

PROPOSED FAR NORTH DISTRICT PLAN

MINUTE 16 OF THE INDEPENDENT HEARINGS PANEL

DECISION ON LATE FURTHER SUBMISSION

1. This minute is a decision on an application by Ara Poutama Aotearoa the Department of Corrections (**Ara Poutama**) to waive the time limit to lodge a further submission relating to the Far North Proposed District Plan, under s 37(1)(b) of the Resource Management Act 1991 (**RMA**).

Background

2. The Far North Proposed District Plan was notified on the 27 July 2022. Submissions closed on 21 October 2022. Following this, a summary of decisions requested was notified on 7 August 2023 and the period for further submissions closed on 4 September 2023. On 3 November 2023, Ara Poutama lodged a late further submission (FS571) on two original submission points by Ngāwhā Generation Limited (S432.001 and S432.029).
3. The [S42a report on late submissions](#) recommended that the Hearings Panel accept this late further submission and allow the matters raised to be addressed through the hearings process.
4. The Hearings Panel subsequently issued [Minute 2 - Late Submissions](#) on 9 February 2024. Minute 2 included the Hearings Panel's decisions on whether to waive the statutory time limits for late submissions and further submissions, including the late further submission lodged by Ara Poutama.
5. The minute states that Ara Poutama's further submission was considerably late and beyond the acceptable discretion we were prepared to grant in the circumstances. The minute goes further to state:

“We also note that that we have received an objection to the acceptance of FS571 by Ara Poutama Aotearoa the Department of Corrections from the primary submitter Ngawha Generation (S432) stating that it would be unduly prejudiced if the Commissioners determine to accept it. We agree, noting also, as above, the considerable lateness of the further submission, and we have rejected submission FS571... accordingly”.

6. After this decision, communication continued between the two submitters and Council staff. On 17 September 2024, Ara Poutama filed [a late further submission](#) and [application for waiver of the time limit](#). This late further submission was identical to FS571 as originally lodged on 3 November 2023. It opposes Ngāwhā Generation Limited's submission seeking that the land located adjacent to the Northland Region Corrections Facility be rezoned to

Light Industrial or Special Purpose. Ara Poutama requested a reasoned decision from the Council on the waiver application that was filed in support of the re-lodged further submission.

7. The late further submission and application for waiver was served on Ngāwhā Generation Limited. On the 23 September 2024, the Panel received an email on behalf of Ngāwhā Generation Limited confirming that Ngāwhā Generation Limited's position on the new late submission is unchanged from its position on the previous late submission, but it will abide the decision of the Hearings Panel on this matter. Counsel for Ara Poutama subsequently requested a copy of Ngāwhā Generation Limited's previous position and, upon receipt, emailed the Panel challenging Ngāwhā Generation Limited's basis for opposing the late further submission, and reiterating matters set out in the application for waiver (Attachment 3 to this Minute).
8. [Minute 10](#) directed a timetable for Ngāwhā Generation Limited to provide any further comments and then for Ara Poutama to file any reply, addressing only matters raised in any comments received from Ngāwhā Generation Limited.
9. On 18 October 2024, Ngāwhā Generation Limited's representative reiterated (email contained in Attachment 2 to this Minute) that Ngāwhā Generation Limited's position on the new late submission is unchanged from its position on the previous late submission ("as outlined in comms from Tarryn Collins – reattached"). Notwithstanding this position, Ngāwhā Generation Limited advised that it will abide by the decision of the Hearings Panel on this matter. Ara Poutama subsequently confirmed that, as nothing additional had been raised, there were no further matters in reply to be addressed by Ara Poutama.

The application by Ara Poutama

10. The application by Ara Poutama is made under s 37A of the RMA. At paragraph 4, the application summarised key aspects of s 37A. Against that context, the application sets out a number of reasons why Ara Poutama considers the waiver should be granted. Although the reasons are not repeated in full here, all have been carefully considered.

