

**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

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**RESOURCE MANAGEMENT ACT 1991**

**DIRECTION #7**

**HEARING PANEL**

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**PURPOSE**

1. The purpose of Direction #7 is to respond to Counsel for the applicant’s 4 October 2024 further request for the matter to be put on hold while the applicant completes the process with NZTA. No timeframe for that prospect is provided.

**BACKGROUND**

2. As previously noted in our Directions, this matter is currently re-scheduled for hearing on 14-15 October 2024, having initially been set down for hearing and a related timetable for evidence exchange in the Hearing Panel’s Direction #1 on 19 March 2024.
3. Since then the Hearing Panel has issued a further 5 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 13 September 2024.
4. Counsel for the applicant, Russell Bartlett KC, has submitted a further request for the matter to be put on hold (dated 4 October 2024) as a result of the evidence filed by NZTA. That request to Katie Martin, Whangarei District Council, has been referred to the Hearing Panel for direction.

**PREVIOUS DIRECTIONS**

5. 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 s.91A(3) statutory 130 working days from lodgement and acceptance.
6. We have also previously noted 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. Submissions closed on 5 February 2024.
7. Furthermore, we noted 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 submissions in February of this year.
8. In Direction #6, we observed that:

*... 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.*

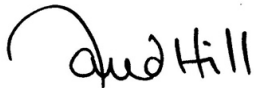
9. That observation appears to have been prescient.
10. We also noted with respect to waivers for extensions of time, that s.37A requires consideration of a number of matters including:
  - (a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
  - (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, but that special circumstances might apply.
11. Having considered those matters, we concluded that the Hearing Panel was:

*... 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.*
12. Direction #6 therefore directed that:
  - 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.*
13. The applicant advised that it was not withdrawing but would proceed as per the timetable.
14. The applicant now seeks a further unspecified deferral.

## **DIRECTIONS**

15. Whilst we are not privy to the discussions that have been occurring between the applicant and NZTA, it would seem on the face of the evidence lodged by NZTA that, at the very least, the application will require further and potentially substantial modification.
16. In that circumstance, further review by the Councils, opportunity for submissions, and new briefs of evidence are likely to be required.
17. We conclude that this application is now at risk of an abuse of process and that further placement on indefinite hold is not appropriate. However, we are unsure as to whether our delegation extends to making a decision to return the application.
18. We therefore make the following directions:
  - (a) The hearing scheduled to commence on Monday, 14 October 2024 is vacated. All parties are to be advised accordingly forthwith.
  - (b) The Councils are to confer to determine whether the application(s) should either:
    - i) be placed on hold as requested by the applicant; or

- ii) be returned pending possible relodgement of a completed application per s.91C RMA.
  - (c) That decision is to be advised as soon as practicable and all parties notified.
  - (d) In the event that the Councils determine that returning the application is not warranted, it is to advise all parties of a revised timetable as soon as practicable.
19. Any queries or correspondence related to this Direction should be sent through to the Hearing Coordinator, at [consentsadmin@wdc.govt.nz](mailto:consentsadmin@wdc.govt.nz).



David Hill (Chairperson)  
Hearing Panel  
7 October 2024