

Report To: Council



Meeting Date: 27 August 2024

Subject: Proposed Waitomo District Plan – Clause 10A extension

Type: Decision Required

Author(s): Alex Bell
General Manager – Strategy and Environment

1. Purpose of Report

- 1.1 The purpose of this business paper is to seek approval from the Council to make an application to the Minister for the Environment for an extension of time of six months for making a decision on the provisions and matters raised in submissions on the Proposed Waitomo District Plan.

2. Suggested Resolutions

- 2.1 The following are suggested resolutions only and do not represent Council policy until such time as they are adopted by formal resolution.
- 1 The business paper on the Proposed Waitomo District Plan – Clause 10A extension be received.
 - 2 Council approve the letter to the Minister for the Environment requesting an extension of time to 20 April 2025 pursuant to Clause 10A of Schedule 1 of the Resource Management Act 1991.

3. Background

- 3.1 Council notified the Proposed Waitomo District Plan (PDP) on 20 October 2022. A total of 58 submissions were received on the PDP, which equated to a total of 2031 individual submission points. Council staff were then required to summarise each submission, including relief sought and publish the summary of submissions on the Council website, which was notified on 28 July 2023. Council then received 30 further submissions, which are limited to stating whether the further submitter supports or opposes the relief sought primary submission. A total of 928 further submissions were received.
- 3.2 Council officers then began preparing their hearing reports on the PDP Chapters and working with the Hearing Commissioners to set hearing dates.
- 3.3 The first tranche of hearings on the PDP was held on 15-16 July 2024 with the second tranche due to be held from 26-29 November 2024. The hearing dates were chosen based on commissioner availability and staff resource.
- 3.4 Clause 10(4)(a) of Schedule 1 of the Resource Management Act 1991 (RMA) requires that a local authority must give a decision on the provisions and matters raised in submissions within 2 years from the date of notification. As the second tranche of hearings is not due to be held until after the 20 of October 2024, we will be unable to meet the 2-year timeframe. Therefore, an extension to the time is required to be applied for under Clause 10A of Schedule 1 of the RMA. Council officers consider that a 6-month extension will be required to 20 April 2025. This will allow sufficient time to hear and decide on the provisions and matters raised in submissions.

4. Commentary

- 4.1 Clause 10(4)(a) of Schedule 1 of the RMA requires that a local authority must give its decision on the provisions and matters raised in submissions no later than 2 years after notifying the PDP. However, Clause 10A(1) allows a local authority to make an application to the Minister for an extension of time if it is unable or is likely to be unable to issue decisions on provisions and matters raised in submissions within 2 years of notification.
- 4.2 Clause 10A(2) requires that in its application a local authority must set out:
- (a) The reasons for the requested extension; and
 - (b) The duration of the extension required.
- 4.3 The reasons for the requested extension can be summarised as follows:
- There was a large amount of uncertainty with regards to the effect that the Natural and Built Environment Act 2023 could have on the process and content of the PDP. This legislation caused some delays in our process, as Council staff wanted to ensure that Council would not be undertaking work and incurring expense if this legislation required considerable changes to the PDP. There was also some concern that planning processes such as the PDP would be required to cease. The majority of the Natural and Built Environment Act 2023 has now been repealed.
 - Given the number of submissions and the broad range of issues contained within the submissions, Council staff considered that the most appropriate way to manage the hearings process was to split the hearings into two tranches. This allows for expert conferencing and discussions with submitters ahead of hearings to narrow the scope of issues in contention and see if an agreed position could be reached. However, this has meant that we have had to arrange the hearings to meet the availability of the Hearing Commissioners. Council staff consider it is crucial that the same Hearing Commissioners hear and decide both tranches to ensure consistency in approach and decision making.
 - We have set a date for the second tranche of hearings, which is enclosed as Attachment 2. This demonstrates that the Council is committed to concluding the hearings and issuing decisions on the PDP as soon as possible.
 - As the first tranche of hearings has been undertaken, decisions could have been issued on the first tranche of submissions and provisions. However, it is considered that to ensure that there is consistency across the entire District Plan and to ensure that there are no issues that cross over between chapters, issuing a single integrated decision is the most efficient and effective approach.
- 4.4 Council officers are requesting an extension of time for 6 months to 20 April 2025 to enable sufficient time for decisions on the provisions and matters raised in submissions to be issued.
- 4.5 Clause 10A(3) specifies that before applying for an extension, a local authority must take into account:
- (a) the interests of any person who, in its opinion, may be directly affected by an extension; and
 - (b) the interests of the community in achieving adequate assessment of the effects of the proposed policy statement or plan or change to a policy statement or plan; and
 - (c) its duty under section 21 to avoid unreasonable delay.
- 4.6 The matters in Clause 10A(3) can be considered to have been taken into account based on the following:
- (a) Council officers have taken into account the interests of any person who may be directly affected by an extension. All persons who submitted on the PDP may be directly affected by the extension of time sought. However, Council officers do not consider any individual submitters to be more affected than any other submitters

