



Document Id:

MEMORANDUM

To: Anita Dawe
From: Peter Constantine, Acting Principal Planner
Date: 2 February 2023
Re: s37 RMA – Extension of Time

Purpose

1. To seek authorisation, in accordance with the ORC’s Delegations Manual, to extend the time period for receiving further submissions on primary submissions to the Freshwater Parts of the proposed Otago Regional Policy Statement 2022.

Authority

2. Section 37(1)(a) of the Act provides for an authority to extend a time period specified in this Act or in regulations, whether or not the time period has expired. The Delegations Manual provides for this extension to be approved by the General Manager, Policy, Science and Strategy

Extend any other time period not associated with a resource consent process.	GM Policy, Science and Strategy GM Regulatory
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Background

3. The availability of the SODR for viewing (and establishment of the period for lodging further submissions) was publicly notified in the ODT on 21 January 2023 and on Council’s website on Friday 20 January 2023.
4. The period for lodging further submissions is set in Clause 7(1)(c) of Schedule 1 to the RMA; that period being 10 working days.
5. By email from several parties (primary submitters) Council was advised that six primary submissions were not uploaded to its website and therefore were not available for viewing. In addition, Council was advised by Ravensdown that there was an error in the summary of the decision sought on one of its submission points.
6. The ‘missing’ submissions were uploaded to Council’s website and a corrigendum concerning the Ravensdown issue was prepared and uploaded to the website. It was

necessary, as part of this action, to provide additional time for lodging further submissions in respect of these matters. A public notice was prepared and was inserted in the ODT on 1 February 2023 advising that in respect of only the six 'missing' submissions and the single point within the Ravensdown submission, the period for lodging submissions had been extended to 5.00pm on Thursday 9 February 2023 – an extension of 5 working days.

7. Retrospective approval for this action is sought.
8. Since taking the action described above, Council has been notified of a further three errors in the now publicly notified SODR. Two of these are considered 'minor' but essential and concern addresses for service; the third concerns an error in the summarising of the decision sought.

Current Issues

9. The current issue has three distinct parts. These are set out below, along with the recommended solution.

Amendment 1

10. A change to the address for service of submitter FPI025 Beef + Lamb New Zealand Ltd and Deer Industry New Zealand:

Lilly.lawson@beefandlambnz.com → lilly.lawson@beeflambnz.com

11. This email address requires correction in the SODR, but Beef and Lamb did receive a copy of the public notice as required by Clause 7(2) of Schedule 1 to the RMA. The only real impact, therefore, will be on anyone who wishes to further submit on the B+L submission and has failed to achieve service of that further submission.

Amendment 2

12. A change to the address for service of submitter FPI028 Waterfall Park Developments Ltd:

maddie@brownandcompany.co.nz → maddy@brownandcompany.co.nz

13. This email address requires correction in the SODR, and Waterfall Park Developments Ltd did not receive a copy of the Public Notice as required by Clause 7(2) of Schedule 1 to the RMA:

“The local authority must serve a copy of the public notice on all persons who made submissions”

14. In addition to sending a copy of the public notice, this submitter must be given a new date by which any further submissions it wishes to make are to be received at Council. The period must be no longer than 10 working days from the date the submitter is notified.
15. Because this is not considered to be an extension of time (the further submission period in fact had not commenced for this submitter) the public notice has been

emailed (on 1 February 2023) to this submitter and the submitter has been advised that the period them to lodge any further submissions closes at 5.00pm on Thursday 16 February 2023.

Amendment 3

16. This required amendment to the SODR concerns the submission by The Fuel Companies – FPI034.002. The summary of the decision requested omitted six words which are important to an understanding of what decision the submitter is requesting.

- The Fuel Companies LF-FW-P7
 - Original submission FPI034.002: Amend the policy or include a new policy to ensure that the avoidance direction does not lead to prohibited_pathways for essential temporary construction dewatering takes necessary to facilitate operation, maintenance, upgrade and development of infrastructure in over allocated catchments.
 - As summarised: Amend the policy or include a new policy to ensure that the avoidance pathways for essential temporary construction dewatering takes necessary to facilitate operation, maintenance, upgrade and development of infrastructure in over allocated catchments.
 - The summary of submissions omits the following words from the original Fuel Companies’ submission “direction does not lead to prohibited”.

