

IN THE MATTER OF

the Resource Management Act 1991

A N D

IN THE MATTER OF

***the hearing of submissions in relation to
the Proposed Timaru District Plan***

DECISION ON LATE SUBMISSIONS

DATED 27 JUNE 2023

1. **Introduction**

Receipt of late submissions

The Timaru District Council ("the Council") notified the Proposed Timaru District Plan ("the Proposed Plan") on 22 September 2022. The submission period closed on 15 December 2022. After the closing date, a number of submissions were received by the Council some of which were lodged late and others which were procedurally deficient ("the late submissions").

Our appointment

On 14 June 2023 we, A.C.Hughes-Johnson KC, R.Day-Cleavin, Councillor O.Jackson and Councillor S.Scott, were appointed as commissioners to make decisions on late submissions to the Proposed Plan.

It is necessary to consider whether we should grant waivers in respect of the late lodgement of the late submissions and identified procedural deficiencies.

Commissioner Hughes-Johnson records that a number of decades ago, his father held an office in the Royal Forest and Bird Protection Society of New Zealand Inc. and he was a junior member of the Society. However, Commissioner Hughes-Johnson has had no association with the Society since that time and considers that this previous association does not in any way prevent him bringing an independent mind to bear upon these applications.

Issue of minute

On 15 June 2023 we issued a minute directing the provision of a report on the late submissions under sections 37 and 37A of the Resource Management Act 1991 ("the Act") ("the report") and the report was duly received.

On 22 June 2023 a minute was issued directing a supplementary report on a further late submission and a report was duly received ("the supplementary report").

2. ***The late submissions***

The late submissions which require consideration are identified in Appendix A to the report which is ***attached*** to this decision.

On 22 June 2023, an additional submission was received from New Zealand Frost Fans Limited, contained in Appendix A to the supplementary report ***attached*** to this decision.

We record that we have considered the report and the supplementary report in reaching our decision.

3. ***Statutory framework***

Jurisdictional provisions

The jurisdiction to decide whether to waive the failure to comply with the time limits or extend time is provided for under s37 and s37A of the Act.

S37(I) of the Act states.....

37 Power of waiver and extension of time limits

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

Then S37A of the Act then sets out the requirements for waivers and extensions as follows ...

37A Requirements for Waivers and Extensions

- (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.*

4. ***Our consideration of the late submissions***

Relevant considerations

We now turn to comment upon relevant criteria for granting waivers before reaching our decision:-

(i) ***Interests of persons who may be directly affected by the extension of time***

The interests of other submitters who would be affected by the receipt of the late submissions is a key matter for us to consider.

We note that Council has not yet given public notice of submissions under Clause 7 of Schedule 1 of the Act. Should we grant waivers in relation to late submissions, the late submissions will be included in the public notice yet to be published. This will give rise to the ability of those persons with an interest in the late submissions to make further submissions in response to matters raised in the late submissions.

(ii) ***The interest of the community in achieving adequate assessment of the effects of the Proposed Plan***

We record that we have taken into account this matter in reaching our decision. The community has an interest in ensuring that the matters raised in the late submissions are able to be considered in order to ensure that a full assessment of the effects of the Proposed Plan can be made.

(iii) ***Duty under s21 of the Act to avoid unreasonable delay***

Given that public notice of submissions under clause 7 of the First Schedule to the Act is yet to occur, we find that the

granting of waivers will not result in any material delay in the planning process.

(iv) ***The principles of natural justice***

The principles of natural justice centre around the requirement for planning processes to be conducted in a manner which is fair to all parties with an interest in our treatment of the late submissions. We have carefully considered the interests of parties who could be affected by the granting of waivers in reaching our decision.

Specific reasons for lateness

We now turn to consider the specific reasons for the requirement for waivers :-

(i) ***Missing or incomplete Form 5/ lodgements on or before 15 December 2022***

26 of the submissions received before the closing date were procedurally deficient. We find that no prejudice will arise to any other parties following a decision to grant waivers in respect of the procedural deficiencies in question;

(ii) ***Submissions lodged after 15 December 2022***

As to those submissions (other than submission 157 and the submission received from NZ Frost Fans Ltd dealt with hereafter) which were filed after 15 December 2022, being the closing date for submissions, we have considered the reasons for lateness referred to in the report. The reasons include:-

- (a) a mistaken assumption as to the closing date for submissions;
- (b) an original submission "bouncing back";
- (c) delays allegedly caused by Covid staff shortages;
- (d) the impact of a fatal accident resulting in delay;

- (e) lateness due to ill health;
- (f) a claim that a submission was sent prior to the closing date but not received;
- (g) a submitter alleging it was not consulted and only became aware of the implications of relevant provision of the Proposed Plan at a late date;
- (h) lodging a submission on the operative plan of the Timaru District Council rather than the Proposed Plan;
- (i) new ownership of an affected property.