by granting the extension. This issue affects the whole of the district. The Council has taken into account all persons who submitted on the PDP and whether any person is considered to be directly affected by this extension of time sought.

- (b) Council officers have taken into account the interests of the community in achieving adequate assessment of the effects of the PDP. It is considered that the interests of the community are better served by a single integrated decision resulting in a single comprehensive decisions version of the PDP and the proposed extension will allow for this.
- (c) Council officers have taken into account the duty to avoid unreasonable delay under section 21 of the RMA and have proposed the minimum extension of time required to enable it to meet its functions under section 31 of the RMA. While delays may not be viewed favorably by some, it is imperative that a careful and well-considered decision-making process is enabled. Council officers consider the most effective approach is to make decisions on both tranches together to ensure a consistency between all chapters, provisions and submissions on the PDP. Council officers are confident that these revised timeframes are appropriate and will be met.

5. Analysis of Options

5.1 DO NOTHING

5.2 The Council could elect not to apply for an extension of time pursuant to Clause 10A of Schedule 1 of the RMA. However, this would mean that Council would not comply with the required timeframes in Clause 10(4)(a) of Schedule 1 of the RMA, and while this is unlikely to trigger any repercussions from the Minister for the Environment, Council should ensure that the correct process is followed.

5.3 APPLY FOR A 6 MONTH EXTENSION TO THE TIMEFRAME UNDER CLAUSE 10A OF THE RMA

5.4 Council officers consider that we meet the requirements to make an application for an extension of time pursuant to Clause 10A(2) and (3) as set out in 4.3 – 4.5 above.

6. Considerations

6.1 RISK

6.2 Council officers consider that we meet the requirements under Clause 10A of Schedule 1 of the RMA to apply for an extension, and therefore it is considered that there is minimal risk in making an application for an extension of time. However, the Minister for the Environment could decline the extension, but as there is a valid reason to apply for the extension this is unlikely, and Council could still proceed with issuing decisions on the PDP and the decisions would not be invalidated.

6.3 CONSISTENCY WITH EXISTING PLANS AND POLICIES

6.4 The PDP is consistent with Councils Policies and Plans, particularly the Town Concept Plans and has been budgeted for within the Long-Term Plan 2024-2034.

6.5 SIGNIFICANCE AND COMMUNITY VIEWS

6.6 The level of engagement undertaken to date is considered appropriate to the significance of the issue and is compliant with the legislative requirements.

7. Recommendation

1 The business paper on the Proposed Waitomo District Plan – Clause 10A extension be received.

- 2 Council approve the letter to the Minister for the Environment requesting an extension of time to 20 April 2025 pursuant to Clause 10A of Schedule 1 of the Resource Management Act 1991.