17. This requires a Corrigendum to the SODR. That work is completed (except for some minor edits concerning dates for receiving further submissions that cannot be completed until approval to this time extension is granted) and can, along with the necessary explanatory text on the relevant webpages, be uploaded to the ORC website immediately.

18. The question is whether or not this amendment is of such significance that it requires an extension to the period for filing further submissions. I think it does. The summarised text in the SODR does not make sense and therefore does not pass the ‘tests’ that have been established through caselaw regarding accuracy of the summary. It is accepted that any person concerned about the decision sought could refer directly to the original submission for clarification, but that does not overcome this more fundamental failure.

19. To address this issue, I propose:

- a) that a corrigendum is uploaded as soon as practicable to the Council’s website, along with explanatory text to the relevant webpages (draft text below).
- b) an extension of time for lodging further submissions on this submission point only; the closing date to be 16 February 2023
- c) a summary public notice (draft text below) is inserted in the ODT as soon as practicable
- d) a full public notice (draft text below) is uploaded to Council’s website
- e) a copy of the summary public notice is emailed to all primary submitters

Consideration

20. In making the request and recommendation set out in paragraph 6 above I have taken into account the criteria in section 37A of the RMA as follows:
 - a. Without the extension of time in respect of the 'missing' submissions all parties would be unfairly disadvantaged as they could not be aware of the full content of the primary submissions summarised in the Summary of Decisions Requested and this would potentially prevent their participation in the process.
 - b. An extension in respect of the Ravensdown correction is justified because the original summary suggested a completely different outcome from that sought by the Submitter, and as such any person reading the SODR would be unfairly disadvantaged
 - c. A time extension is in the interests of full community participation that potential further submitters are given an opportunity to make further submissions as part of this process.
 - d. The extension will not delay the process or Hearing, as officers are still writing a section 42A report on these matters, and the Council is not yet ready to provide the necessary documents to the Chief Freshwater Commissioner.

21. In making the request and recommendation set out in paragraph 15 above I have taken into account the criteria in section 37A of the RMA as follows:
 - a. I consider that the person directly affected by extending the timeframe is Waterfall Park Development Limited. It is in their interests to receive an extension, as otherwise they are unfairly disadvantaged as they were not notified that the Summary of Decisions Requested was available.
 - b. It is in the interests of the community that Waterfall Park Developments Limited is given an opportunity to make further submissions as part of this process and may identify effects that other further submitters do not.
 - c. The extension will not delay the process or Hearing, as officers are still writing a section 42A report on these matters, and the Council is not yet ready to provide the necessary documents to the Chief Freshwater Commissioner.

22. In making the request and recommendation set out in paragraph 19 above I have taken into account the criteria in section 37A of the RMA as follows:
 - a. An extension in respect of The Fuel Companies correction is justified because the original summary suggested a different outcome from that sought by the Submitter, and as such any person reading the SODR would be unfairly disadvantaged or misled
 - b. A time extension is in the interests of full community participation that potential further submitters are given an opportunity to make further submissions as part of this process.
 - c. The extension will not delay the process or Hearing, as officers are still writing a section 42A report on these matters, and the Council is not yet ready to provide the necessary documents to the Chief Freshwater Commissioner.

23. My advice is that the extension of time until 16 February 2023 will not prejudice any party, and will not impact on the overall timeline, Council's advice to the Chief Freshwater Commissioner as required by s80A of the Resource Management Act 1991, nor the preparation of the s42A Report.
24. Given there has not been a Hearings Panel or Commissioner appointed, it is appropriate that the General Manager, Policy, Science and Strategy exercise their delegation and approve the time extension.
25. No person or party would be prejudiced by the time extension, and I therefore note that there is no legal impediment to granting the requested time extension.

Request: That the General Manager, Policy, Science and Strategy exercise her delegation and approve an extension of the time period for receiving further submissions on primary submissions to the Freshwater parts of the PORPS as set out above at paragraph 6 and paragraph 19.



Peter Constantine

Acting Principal Planner

2 February 2023

Decision under delegated authority:

That pursuant to section 37(1)(a) of the Resource Management Act 1991, the periods for lodging further submissions in respect of submissions to the Freshwater parts of the PORPS as set out above are approved.

That the actions set out in this memo be implemented and that this memo be made available on the RPS web page as soon as reasonably practical.

Signed



Anita Dawe

General Manager, Policy and Science

2 February 2023