Ngāwhā Generation Limited's position

11. In opposition to the further submission lodged on 3 November 2023, the email from Tarryn Collins on behalf of Ngāwhā Generation Limited (Attachment 1 to this Minute) stated that "on any objective and reasonable basis, this is a significantly late further submission". The email refuted any reliance by Ara Poutama on the "FNDC PDP Submissions Explorer" as justification for lateness and referred to the website disclaimer in that regard. Ms Collins stated that, as the late further submission only relates to Ngāwhā Generation Limited's original submission, and its primary relief is that Ngāwhā Generation Limited's original submission be rejected as currently proposed, it is clear that Ngāwhā Generation Limited will be unduly prejudiced if the Commissioners determine to accept the late further submission (see Attachment 1 to this Minute). On the basis of the above, and in the overall interests of procedural fairness, Ngāwhā Generation Limited continued to oppose the acceptance of the late submission from Ara Poutama, and respectfully requested that the Hearings Panel reject it.
12. While the correspondence described above related to the further submission lodged on 3 November 2023, the effect of the correspondence on behalf of Ngāwhā Generation Limited dated 23 September and 18 October is to apply the same reasoning and objections to Ara Poutama's re-lodged further submission and waiver application dated 17 September 2024. These reasons are addressed below.

Statutory context

13. When considering late further submissions, the starting point is clause 1 of Schedule 1 of the RMA which states that where any time limit is set in Schedule 1, a local authority may extend it under s 37 of the RMA. Sections 37 and 37A deal with the power and requirements of a waiver and extension of time limits.

14. Section 37(1) provides that:

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.*

15. Section 37A then sets out the requirements for waivers and extensions as follows:

(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...*

(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.

Discussion

16. The Ara Poutama application seeks a *waiver* for failure to comply with the time limit for further submissions, as opposed to the extension of a time limit. As such, the restrictions on time extensions under s 37A(2) do not apply.

17. The further submission lodged by Ara Poutama dated 3 November 2023 was nearly two calendar months late. The relodged further submission dated 17 September 2024 is just over 14 calendar months after the close of further submissions.

18. The Hearings Panel strongly encourages all submitters to adhere to the statutory timeframes in order to ensure an orderly and efficient process. However, it must now consider Ara

Poutama's relodged further submission and application for waiver on their merits under s 37A of the RMA. The matters in s 37A are mandatory relevant considerations. Each must be taken into account before a decision is made on whether to grant the application for waiver of time sought by Ara Poutama.

The interests of any person who, in its opinion, may be directly affected by the extension or waiver – s 37A(1)(a)

19. The prejudice asserted by Ngāwhā Generation Limited appears to arise because it would face opposition to its rezoning request that it would not otherwise face if the application for waiver is refused. Ara Poutama submits that Ngāwhā Generation Limited will not be directly affected by the waiver and, while Ngāwhā Generation Limited may be directly affected by the content of the further submission, that is not an effect of granting the waiver to accept the further submission out of time.
20. Irrespective of whether Ngāwhā Generation Limited should be described as "directly affected" by the waiver, we do not consider that s 37A(1)(a) warrants refusal of Ara Poutama's application for a waiver. To the extent that Ngāwhā Generation Limited may be directly affected by granting the waiver, any impacts are not particularly onerous or burdensome. While Ngāwhā Generation Limited would be required to face new opposition to its rezoning request, that is anticipated by the further submissions process, and it is consistent with the scheme of the RMA for Ara Poutama to be heard by the Hearings Panel on a rezoning proposal that may affect its interests.

The interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan – s 37A(1)(b)

21. Allowing Ara Poutama to pursue its further submission will enable Ngāwhā Generation Limited's rezoning proposal to be tested before the Hearings Panel by a potentially affected member of the community. We consider that it is generally in the interests of Ara Poutama and potentially the wider community for the rezoning proposal to be tested before the Hearings Panel. Section 37A(1)(b) therefore does not warrant refusal of Ara Poutama's application for waiver.

Duty under section 21 to avoid unreasonable delay – s 37A(1)(c)

22. Granting the waiver would not cause any delay to the hearing process. The rezoning request by Ngāwhā Generation Limited is not scheduled to be heard until September 2025 (Hearing Stream 15B). We accept Ara Poutama's submission that this leaves sufficient time for submitters to respond to Ara Poutama's further submission, and then for Ara Poutama to respond to any responses received. Section 37A(1)(c) therefore does not warrant refusal of Ara Poutama's application for waiver.

