

From: Gerald Lanning [<mailto:Gerald.Lanning@simpsongrierson.com>]
Sent: Wednesday, 18 January 2017 3:23 p.m.
To: Matthew Gouge
Cc: Zac Fargher; John Duguid; Christian Brown
Subject: RE: EWL_PlanningCommitteeMtng_29.11.2016_PoliticalReferenceGroup.ppt [SG-SGDMS.FID871772]

Good afternoon Matt

Thank you for asking our advice on whether the Environmental Protection Authority (**EPA**) can extend the timeframe for submissions on the East West Link project.

We agree with your view that the EPA cannot extend the submission period, but consider that it *may* be possible for the board of inquiry (**board**), once constituted, to effectively do so by receiving late submissions. We have outlined our reasons for this below.

Firstly, as you have suggested, we do not consider that the EPA has the power under the RMA to amend the timeframes for receiving submissions. Section 149E(9) explicitly provides that "the closing date for making a submission is 20 working days after the day on which public notice of the direction is given". For the purpose of this section, "direction" is the Minister directing the EPA to refer a matter to a board, or to the Environment Court. We have not identified any scope for the Minister or EPA to extend this period. As you have noted, section 37 of the RMA is only available to a "consent authority" or "local authority", and neither term is defined as including the EPA.

However, once the information compiled by the EPA (including submissions) has been provided to the board (under section 149G), it may be that the board could continue to accept submissions lodged after the 20 day statutory period. It is possible that this could be done under section 37. Again, however, the application of section 37 is limited to consent authorities – which is not defined as including boards of inquiry. Certain RMA provisions do allow the board to act as if it were a consent authority – but only for specific purposes (eg see sections 149L(1) and 149P(2)) which do not include section 37. However, there is precedent for boards using section 37 to receive late submissions in the past (although there has been no analysis as to whether this is lawful).

Section 37A provides that waivers and extensions of time limits are available where special circumstances apply (including scale and complexity), or if the applicant agrees. In our view, as an option to potentially achieve the intent of extending the submission period, and considering the lack of scope for the EPA to do so, the Council could request that NZTA give its agreement in advance for the board, once established, to accept submissions for an extended period. However, given that the power (if any) to accept late submissions sits with the board and not the EPA, there is some risk for submitters should the board decide not to accept the late submissions. Accordingly, this may not achieve the Council's objectives.

Please let us know if you have any questions in relation to this advice.

Regards
Gerald

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From: Matthew Gouge [<mailto:matthew.gouge@aucklandcouncil.govt.nz>]
Sent: Tuesday, 17 January 2017 2:04 p.m.
To: Gerald Lanning
Cc: Zac Fargher; John Duguid
Subject: FW: EWL_PlanningCommitteeMtng_29.11.2016_PoliticalReferenceGroup.ppt

Hello Gerald

I trust you had a nice holiday and welcome back.

I have a question on the timeframes for submission set under Part 6AA of the RMA. Below is a resolution from the Planning Committee seeking for the EPA to double the submission timeframes from 20 to 40WD for the East West Link project.

We have been discussing this request within the planning team and are not convinced that the EPA (or anyone else) has the power to extend the 20WD timeframe specified under section 149E(9). It appears that s37 is not available as the EPA is not defined as a 'Consent Authority'. Can you please provide a view on whether the below is legally possible?

- a) request that the Environment Protection Authority consider an eight-week submission period for this application due to its complexity and significant effects that it will have on the local community.**

Kind regards

**Matthew Gouge | East West Link – Council Submission Project Manager
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