We have concluded that in each case we should accept the reasons for lateness and grant the waivers required. We do not regard the delays in lodgement as giving rise to material prejudice or representing a disqualifying factor.

(iii) ***No reason for lateness given / submission 157/Ryan de Joux***

This submission was received on 17 February 2023 and no specific reason was given for lateness. The report states that accepting this late submission "could impose a burden on Council to further investigate with the potential of needing wider consultation with stakeholders and ratepayers within the district". For this reason, we have given special consideration to the question of whether we should grant a waiver in this case. Notwithstanding the degree of lateness, the absence of any reason for lateness, and staff concerns outlined above, we have concluded on balance that we should grant a waiver in this case. In reaching this decision we have been primarily influenced by the fact that the summary of submissions is yet to be completed and that any persons with an interest in the late submission in question will have an opportunity to respond to the late submission by lodging a further submission as public notification of submissions has not yet taken place. We find that it is appropriate for the matters raised to be tested through the Schedule 1 process along with all other matters raised in submissions.

(iv) ***Submission from New Zealand Frost Fans Limited***

On 22 June 2023, a submission was received from New Zealand Frost Fans Limited. The significant lateness of the submission was acknowledged by the submitter, and reasons given for that lateness. The supplementary report recommended that we should not grant a waiver in this case, given the recommendation in the (first) report that no further submissions should be received after the date of that report. However, we consider that the reasoning recorded in (iii) above applies equally to this submission. Accordingly on balance we have concluded that we should grant a waiver in this case.

5. ***Conclusion***

For the reasons set out above, we grant waivers in respect of the late lodgement of submissions and procedural deficiencies identified above in respect of all late submissions recorded in the staff reports attached to this decision. The effect of the grant of waivers is that all late submissions are accepted and will be included in the summary of submissions.

We therefore accept recommendations 4 (b) and (e) presented in the (first) staff report and recommendation 4 (b) presented in the supplementary report.

In order to ensure the orderly consideration of existing submissions by the Council and to prevent delay, we direct that no other late submissions are to be received by the Council from the date of the supplementary report, namely 23 June 2023.

Pursuant to s37A(6) of the Act we direct that notice of our grant of waivers is to be given to all hearing parties including submitters and that this decision is to be published on the Council's website.

DATED this 27th day of June 2023



**A C HUGHES-JOHNSON KC (AS CHAIR ON
BEHALF OF THE COMMISSIONERS)**

Appendix A – Summary of Incomplete/Late Submissions

Sub No.	Submitter	Category	Date first received	Date Complete	Additional note
198	O'Keefe, Stout & Vogel	Other	6.12.2022	16.1.2022	Attachment missing.
70	Joanne Brownie	Procedurally late	9.12.2022	9.1.2022	Incomplete Form 5 re Trade competition
90	Hermann Frank	Procedurally late	13.12.2022	16.12.2022	Missing Form 5
96	A. S. Bras	Procedurally late	13.12.2022	18.1.2022	Incomplete Form 5
154	Christian Bras	Procedurally late	13.12.2022	12.1.2022	Incomplete Form 5
231	Timothy Graeme Blackler	Procedurally late	13.12.2022	16.12.2022	Missing Form 5
232	Peter Bras	Procedurally late	13.12.2022	12.1.2023	Incomplete Form 5
62	Graeme & Margaret King	Procedurally late	14.12.2022	3.4.2023	Incomplete Form 5
158	Kenneth J & Rose E Tarrant	Procedurally late	14.12.2022	31.1.2023	Incomplete Form 5
194	Russell James King	Procedurally late	14.12.2022	3.2.2023	Incomplete Form 5
92	Bruce Wain Rogers	Procedurally late	15.12.2022	20.12.2022	Missing Form 5
100	David J Moore and Judith Moore	Procedurally late	15.12.2022	20.12.2022	Incomplete Form 5
117	Tosh Proanov	Procedurally late	15.12.2022	31.12.2022	Missing Form 5
134	Alan Johnson - NZMCA	Procedurally late	15.12.2022	22.12.2022	Missing Form 5
146	Lyndsay William and Frances Margaret Dennison	Procedurally late	15.12.2022	19.1.2022	Incomplete Form 5
161	Fi-Glass Products T/A Mr Boats	Procedurally late	15.12.2022	17.1.2022	Missing Form 5
176	Connexa	Procedurally late	15.12.2022	19.12.2022	Missing Form 5
182	James Sutherland for Federated Farmers	Procedurally late	15.12.2022	19.12.2022	Missing Form 5
187	Kiwi Rail	Procedurally late	15.12.2022	21.12.2022	Missing Form 5