Result

23. Pursuant to s 37(1)(b), and having regard to all relevant matters including 37A(1)(a) to (c), the Hearings Panel grants a waiver of time and accepts Ara Poutama's further submission dated 17 September 2024, on submission points S432.001 and S432.029 of the Ngāwhā Generation Limited submission.
24. To be clear, nothing in the foregoing has any bearing on the merits of the respective positions of Ngāwhā Generation Limited and Ara Poutama in relation to the substantive rezoning

request. That will be considered in due course by the Hearings Panel through the proper process.

25. A copy of this minute is to be provided to Ngāwhā Generation Limited in accordance with s 37A(6).

26. If you have any questions regarding this Minute, please contact the Hearings Administrator Alicia-Kate (AK) Taihia - Submissions & Hearings Administrator District Plan: alicia-kate.taihia@fndc.govt.nz or (09)4015247.

A handwritten signature in black ink. The signature consists of a large, stylized loop at the top, followed by the letters 'R.B.' in a cursive script, and another large loop at the bottom. A horizontal line extends to the right from the middle of the signature.

Robert Scott
Hearings Panel Chairperson

7 November 2024

ATTACHMENT 1: Email Correspondence from Taryn Collins, Ngawha Generation Limited, dated 18 January 2024

From: Taryn Collins
Sent: Thursday, 18 January 2024 8:31 am
To: Liz Searle
Cc: Jaimee Cannon; Monique Gillies; David Badham
Subject: RE: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan
Attachments: BM191052_07_Overview_Plan - Zoning Plan_V1_20 October 2022 reduced.pdf

Mōrena Liz,

Please note, our submission should be received from our subsidiary **Ngāwhā Generation** (who are a part of Top Energy Group). If the below can please be forwarded on to the panel, it would be much appreciated.

Thanks for your email and providing further opportunity for us to expand on Ngāwhā Generation's opposition to the late further submission received by FNDC from Ara Poutama Aotearoa / Department of Corrections ("**Ara Poutama**"). In this regard, I note the following reasons for Ngāwhā Generation's opposition:

1. The late further submission from Ara Poutama solely relates to the Ngāwhā Generation's original submission (S432.001 and S432.029) to rezone its land at Ngāwhā to Light Industrial or Special Purpose Zone. A copy of the map accompanying Ngawha Generation's rezoning request is attached.
2. Ara Poutama's primary relief is that Ngāwhā Generation's rezoning proposal in their current form be rejected.
3. Ara Poutama's first further submission was submitted within the further submission deadline on 4 September 2023. The additional late further submission was submitted on 3 November 2023, almost 2 calendar months (43 working days) after the original further submission deadline. Ngāwhā Generation submit that on any objective and reasonable basis, this is a significantly late further submission.
4. Within the body of Ara Poutama's further submission the following statement is made:
"Please note that Ara Poutama made an earlier further submission on the PDP, dated 4 September 2023. This is an additional further submission which relates to a primary submission point requesting rezoning that was not shown on the 'FNDC PDP Submissions Explorer', and thus was not identified by Ara Poutama until engagement (outside of the formal PDP process) was entered into with the submitter."
5. FNDCs PDP submission explorer includes a disclaimer upon entering it as follows:

"Disclaimer

The spatial mapping tool has no legal weight and has been produced to assist the public in understanding those submissions seeking spatial outcomes (such as rezoning) for specific properties. All care has been taken to ensure the spatial mapping tool accurately reflects the relevant submission points.

However, please note that the Council:

- *Does not guarantee the spatial tool gives the exact location of rezoning requests sought in submissions.*
- *Will bear no liability for the use, reliance on or misuse of any information*

contained in the spatial mapping tool.

- *Recommends that, in addition to using the information provided in the spatial mapping tool, that the public read the original submissions.*

In continuing to use this service you agree to the above statement.”