8. Attachments/Separate Enclosures

Attachments:

1. Letter to the Minister for Environment seeking an extension under Clause 10A of Schedule 1 of the Resource Management Act 1991. (766499)
2. Hearing Direction – Tranche 2

Doc ID: 766499

27 August 2024



Hon Penny Simmonds
Minister for the Environment

Digitally Delivered

By email: P.Simmonds@ministers.govt.nz

Dear Minister Simmonds,

APPLICATION FOR EXTENSION OF TIME PURSUANT TO CLAUSE 10A OF THE RESOURCE MANAGEMENT ACT 1991

I am writing to you to seek an extension of time for making a decision on the Proposed Waitomo District Plan (PDP), pursuant to Clause 10A of Schedule 1 of the Resource Management Act 1991 (the RMA).

Waitomo District Council (Council) has undertaken a comprehensive review of its District Plan. This is the first review of the District Plan since it was made operative in 2009. The review process commenced scoping in 2017 and culminated with Council notifying the PDP on 20 October 2022.

Clause 10(4)(a) of the RMA requires Council to issue decisions within two years from the date of notification. This timeframe expires on 20 October 2024. We are seeking an extension of this timeframe by 6 months, to 20 April 2025. This extension represents the time required to complete the remaining hearing which is scheduled for 26 – 29 November 2024, drafting and releasing an integrated decision.

Council received 58 submissions (2,301 submission points) and 30 further submissions (928 further submission points). However, at the time of notification it was not clear whether the incoming Natural and Built Environment Act 2023 would require Councils to cease planning processes in favour of the new system. Once the Act was repealed, Council recommenced the PDP process.

Given this hiatus (and that Waitomo District Council is a small Council with limited resources), it has taken a considerable amount of time to collate and summarise submissions, schedule two tranches of hearings and complete the necessary reporting. It is our goal to narrow the issues of contention, potentially reducing the number of appeals and produce a single, integrated decision on the PDP.

The period remaining under the RMA does not allow us time to issue a decision on both the tranche 1 and tranche 2 hearings. While delays are not ideal, the timeframe extension is critical to enable us to complete the hearing process. We will remain engaged with Ministry for the Environment officials, and should the extension be approved, we will ensure there is regular communication on our progress. We will be doing our very best to work efficiently and release decisions ahead of 20 April 2025.

Please see Attachment 1 which provides supporting information regarding the requirements for an extension under Clause 10A(3) of Schedule 1 of the RMA.

If you require any further information or clarification, please do not hesitate to contact me. I look forward to your response.

Yours faithfully,

ALEX BELL
GENERAL MANAGER – STRATEGY AND ENVIRONMENT

ASSESSMENT PURSUANT TO CLASUE 10A(2) AND (3) OF SCHEDULE 1 OF THE RESOURCE
MANAGEMENT ACT 1991

1. Clause 10A(2) requires that in its application a local authority must set out:
 - (a) The reasons for the requested extension; and
 - (b) The duration of the extension required.
2. The reasons for the requested extension can be summarised as follows:
 - There was a large amount of uncertainty with regards to the effect that the Natural and Built Environment Act 2023 could have on the process and content of the PDP. This legislation caused delays in our process, as Council staff wanted to ensure that Council would not be undertaking work and incurring expense if this legislation required planning processes to cease or involved considerable changes to the PDP. The majority of the Natural and Built Environment Act 2023 has now been repealed.
 - Given the number of submissions and the broad range of issues contained within the submissions, Council staff considered that the most appropriate way to manage the hearings process was to split the hearings into two tranches. This allows for expert conferencing and discussions with submitters ahead of hearings to narrow the scope of issues in contention and see if an agreed position can be reached. However, this has meant that we have had to arrange the hearings to meet the availability of the Hearing Commissioners and submitters. Council staff consider it is crucial that the same Hearing Commissioners hear and decide both tranches to ensure consistency in approach and decision making.
 - The first tranche of hearings is completed. We have set a date for the second tranche of hearings, which is enclosed as Attachment 1. This demonstrates that the Council is committed to concluding the hearings and issuing decisions on the PDP as soon as possible.
 - As the first tranche of hearings has been undertaken, decisions could have been issued on the first tranche of submissions and provisions. However, this is counterproductive as it is essential to ensure consistency across the entire district plan and to ensure that there are no issues that cross over between chapters. Issuing single integrated decision is the most efficient and effective approach.
3. Council officers are requesting an extension of time for 6 months to 20 April 2025 to enable sufficient time for decisions on the provisions and matters raised in submissions to be issued.
4. Clause 10A(3) specifies that before applying for an extension, a local authority must take into account:
 - (a) the interests of any person who, in its opinion, may be directly affected by an extension; and
 - (b) the interests of the community in achieving adequate assessment of the effects of the proposed policy statement or plan or change to a policy statement or plan; and
 - (c) its duty under section 21 to avoid unreasonable delay.
5. The matters in Clause 10A(3) can be considered to have been taken into account based on the following:
 - (a) Council officers have taken into account the interests of any person who may be directly affected by an extension. All persons who submitted on the PDP may be directly affected by the extension of time sought. However, Council officers do not consider any individual submitters to be more affected than any other submitters by granting the extension. This issue affects the whole of the district. The Council has taken into account all persons who submitted on the PDP and whether any person is considered to be directly affected by this extension of time sought.
 - (b) Council officers have taken into account the interests of the community in achieving adequate assessment of the effects of the PDP. It is considered that the interests of the community are better served by a single integrated decision resulting in a single comprehensive decisions version of the PDP and the proposed extension will allow for this.

