ *Bridge v Central Hawkes Bay District Council* [2024] NZEnvC 191 at [25] and [31].

⁸ *Bridge v Central Hawkes Bay District Council* [2024] NZEnvC 191 at [31].

⁹ *Bridge v Central Hawkes Bay District Council* [2024] NZEnvC 191 at [35].

¹⁰ *Bridge v Central Hawkes Bay District Council* [2024] NZEnvC 191 at [38].