6. The disclaimer is clear that it does not give the exact location of rezoning requests and that the original submissions also needs be reviewed. Therefore, Ara Poutama’s justification of the rezoning request not being shown on the ‘FNDC PDP Submissions Explorer’ should carry no weight in the determination of whether or not to accept the late further submission.
7. As the late further submission only relates to Ngāwhā Generation’s original submission, and its primary relief is that Ngāwhā Generation’s original submission be rejected as currently proposed, it is clear that Ngāwhā Generation will be unduly prejudiced if the Commissioners determine to accept it.
8. On the basis of the above, and in the overall interests of procedural fairness, **Ngāwhā Generation continue to oppose** the acceptance of the late submission from Ara Poutama, and respectfully request that the Hearing’s Panel reject it.

*At the time of preparing this email, the mapping website could be accessed at this link [FNDC Submissions Explorer \(Public Example\) \(arcgis.com\)](#)

I trust the above is of assistance, however should FNDC or the Hearings Panel requiring further details or explanation, please do not hesitate to contact me in the first instance.

Kind regards,

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From: Liz Searle <Liz.Searle@fndc.govt.nz>
Sent: Wednesday, 17 January 2024 5:35 pm
To: Taryn Collins
Cc: Jaimee Cannon; Monique Gillies
Subject: RE: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan

Kia ora Taryn,

Thank you for the further comment provided to support your opposition to Council accepting late submission points FS571.001 and FS571.002. A copy of this correspondence will be filed

and forwarded to the panel for their consideration tomorrow.

Ngā mihi

Liz Searle

Policy Planner - District Plan

From: Taryn Collins

Sent: Wednesday, January 17, 2024 4:05 PM

To: Liz Searle

Cc: Proposed District Plan <pdp@fnhc.govt.nz>; David Badham; Calvin Naude

Subject: RE: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan

Tēnā koe Liz,

Thanks for your email and providing further opportunity for us to expand on Top Energy's opposition to the late further submission received by FNDC from Ara Poutama Aotearoa / Department of Corrections ("**Ara Poutama**"). In this regard, I note the following reasons for Top Energy's opposition:

1. The late further submission from Ara Poutama solely relates to the Top Energy's original submission (S432.001 and S432.029) to rezone its land at Ngāwhā to Light Industrial or Special Purpose Zone. A copy of the map accompanying Top Energy's rezoning request is attached.
2. Ara Poutama's primary relief is that Top Energy's rezoning proposal in their current form be rejected.
3. Ara Poutama's first further submission was submitted within the further submission deadline on 4 September 2023. The additional late further submission was submitted on 3 November 2023, almost 2 calendar months (43 working days) after the original further submission deadline. Top Energy submit that on any objective and reasonable basis, this is a significantly late further submission.
4. Within the body of Ara Poutama's further submission the following statement is made:
"Please note that Ara Poutama made an earlier further submission on the PDP, dated 4 September 2023. This is an additional further submission which relates to a primary submission point requesting rezoning that was not shown on the 'FNDC PDP Submissions Explorer', and thus was not identified by Ara Poutama until engagement (outside of the formal PDP process) was entered into with the submitter."
5. FNDCs PDP submission explorer includes a disclaimer upon entering it as follows:

"Disclaimer

The spatial mapping tool has no legal weight and has been produced to assist the public in understanding those submissions seeking spatial outcomes (such as rezoning) for specific properties. All care has been taken to ensure the spatial mapping tool accurately reflects the relevant submission

points.

However, please note that the Council:

- *Does not guarantee the spatial tool gives the exact location of rezoning requests sought in submissions.*
- *Will bear no liability for the use, reliance on or misuse of any information contained in the spatial mapping tool.*
- *Recommends that, in addition to using the information provided in the spatial mapping tool, that the public read the original submissions.*

In continuing to use this service you agree to the above statement."

6. The disclaimer is clear that it does not give the exact location of rezoning requests and that the original submissions also needs be reviewed. Therefore, Ara Poutama's justification of the rezoning request not being shown on the 'FNDC PDP Submissions Explorer' should carry no weight in the determination of whether or not to accept the late further submission.

7. As the late further submission only relates to Top Energy's original submission, and its primary relief is that Top Energy's original submission be rejected as currently proposed, it is clear that Top Energy will be unduly prejudiced if the Commissioners determine to accept it.
8. On the basis of the above, and in the overall interests of procedural fairness, **Top Energy continue to oppose** the acceptance of the late submission from Ara Poutama, and respectfully request that the Hearing's Panel reject it.

