

**IN THE MATTER** of the Resource Management Act 1991

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**IN THE MATTER** of the Proposed District Plan Hearings of the  
**Thames Coromandel District Council.**

**BEFORE** A Special Purpose Committee (Hearing Panel  
of Commissioners) appointed by **Thames  
Coromandel District Council**

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## Second Memorandum and Direction of the Hearings Panel

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### Background

1. We have been appointed<sup>1</sup> by Thames Coromandel District Council (Council) to: hear and make recommendations on submissions and further submissions to the Council's Proposed District Plan (PDP); and we have been delegated power to consider late submissions in accordance with sections 37 and 37A of the Resource Management Act 1991 (RMA).
2. The PDP for the Council was publicly notified and open for submissions on 13 December 2013 with the closing date for submissions being 14 March 2014.
3. Since the closing date for public submissions, the Council has logged the receipt of a number of late submissions.
4. The Council has already stated that it would accept submissions that were three days late and our First Memorandum and Direction considered the receipt of late submissions up to 28 March 2014. This Second Memorandum addresses late submissions that were received by the Council after 28 March 2014.

### Procedure for Receipt of Late Submissions

5. Section 37(1) of the Resource Management Act 1991 provides:

*37. Power of waiver and extension of time limits-*

*(1) A consent authority or local authority may, in any particular case, -*

*(a) ....*

*(b) Waive a failure to comply with a requirement under this Act, regulations, or plan for the time or method of service of documents.*

6. The local authority may exercise discretion to receive submissions made out of time by waiving, in these cases, the failure to comply with the deadline for the close of submissions in respect of the PDP.

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<sup>1</sup> District Plan Hearing Panel – Special Purpose Committee Terms of Reference.

7. The local authority cannot exercise its discretion until it has complied with the provisions of Section 37A of the Resource Management Act 1991 which states that:

*37A Requirements for waivers and extensions-*

*(1) A ... local authority must not ... waive compliance with a time limit...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...waiver; and*

*(b) The interests of the community in achieving adequate assessment of the effects of the proposal, policy statement, or plan; and*

*(c) Its duty under Section 21 to avoid unreasonable delay.*

*(2) – (5) ...*

*(6) A... local authority must ensure that every person who, in its opinion, is directly affected by...the waiver of compliance with the time limit...is notified of the extension.*

8. As noted above we have been delegated authority to exercise the discretion contained in Section 37(1)(b) of the Resource Management Act by the Council. Our decision on late submissions may be subject to judicial review in the High Court, therefore it is essential that we properly turn our mind to, and take into account, the matters set out in Section 37A of the Resource Management Act 1991.

### **Analysis**

9. As noted above the Council has already indicated that it will accept late submissions which were three days late and we have provided a Memorandum which addressed late submissions received by Council by the close of work on 28 March 2014. This Second Memorandum addresses other submissions which were received after 28 March 2014.
10. The Committee held an informal meeting in Council Chambers on Tuesday 8 April 2014 where PDP support reported that further late submissions had been received and asked for direction.

#### **Interests of any person who may be directly affected by the waiver.**

11. We accept that for these late submissions there was no evidence to suggest that a waiver of compliance with the deadline for the close of submissions will directly affect the interests of any person and the degree of lateness raised the issues of procedural fairness. The Council is currently summarising all submissions and preparing a report of the summary of decisions sought for public notification and call for further submissions. While it may still be possible to incorporate these submissions into the process at this stage we are of the viewpoint that there needs to be a justification for us doing so. To this end we have resolved to look at those late submissions that provided a reason for lateness.

#### **The interests of the community in achieving adequate assessment of effects of the proposed district plan.**

12. The submissions raise matters that can be addressed through the hearings process on the PDP. It is in the interest of the community to test the provisions of the PDP and these submissions will assist that. While we accept that it is a matter of natural justice to allow the fullest participation in the development of Policy under the Resource Management Act 1991, the degree of lateness tests procedural fairness.

**The Council's Duty under Section 21 to avoid unreasonable delay.**

13. Staff also indicated that the processing of these late submissions will not cause an unreasonable delay and the Council will be able to meet its duty to avoid unreasonable delay if the person delegated authority to exercise its discretion pursuant to Section 37(1)(b) allows the waiver

**A local authority must ensure that every person who, in its opinion, is directly affected by the waiver of compliance with a time limit is notified of the extension**

14. No other person can be identified by the waiver of compliance with the close of submissions for PDP, except for the submitters who failed to comply with the deadline. The submitters should be notified in writing of the result of the exercise of the local authorities' decision made in respect to Section 37(1)(b) of the Resource Management Act 1991.

**RESOLUTION**

Having taken into account the matters set out in Section 37A of the Resource Management Act 1991, and in accordance with the authority delegated to us we have resolved to accept the late submissions that were received by Council on or before 8 April 2014.

We have also resolved that in the interests of procedural fairness that no late submission will be considered after 8 April 2014.



A handwritten signature in black ink, appearing to read 'Mark Farnsworth', is written over a solid blue horizontal line. The signature is cursive and somewhat stylized.

**Special Purpose Committee: Independent Hearing Commissioners Farnsworth (Chair)  
& Munro and Cr Goudie**

**13 April 2014**