- (c) Council officers have taken into account the duty to avoid unreasonable delay under section 21 of the RMA and have proposed the minimum extension of time required to enable it to meet its functions under section 31 of the RMA. While delays may not be viewed favorably by some, it is imperative that a careful and well-considered decision making process is enabled. Council officers consider the most effective approach is to make decisions on both tranches together to ensure a consistency between all chapters, provisions and submissions on the PDP. Council officers are confident that these revised timeframes are appropriate and will be met.

IN THE MATTER OF the Resource Management Act 1991 (the RMA)

AND

IN THE MATTER OF The Proposed Waitomo District Plan

DIRECTION 3 FROM THE HEARING PANEL

HEARING DATES, EVIDENCE EXCHANGE FOR THE SECOND TRANCHE OF HEARINGS,

AND

EXPERT CONFERENCING.

1. Pursuant to sections 34 and 34A of the RMA, Waitomo District Council (the Council) has appointed a four person Hearing Panel consisting of three independent hearing commissioners – Greg Hill (Chair), Phil Brodie and Wikitōria Tāne; and Councillor Allan Goddard. The Council’s delegation to the Hearing Panel includes:

Council delegates to the Hearings Panel all powers, duties and functions under the Resource Management Act 1991 (Clauses 8AA to, and including, Clause 10 of the First Schedule of the Resource Management Act 1991) to case manage, consider, hear, deliberate and decide on all submissions and further submissions received on, and provisions of, the Proposed Waitomo District Plan.¹

2. This Direction addresses the second tranche of hearings², as well as expert conferencing. The hearing topics for this tranche are attached in Appendix 1.
3. The hearing of submissions to this tranche of hearing topics is scheduled to commence on **Wednesday 27 November 2024** starting at **9.00am**, at the **Council Chambers, 15 Queen Street, Te Kuiti**. A hearing schedule will be developed closer to this time once the Council knows who is appearing and how much time each submitter may need to present their submission(s). This will determine how many hearing days will be required, but it is unlikely to extend beyond Friday 29 November 2024.

¹ Direction 1 recorded that the Hearing Panel had been delegated recommendatory power only; this was incorrect.

² The first tranche was heard on the 16 and 17 July 2024.

4. The Council’s Hearing Administrator, Kayla Hemara will, closer to the hearing commencement date, make contact with submitters who indicated in their submission that they wished to be heard, and ask:
 - Do you still wish to be heard;
 - How much time you request to present your submission or evidence;
 - If you are a lay submitter, whether you require the assistance of a “friend of submitters” to help navigate the procedural process;
 - Will you present in-person (preferred) or virtually (by remote facilities); and
 - If you intend to be represented by legal counsel and/or calling expert witnesses (e.g. transport, landscape, planning experts)³.
5. The opportunity for remote appearance (via AVL) for submitters/witnesses will be made available subject to prior arrangement with the Council. Details of this will be communicated closer to the commencement of the hearing.