*At the time of preparing this email, the mapping website could be accessed at this link [FNDC Submissions Explorer \(Public Example\) \(arcgis.com\)](#)

I trust the above is of assistance, however should FNDC or the Hearings Panel requiring further details or explanation, please do not hesitate to contact me in the first instance.

Kind regards,

Taryn Collins
Property Advisor
**Top Energy
Group**

From: Liz Searle
Sent: Tuesday, 16 January 2024 1:10 pm
To: Taryn Collins
Cc: Proposed District Plan <pdp@fndc.govt.nz>
Subject: FW: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan
Kia ora Taryn,

The further submission points referred to have been recorded as FS571.001 and FS571.002 (Ara Poutama Aotearoa the Department of Corrections, submitted on 3 November 2023, copy of further submission attached).

In December Council appointed five independent hearings commissioners to hear original submissions and further submissions to the Proposed District Plan. Elected members of the panel are to be confirmed shortly.

At the end of the month, led by the panel chair, a decision will be made as to whether Council will waive the failure to comply with the time limits thereby accepting or rejecting each of the late original submissions and further submissions. As part of this decision making process, the panel will have regard to any reasoning provided to either support or reject a late submission.

If you wish to provide any additional comment for the panel's consideration can you please forward to me by COB Friday this week and it will be forwarded to the panel. Please note, any discussion with you will be at the discretion of the panel.

Please don't hesitate to contact me if you have any further queries regarding the

process. Ngā mihi

Liz Searle

Policy Planner - District Plan

From: Taryn Collins
Sent: Tuesday, 21 November 2023 4:30 PM
To: Proposed District Plan <pdp@fndc.govt.nz>
Cc: Sean Grace; David Badham; MILLAR, Andrea (WELLHO)
Subject: FW: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan [Filed 22 Nov 2023 08:16]
Importance: High

Kia ora koutou,

In short, we confirm that Ngāwhā Generation Limited **oppose** the lodgement of this additional late further submission from Ara Poutama Aotearoa the Department of Corrections. Being lodged two months after the close of the further submission period is unreasonable and unduly prejudices Ngāwhā Generation Limited, as it opposes its rezoning request for its landholdings at Ngāwhā.

We wish for Ngāwhā Generation Limited's opposition to be recorded, and will provide further justification for this opposition to the late receipt of this further submission, as needed prior to the commencement of the hearing for the Proposed Far North District Plan Review.

Ngā mihi | Kind regards,
Taryn Collins
On behalf of Ngāwhā Generation Limited

Kind regards,

Taryn Collins
Property Advisor
**Top Energy
Group**
From: Sean Grace

Sent: Friday, 3 November 2023 1:42 pm
To: 'pdp@fndc.govt.nz' <pdp@fndc.govt.nz>
Cc: Taryn Collins; David Badham; MILLAR, Andrea (WELLHO)
Subject: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan
Importance: High

Kia ora,

Ara Poutama Aotearoa the Department of Corrections (**Ara Poutama**) is making a second further submission on the Far North Proposed District Plan, as set out in the **attached** document.

Ara Poutama made an earlier further submission on the PDP, dated 4 September 2023. This is an additional further submission which relates to a primary submission point requesting rezoning that was not shown on the 'FNDC PDP Submissions Explorer', and thus was not identified by Ara Poutama until engagement (outside of the formal PDP process) was entered into with the submitter.

We appreciate this further submission is being lodged outside of the prescribed further submission period, however we consider that this will not unduly prejudice any party given that the potential concerns have already been raised and discussed with the submitter.

It would be appreciated if receipt of this further submission could be acknowledged, by way of return email.

