

TAUPŌ DISTRICT COUNCIL

PROPOSED DISTRICT PLAN CHANGES:

PLAN CHANGE 43: TAUPŌ INDUSTRIAL ENVIRONMENTS

MINUTE 9 OF THE INDEPENDENT HEARING PANEL

Introduction

1. This Minute arises out of a request for an extension of time for the provision of evidence to **PC43 Taupō Industrial Environments** to the District Plan. The submitter who has requested an extension is **Mega Food Services Limited – (Mega Foods)** submitter 21 and further submitter 203.
2. For the reasons outlined below, the request is granted with the submitter (for efficacy reasons) having been advised verbally before now, but we take this opportunity to make some observations and comments on some procedural matters that we have become aware of as part of this extension request exercise.
3. Also, we wish to record that this is the final extension we will be granting for extensions to filing of evidence.

Factual background and issues arising

4. We have been forwarded an email by the Hearing Administrator at Taupō District Council (**TDC**) from Mr Darren Clark of McKenzie and Co Limited (**McKenzie and Co**) - the consultants now acting for Mega Foods - who have sought an extension of time for the provision of evidence for PC43 due to extenuating circumstances.
5. As we understand it Cheal Consultants lodged evidence on behalf of Mega Foods however this has subsequently been withdrawn at the request of McKenzie and Co and a six-page summary statement of evidence has been lodged in its place on the required date of 9 August 2023 with an accompanying email requesting an extension of time to lodge planning evidence and legal submissions.
6. The request for an extension of time is explained in the email as being due to the recent engagement of McKenzie and Co as the submitter's planning agent (we understand two days before evidence was due) and their need to provide expert planning and legal submissions. The submitter's agent has also explained that the need to provide planning and legal submissions has arisen because the s42A report recommends amendments to notified provisions and, particularly, the inclusion of new provisions that potentially impact the submitters area of area of interest at Broadlands Road West. McKenzie and Co report that these amendments are significant and will potentially have adverse consequences on Mega Foods ability to develop the Broadlands Road West land for industrial purposes as contemplated by PC43.

7. Our initial thought was to decline the request due to the lateness of the request (i.e. received on the day that evidence was due to be filed) and that the reasons advanced did not appear to differentiate the submitter's position from any other submitter opposing or supporting the plan change. However, having delved further into the material before us, we do agree that in this situation there are extenuating circumstances, and we elaborate on these further below.
8. We also record that the provision of a summary of evidence by the submitter has been useful for the Panel and should also be useful for the Council and other parties who have an interest in this matter.

Assessing the request

9. In assessing the merits of the request, two matters come before us:
 - a) potential scope and legal issues as to whether the s42A report recommended amendments are within scope of what the submissions sought/represent a reason; and
 - b) potential natural justice and fairness issues with the process.
10. At a cursory look the s42A report recommends the following:
 - a. Insert as Appendix 11 - Broadlands Road West – Structure Plan Area (identifying the Geothermal SNAs and associated 20m buffers).
 - b. Amendments to subdivision discretionary rule 4h.3.7;
 - c. A new restricted discretionary subdivision rule 4h.4.2; and
 - d. A new non-complying land use rule 4h.4.1.
11. The summary statement provided by McKenzie and Co advances the opinion that the s42A report has not undertaken a comprehensive s32AA assessment of the proposed changes and given this lack of full assessment it determines that there are unquantified wider impacts on how the rezoned land in the western part of the site could be utilised. The summary statement further states that in their opinion the Panel does not have adequate information to adopt the recommended changes to PC43.
12. We acknowledge the work by Wildlands Consultants Ltd on behalf of TDC at short notice to be included in the s42A report, but we also note the claim from Mega Foods that the process has not been fair to all parties and hence their need for planning evidence and legal submissions.
13. Our preliminary response to the above is that the issues arising have a degree of legal and planning complexity with another layer of complexity added by questions raised in the submitter's summary of evidence statement relating to:
 - a. The potential relevance of provision of the Geothermal Module of the Waikato Regional Plan (**WRP**), as they affect 'Significant Geothermal Features' (**SGF**)
 - b. Whether the prescribed process in the National Policy Statement on Indigenous Biodiversity (**NPSIB**) has been correctly followed. (The NPSIB was gazetted on 7 July 2023 and has legal effect as of 4 August 2023).

14. In terms of the above, and starting with scope, it is not entirely clear to us what the submission basis is for the above outlined recommended amendments. We are aware that three submitters (Department of Conservation, Waikato Regional Council and Alana Delich) requested various broad matters, additional matters of discretion to rule 4h.3.7, and challenged the robustness of the investigations that informed the PC43. We note that this is a matter of interpretation.
15. On the relevance of the WRP and NPSIB we simply state that we are hopeful of a simple and agreed legal position on those matters.
16. At the hearing, we will require some clarification from Council and affected submitters on:
 - a. the submission scope for the above recommended amendments and discussion of any fairness or natural justice issues that may potentially arise from those recommendations.
 - b. the legal situation affecting the requirements of the WRP and the NPSIB to be “given effect to” by this plan change (the latter situation being one where the PC43 was in play at the time that the NPS came into force).
17. In the meantime, we therefore grant the extension for the provision of planning evidence to the date requested (**5pm 16 August 2023**). We expect the planning evidence to elaborate on the summary statement and not to deviate into other areas not previously canvassed in the summary. We have not previously specified a date for the circulation of legal submissions, but in this case it would be helpful that all legal submissions on this matter from all relevant parties are received no later than two clear working days in advance of the hearing (i.e. by 5pm on 22 August).
18. For the record, we note that the hearing for PC43 is set down for 25 August and therefore there would still be more than the 5 working days between the circulation of the evidence and the start of the hearing required under s 41B of the RMA, so we do not consider that this would cause any delay in the hearing timetable nor that there would be any prejudice to the Council or other submitters with the late circulation of the evidence.

Directions

19. In granting that extension we encourage the representatives (particularly counsel) of Mega Foods and TDC to have an urgent conference regarding the scope matter and fairness/natural justice matters. To be clear, this is not a question of whether the submissions are ‘on the plan change’ (this is not in question), but whether the recommended amendments in the s42A report could have been envisaged as a reasonable outcome of the submissions lodged and whether there is any natural justice/fairness issue arising.
20. It would be of assistance to us to have a brief (joint) report back to us from the above mentioned counsel by **3pm Tuesday 15 August 2023** on the outcome of any discussion on scope to enable further directions to be given to Mega Foods and TDC (and other relevant submitters calling expert planning evidence) as to how this matter can be addressed in the lead up to the hearing. For example, some expert planning conferencing about the RMA s32/32AA

appropriateness tests in relation to the amended provisions addressing paragraphs 7.3 and 7.4 of Mr Clark's summary of evidence statement as a basis might be appropriate.

21. That aside, the other directions relating to clarifications sought at the hearing are reinforced.

Next steps

22. The request for the extension for filing evidence is granted as per above. The timeframes for our directions are also set out above.
23. The Panel will provide subsequent Minutes on any further updates in relation to the hearing's proceedings in due course.
24. Any submitter enquiries relating to the proposed plan changes and the hearing should be directed to the Hearing Administrators Hilary Samuel or Haydee Wood and can be contacted at districtplan@taupo.govt.nz.

DATED Sunday 13th August 2023



DJ McMahon

Chair - Independent Hearings Panel

For and on behalf of:
Commissioner Elizabeth Burge
Councillor Kevin Taylor