Section 42A reports and Evidence Exchange

6. In terms of procedural matters, Section 42A of the RMA provides that the Council may prepare a report on the matters to be considered and be provided prior to the hearing. Also, section 41B of the RMA provides that the Hearing Panel may direct evidence from any expert to be provided before the hearing.
7. Accordingly, the Hearing Panel directs as follows:
 - (a) Pursuant to section 42A of the RMA, the section 42A hearing report on **Ecosystems and Indigenous Biodiversity** is to be made available to parties on-line no later than Friday **4 October 2024**⁴;
 - (b) Submitters’ expert evidence (evidence given by a professional with specialist qualifications and experience) on the topic of **Ecosystems and Indigenous Biodiversity** is to be emailed to the Council (at the email address below), no later than **midday, Monday 21 October 2024**. It will then be made available to parties on-line no later than **5.00 pm, Monday 21 October 2024**.

³ Submitters are not required to have legal counsel or expert witness, and can speak to your submission at the hearing if you have indicated an intention to appear at the hearing.

⁴ This is to allow time for expert conferencing – see paragraphs 11 – 18.

- (c) Pursuant to section 42A of the RMA, all other section 42A hearing reports are to be made available to parties on-line no later than **Monday 21 October 2024;**
 - (d) Submitters' expert evidence (evidence given by a professional with specialist qualifications and experience) on all other topics other than Ecosystems and Indigenous Biodiversity is to be emailed to the Council (at the email address below), no later than **midday, Monday 4 November 2024.** It will then be made available to parties on-line no later than **5.00 pm, Monday 4 November 2024.**
 - (e) Pursuant to sections 41B of the RMA, any rebuttal evidence is to be emailed to the Council (at the email address below), no later than **midday, Monday 18 November 2024.** It will then be made available to parties on-line no later than **5.00 pm, Monday 18 November 2024.**
8. While these Directions do not strictly apply to lay or non-expert statements/evidence, the Hearing Panel would appreciate any written statements to be presented at the hearing to be emailed to the Council (at the email address below) no later than, **midday, Thursday 21 November 2024.** It will then be made available to parties on-line no later than **5.00 pm, Thursday 21 November 2024.**
9. The Hearing Panel also requests parties to pre-circulate their legal submissions (if any) in advance of the hearing to be emailed to the Council (at the email address below), preferably no later than no later than, **midday, Thursday 21 November 2024.** They will then be made available to parties on-line no later than **5.00 pm, Thursday 21 November 2024.**
10. The purpose of this Direction is to provide the opportunity for the Hearing Panel and the other parties to have read and considered any legal submissions, evidence or statements in advance of the hearing to assist in understanding the case being presented. As the Hearing Panel will have read all the pre-circulated material before the hearing, there will be no need for it to be read out. An executive summary may be read out or the key points highlighted.

Expert Conferencing

11. Clause 8AA – Resolution of Disputes of the First Schedule of the RMA enables a process to clarify and resolve disputes between parties. Accordingly, the Hearing Panel directs expert conferencing as set out below.

