

IN THE MATTER OF the Resource Management Act 1991
AND

IN THE MATTER OF Vaco Investments (Waipu Project)
 Ltd – Subdivision, land use and
 discharge consents – 47 Millbrook
 Road, Waipu, Pt Lot 1 DP 44163 NA
 26A/257

RESOURCE MANAGEMENT ACT 1991

DIRECTION #6

HEARING PANEL

PURPOSE

1. The purpose of Direction #6 is to respond to the applicant’s request for a further deferral of the hearing and related matters.

BACKGROUND

2. This matter is currently scheduled for hearing on 14-15 October 2024.
3. This matter was initially set down for hearing and a related timetable for evidence exchange in the Hearing Panel’s Direction #1 on 19 March 2024.
4. Since then the Hearing Panel has issued a further 4 Directions, each responding to a request by the applicant for suspension or deferral, including a substantial redesign of the application. The last such request and direction was issued on 12 June 2024.
5. The Hearing Panel has now received (by email dated 11 September 2024) a further request from the applicant for a further 4 week deferral (and suspension of the timetable for release of the s.42A report) in order to attempt to resolve continuing outstanding matters with NZTA – matters that have been the effective cause of the previous multiple deferral requests - with proposed expert conferencing in the meantime on:
 - Matters pertaining to landscape and effects on rural character and amenity;
 - Traffic matters;
 - Planning matters, with a view to prepare JWS on the matters of agreement.
6. The latest request responds to the Hearing Panel’s informal indication to the applicant (via Council on 10 September 2024) that it did not agree with the signalled further deferral of 3 weeks (at that point) and that the applicant should either proceed to hearing as scheduled or withdraw its application and resubmit when it was fully and finally formed.
7. As we noted in Direction #2 on 3 April 2024, that initial suspension request for a deferral (which we subsequently accepted under a s.37 waiver) was made well beyond the statutory 130 working days from lodgement and acceptance.

8. We also note the s.103A requirement on the Hearing Panel to issue a decision no later than 75 days after the closing date for submissions on the application.
9. Finally we note that Whangarei District Council received 52 submissions and Northland Regional Council 18 submissions, substantially opposed to a grant of consent. Those submitters have been waiting on a hearing since they lodged in late January / early February of this year.

DIRECTION

10. The continual delays in this matter, and the redrafting of the application details (including an indication in the latest request that further substantive redesign of the main access, for example, will be required) suggests that the application should be resubmitted for consideration when completed and that a further 4 weeks is unlikely to achieve that finalised outcome.
11. With respect to waivers for extensions of time, s.37A requires consideration of a number of matters including:
 - (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.And that special circumstances apply.
12. The Hearing Panel is not persuaded that such a waiver or further extension is any longer appropriate in light of those considerations, and that the special circumstances contemplated by the RMA (e.g. scale or complexity) do not apply to what has effectively become a protracted redesign exercise which would ordinarily be completed prior to the lodgement of such an application.
13. The Hearing Panel therefore directs as follows:
 - i) The timetable set out in Direction #5 stands.
 - ii) The Hearing will remain as scheduled to commence on 14 October 2024 unless the applicant withdraws the application in the meantime.
14. Any queries or correspondence related to this Direction should be sent through to the Hearing Coordinator, at consentsadmin@wdc.govt.nz.



David Hill (Chairperson)
Hearing Panel

13 September 2024