Ngā mihi

Sean Grace | Planner | Senior Principal | Full Member, New Zealand Planning Institute

ATTACHMENT 2: Email Correspondence from David Badham on behalf of Ngawha Generation Limited, dated 18 October 2024

Sarah Trinder

From: David Badham
Sent: Friday, 18 October 2024 11:24 am
To: Proposed District Plan; Stephen Quinn
Cc: Tim Fischer; Emma Manohar; taryn.collins; Paul Doherty; Calvin Naude; Aidan Cameron
Subject: RE: District plan review - late submission
Attachments: RE: Ara Poutama Aotearoa - Further submission on the Far North Proposed District Plan; Minute 10 - Procedure on Late Submission.pdf

Kia ora koutou,

In response to the below and Minute 10, I can confirm that Ngāwhā Generation Limited's position on the new late submission is unchanged from its position on the previous late submission (as outlined in comms from Tarryn Collins – reattached). Notwithstanding this position, Ngāwhā Generation Limited will abide by the decision of the Hearing Panel on this matter.

Please note that Taryn Collins is currently on parental leave. For all correspondence relating to this matter, please ensure that Paul Doherty, Calvin Naude and Aidan Cameron (cc'd in to this email) are included moving forward.

Ngā mihi | Kind regards,

DAVID BADHAM
Partner/Northland Manager

From: Proposed District Plan <pdp@fndc.govt.nz>
Sent: Friday, 11 October 2024 9:59 am
To: Stephen Quinn; Proposed District Plan <pdp@fndc.govt.nz>
Cc: Tim Fischer ; Emma Manohar ; taryn.collins; David Badham
Subject: RE: District plan review - late submission

Mōrena all,

Please see attached Minute 10 which was issued yesterday by the Hearing Panel.

Ngā mihi,

District Plan Team

Te Kaunihera o Te Hiku o te Ika | Far North District Council

Pokapū Kōrero 24-hāora | 24-hour Contact Centre 0800 920 029
fndc.govt.nz



From: Stephen Quinn

Sent: Tuesday, September 24, 2024 4:08 PM
To: Proposed District Plan <pdp@fndc.govt.nz>
Cc: Tim Fischer ; Emma Manohar ; taryn.collins; davidb
Subject: RE: District plan review - late submission

I write further on behalf of Ara Poutama Aotearoa the Department of Corrections, who has filed a late submission and application for waiver.

At my request, both counsel and the planner for Ngāwhā Generation Limited has now sent me the attached email of 18 January 2024. That email continues to be relied on by Ngāwhā Generation Limited in opposition to Ara Poutama's late submission, although it is acknowledged that they will abide the decision of the hearing panel. This is the first time that Ara Poutama has seen that email. It is clear from the email chain that the Council sought comments from Ngāwhā Generation Limited and did not include a representative from Ara Poutama in that email chain.

Having now reviewed the content of the 18 January opposition and the claimed prejudice, it is clear that this material does not address any of the relevant tests and considerations for prejudice arising from a waiver application. The basis for Ngāwhā Generation Limited opposing the late submission is essentially that Ara Poutama should not have missed the deadline because reliance should not have been placed on the Submissions Explorer tool. This is essentially a focus on whether Ara Poutama should have met the deadline, and not whether there is prejudice to Ngāwhā Generation Limited from a late submission. Having read the email reasons provided, not one reason or basis for prejudice is provided.

By contrast, the caselaw set out in my 17 September letter establishes the principles and nature of reasons that would need to be provided to establish a prejudice claim. None of those factors are present here. Similar to the recent outcome in *Bridge v Central Hawkes Bay District Council* (which involved a submission filed a year late), the late submission by Ara Poutama should be accepted by the Council. We look forward to receiving a decision accordingly.

Regards

Stephen Quinn

Partner

From: Stephen Quinn
Sent: Tuesday, 17 September 2024 1:33 PM
To: pdp@fndc.govt.nz
Cc: Tim Fischer; Taylor Doyle; Emma Manohar; taryn.collins; davidb
Subject: District plan review - late submission

I act for Ara Poutama Aotearoa the Department of Corrections. I attach for filing a late submission and application for waiver.

I confirm that this further submission has been served on representatives for the submitter. I look forward to confirmation of receipt, and determination of the waiver application.

Regards

Stephen Quinn

Partner

ATTACHMENT 3: Email Correspondence from Stephen Quinn on behalf of Ara Poutama (Department of Corrections), dated 18 October 2024.