12. The purpose of the conferencing process is for the parties' experts to identify, discuss and potentially resolve (or not) the issues in contention between them.
13. Expert conferencing will be held for the topic **Ecosystems and Indigenous Biodiversity**, and we direct accordingly. The conferencing session(s) on this topic will be open to the 'technical experts' as well as the planning experts.
14. The conferencing session(s) are likely to occur between **7 and 12 November 2024**. The date(s) for the conferencing session(s) will be confirmed as soon as possible, and will be communicated to those experts attending the conferencing session(s).
15. Parties are to inform the Council's Hearing Administrator, Kayla Hemara via email (address below) of the expert witnesses (name, expertise, and contact details) who will attend the conferencing sessions. This is to be provided no later than **16 August 2024**.
16. The Hearing Panel directs that conferencing is undertaken in accordance with the Environment Court Practice Note 2023 and in particular – Section 9 - Code of conduct for expert witnesses. Also, those experts participating in the conferencing are to make themselves available to appear at the hearing if required to do so by the Hearing Panel.
17. That Ms Marlene Oliver is appointed as the independent facilitator for the expert conferencing session(s). She is authorised to:
 - a. Act as independent facilitator;
 - b. In conjunction with the Council (as administrator) invite submitters and the Council as regulator (in its section 42A reporting function) to advise whether their expert witnesses in the relevant fields will attend the expert conferencing sessions;
 - c. In conjunction with the Council (as administrator) organise the sessions (including format, topics, agendas, attendance and Joint Witness Statements (JWS), times and venues – in person or on-line as appropriate;
 - d. Liaise with the Council (in its section 42A reporting function) and submitters' experts; and;

- e. Report to the Chair of the Hearing Panel on an as required basis on progress with the conferencing sessions and progress on any JWS setting out the outcomes, including matters agreed and not agreed.
18. While this direction cannot compel the parties to agree to take part in the conferencing sessions or compel expert witnesses to attend and participate, we strongly recommend that they do so. These sessions will provide a degree of formality for those parties and witnesses who attend in an effort to clarify, resolve or narrow the issues in contention. This should ensure that the hearing is more efficient than if the conferencing sessions were not held.

Enquires

19. Any correspondence relating to this Direction and related matters should be sent to the Council's Hearing Administrator, Kayla Hemara via email kayla.hemara@waitomo.govt.nz



Greg Hill (Chair)

for the Hearing Panel

29 July 2024

Appendix 1 – Tranche 2 Hearing Topics

Tranche 2

Part 1

Introduction and General Provisions

1. Mihi
2. Contents
3. Purpose
4. Description of the district

How the Plan works

5. Statutory context
6. General approach
7. Cross boundary matters
8. Relationships between spatial layers

Interpretation

9. Definitions
10. Abbreviations
11. Glossary

National Direction Instruments

12. National policy statements and New Zealand Coastal Policy Statement
13. National environmental standards
14. Regulations

Mana Whenua

15. Mana Whenua

Part 2 – District Wide Matters

Strategic Direction

16. Strategic Direction

Energy, Infrastructure and Transport

17. Energy
18. National Electricity and Gas Transmission
19. Network Utilities
20. Transport

Historical and Cultural Values

24. Historic Heritage
25. Sites and Areas of Significance to Māori

Natural Environmental Values

- 26. Ecosystems and Indigenous Biodiversity
- 27. Natural Character
- 28. Natural Features and Landscapes

Part 3 Area Specific Matters

- 41. Residential zone

Designations

- 55. Designations

Part 4 – Appendices and Maps

Schedules

- SCHE1 Heritage buildings and structure
- SCHE2 Significant archaeological sites
- SCHE3 Sites and areas of significance to Maori
- SCHE4 Sites and areas of significance to Maori – wahi tapu sites
- SCHE5 Sites and areas of significance to Maori – cultural alert layer
- SCHE6 Significant natural areas
- SCHE7 Outstanding natural landscapes
- SCHE8 Outstanding natural features
- SCHE9 Landscapes of high amenity value
- SCHE12 Karst overlay

Appendices

- APP1 Information requirements for resource consent applications
- APP2 Cultural impact assessment process
- APP3 ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value
- APP4 Biodiversity offsetting framework
- APP6 Statutory Acknowledgement Areas – Maraeroa A and B Blocks
- APP7 Statutory Acknowledgement Areas – Ngati Tuwharetoa
- APP8 Statutory Acknowledgement Areas – Raukawa

Maps

- Proposed Waitomo District Plan Maps

Please note that this Tranche will also include any other submissions not addressed in the Tranche 1 and 2 topics.