Sub No.	Submitter	Category	Date first received	Date Complete	Additional note
199	Griff Simpson Family Trust	Procedurally late	15.12.2022	17.1.2022	Missing form 5
208	Spark	Procedurally late	15.12.2022	19.12.2022	Missing Form 5
209	Chorus	Procedurally late	15.12.2022	19.12.2022	Missing Form 5
210	Vodafone	Procedurally late	15.12.2022	19.12.2022	Missing Form 5
221	Rangitata Island Dairy Ltd	Procedurally late	15.12.2022	19.12.2022	Missing Form 5
236	Waihi School Trust Board	Procedurally late	15.12.2022	29.3.2022	Incomplete Form 5. Submitter informed on 28th March 2023 that Form 5 was incomplete when the matter was noted.
237	Fred Coughlan for Aitken, Johnston & RSM Trust Limited	Procedurally late	15.12.2022	11.4.2022	Missing form 5
156	Nicky Snoyink - Forest & Bird	before 10 January	15.12.2022	21.12.2022	Incomplete submission due to staff absences, covid related illnesses, etc - waiver and extension for four working days applied for.
72	Lee Burdon	before 10 January	16.12.2022	6.1.2023	Checked with staff who confirmed 16 December was the close date for submission. Then incomplete form 5.
79	Jeremy Talbot	before 10 January	16.12.2022	9.1.2023	Original submission bounced back. Resent on 16 December. Then Incomplete Form 5.
95	Darren Wayne Rae	before 10 January	16.12.2022	First received date	Thought closing date was 23/12/2022.
124	Philip Gray	before 10 January	16.12.2022	19.12.2022	Email sent after 5pm on closing day and missing form 5
131	Beca Limited - Jessica Mangos for Fire and Emergency NZ	before 10 January	16.12.2022	25.1.2023	Request for extension due to Covid staff shortages. 16/12 Submission received, 19/12 Form 5 request sent and received back, 25/1 request to resend submission as mislaid. Received back same day.
145	Tristram Johnson	before 10 January	16.12.2022	First received date	No reason specified
159	Transpower New Zealand Limited	before 10 January	16.12.2022	First received date	One day late. Impacted by a fatal accident and unable to submit on time.

Sub No.	Submitter	Category	Date first received	Date Complete	Additional note
191	GJH Rooney	before 10 January	16.12.2022	First received date	Waiver for submitting a late submission is sought as considers no person is considered to be unduly prejudiced by Council granting a waiver to accept this submission.
222	Martock Holdings Ltd	before 10 January	16.12.2022	First received date	Email sent after 5pm.
169	Daryl McMillan for Road Metals	before 10 January	19.12.2022	First received date	Late due to ill health. then missing form 5
106	Minister of Education	before 10 January	9.1.2022	31.1.2023	Staff absences due to Covid for both submitter and agents, then missing form 5
233	Red Sky Holdings	Similar submissions made by others	17.1.2023	First received date	Submitter claims sent over on 13 December by email. Never received by Council. Original email wasn't provided.
200	Westgarth, Chapman, Blackler, etc.	Similar submissions made by others	27.1.2023	First received date	Request waiver as the submitter wasn't consulted with the SASMs and only recently became fully aware of its implications.
74	H B	Incomplete	not late	None	No Surname nor first name provided. Submitter refused upon request to provide full name.
206	South Rangitata Reserve Inc	Other	13.12.2022	28.3.2023	Original submission on Operative Plan. Contacted submitter on 22 March, resubmitted on Proposed Plan on 28 March.
234	Rangitata Diversion Race Management Limited	Other	31.1.2023	First received date	Not a landowner and did not receive notification of the proposed changes on SASMs and was busy on dealing with operational issues.
157	Ryan de Joux	Other	17.2.2023	First received date	No specific reason stated.
235	Willowridge Developments Limited	Other	10.3.2023	First received date	New owner of affected property.

Appendix A – New Zealand Frost Fans Limited Submission on the Proposed Timaru District Plan

Form 5

Submission on Notified Proposal for Plan, Change, Variation

Clause 6 of Schedule 1, Resource Management Act 1991

To: Timaru District Council

Name of submitter: New Zealand Frost Fans Limited

This is a submission on the following proposed plan;

Proposed Timaru District Plan

I could not gain an advantage in trade competition through this submission.

~~I am directly affected by an effect of the subject matter of the submission that—~~

~~(a) adversely affects the environment; and~~

~~(b) does not relate to trade competition or the effects of trade competition.~~

The specific provisions of the proposal that my submission relates to are:

Outlined in Appendix 1 as attached to this submission.

My submission is:

Outlined in Appendix 1 as attached to this submission.

I seek the following decision from the local authority:

The same or similar to the relief sought in Appendix 1 attached to this submission.

I wish to be heard in support of my submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.

Signature of submitter



James Robert Witham, on behalf of NZ Frost Fans Limited

15th June, 2023

Electronic address for service of submitter: james.witham@nzfrostfans.com

Telephone: 0274848000

Postal address: 1429 Omaha Road, Hastings 4175

Contact person: James R. Witham, Senior Planner, NZ Frost Fans Limited