From: Stephen Quinn
Sent: Friday, 18 October 2024 2:21 pm
To: Proposed District Plan
Cc: Tim Fischer; Emma Manohar; taryn.collins; Paul Doherty; Calvin Naude; Aidan Cameron; David Badham
Subject: RE: District plan review - late submission

Follow Up Flag: Follow up
Flag Status: Flagged

Further to this email on behalf of Ngāwhā Generation Limited, as nothing additional has been raised, there are no further matters in reply to be addressed on behalf of the Department of Corrections.

Regards

Stephen Quinn

Partner

From: David Badham
Sent: Friday, 18 October 2024 11:24 AM
To: Proposed District Plan <pdp@fndc.govt.nz>; Stephen Quinn
Cc: Tim Fischer ; Emma Manohar; taryn.collins; Paul Doherty ; Calvin Naude; Aidan Cameron
Subject: RE: District plan review - late submission

Kia ora koutou,

In response to the below and Minute 10, I can confirm that Ngāwhā Generation Limited's position on the new late submission is unchanged from its position on the previous late submission (as outlined in comms from Tarryn Collins – reattached). Notwithstanding this position, Ngāwhā Generation Limited will abide by the decision of the Hearing Panel on this matter.

Please note that Taryn Collins is currently on parental leave. For all correspondence relating to this matter, please ensure that Paul Doherty, Calvin Naude and Aidan Cameron (cc'd in to this email) are included moving forward.

Ngā mihi | Kind regards,

DAVID BADHAM
Partner/Northland Manager

From: Proposed District Plan <pdp@fndc.govt.nz>

Sent: Friday, 11 October 2024 9:59 am

To: Stephen Quinn [Proposed District Plan <pdp@fndc.govt.nz>](mailto:pdp@fndc.govt.nz)

Cc: Tim Fischer ; Emma Manohar ; taryn.collins; [David Badham](mailto:David.Badham)

Subject: RE: District plan review - late submission

Mōrena all,

Please see attached Minute 10 which was issued yesterday by the

Hearing Panel. Ngā mihi,

District Plan Team

From: Stephen Quinn

Sent: Tuesday, September 24, 2024 4:08

PM To: Proposed District Plan

<pdp@fndc.govt.nz> **Cc:** Tim Fischer Emma

Manohar; taryn.collins; davidb

Subject: RE: District plan review - late submission

I write further on behalf of Ara Poutama Aotearoa the Department of Corrections, who has filed a late submission and application for waiver.

At my request, both counsel and the planner for Ngāwhā Generation Limited has now sent me the attached email of 18 January 2024. That email continues to be relied on by Ngāwhā Generation Limited in opposition to Ara Poutama's late submission, although it is acknowledged that they will abide the decision of the hearing panel. This is the first time that Ara Poutama has seen that email. It is clear from the email chain that the Council sought comments from Ngāwhā Generation Limited and did not include a representative from Ara Poutama in that email chain.

Having now reviewed the content of the 18 January opposition and the claimed prejudice, it is clear that this material does not address any of the relevant tests and considerations for prejudice arising from a waiver application. The basis for Ngāwhā Generation Limited opposing the late submission is essentially that Ara Poutama should not have missed the deadline because reliance should not have been placed on the Submissions Explorer tool. This is essentially a focus on whether Ara Poutama should have met the deadline, and not whether there is prejudice to Ngāwhā Generation Limited from a late submission. Having read the email reasons provided, not one reason or basis for prejudice is provided.

By contrast, the caselaw set out in my 17 September letter establishes the principles and nature of reasons that would need to be provided to establish a prejudice claim. None of those factors are present here. Similar to the recent outcome in *Bridge v Central Hawkes Bay District Council* (which involved a submission filed a year late), the late submission by Ara Poutama should be accepted by the Council. We look forward to receiving a decision accordingly.

Regards

Stephen Quinn

Partner

From: Stephen Quinn

Sent: Tuesday, 17 September 2024 1:33 PM

To: pdp@fndc.govt.nz

Cc: Tim Fischer>; Taylor Doyle; Emma Manohar; taryn.collins; davidb

Subject: District plan review - late submission

I act for Ara Poutama Aotearoa the Department of Corrections. I attach for filing a late submission and application for waiver.

I confirm that this further submission has been served on representatives for the submitter. I look forward to confirmation of receipt, and determination of the waiver application.

Regards

Stephen Quinn

Partner