

## DECISION DECLINING WAIVER OF NON-COMPLIANCE WITH TIME FOR SUBMISSIONS

- 1) The Board of Inquiry into the proposed National Policy Statement on Freshwater Management was appointed under section 47 of the Resource Management Act 1991 (RMA). By section 48 of the RMA, the Board was required to give public notice of its of the proposed statement and inquiry; and the notice was required to state the closing date for submissions, which was not to be earlier than 20 working days after public notification.
- 2) On 20 September 2008 the Board gave public notice of the proposed statement and inquiry. The notice stated that the closing date for submissions was 23 January 2009. That was 74 working days after the public notification.
- 3) On 14 March 2009 the Board gave public notice of a summary of the 149 submissions that had been received, and invited further submissions supporting or opposing any of the submissions already lodged. The time for lodging further submissions was to close on 10 April 2009 (later extended to 14 April 2009). The Board has received 30 further submissions supporting or opposing submissions already lodged.
- 4) The Board has adopted a programme for hearing the submissions and further submissions between 29 June 2009 and 30 September 2009. That period is based on the availability of the members of the Board to attend the hearings; and cannot practicably be postponed.
- 5) On 14 April 2009, submissions on the proposed National Policy Statement were lodged on behalf of the Bay of Plenty Conservation Board, Te Arawa Lakes Trust and Te Runanga o Ngati Manawa. As none of those submissions expressed support for or opposition to any of the submissions received, each of them is an original submission. The time for lodging original submissions closed on 23 January 2009. Having been lodged on 14 April (53 working days after the closing date), none of them can be accepted and treated as an original submission unless the failure to lodge it by the closing date is waived.
- 6) The Board inferred requests by each of those submitters for waiver of non-compliance with the time limit for lodging submissions, and invited the submitters to provide reasons for lodging them late. On 4 May 2009, Hera Smith, who had lodged all three submissions, replied that

*The members had not had fully discussed key aspects in detail and wished to make further comments although acknowledging the closing date for submissions and agreed to make a submission through the further submissions process.*

- 7) On 5 May 2009, Ms Smith added this:

- *The Te Arawa Lakes Trust agreed to submit on the above however had not had in-depth discussion until after the closing date for submissions*
  - *The Conservation Board had agreed to make a submission however had in-depth discussion or review of the submission until after the closing date however agreed to submit during the further submissions process*
  - *Te Runanga o Ngati Manawa had not had in-depth discussion due to other priorities at the time (settlement claims work) however values the significance and relevance of the submission process and consideration in the further submissions process*
- 8) In considering whether to waive non-compliance with the closing time for lodging submissions, the Board has regard to the reasons given for lodging the submissions late, and to the effects on other submitters of waiving late lodging and accepting the submissions.
- 9) In considering the reasons given for late lodging, the Board notes that:
- (a) The length of time it allowed for lodging submissions was more than three times the minimum length prescribed by the RMA
  - (b) the provisions of Schedule 1 of the RMA about further submissions on proposed planning instruments are not for additional submissions but only submissions in support of or in opposition to submissions originally lodged
  - (c) the provision that the Board made for further submissions was also for further submissions supporting or opposing any of the submissions already lodged, not for additional submissions that were not in support of or in opposition to submissions already made.
- 10) The Board finds that:
- (a) the submitters had ample time between public notification of the proposed policy statement on 20 September 2008 and the closing of the time for lodging submissions on it on 23 January 2009 in which to decide on the contents of their submissions and lodge them within that period
  - (b) it was not open to the submitters to use the opportunity for making further submissions to lodge submissions that were required to be lodged by 23 January 2009
  - (c) the submissions are not in support of or in opposition to submissions already lodged and do not qualify as further submissions that might be lodged by 20 April 2009 (extended to 14 April 2009).
- 11) Therefore the Board concludes that the reasons given for late lodging these submissions do not justify waiving non-compliance with the time for lodging them.
- 12) The Board considers the effects on other submitters of accepting the submissions lodged on 14 April 2009.
- 13) The purpose of publishing the summary of the original submissions and allowing further submissions in support of or in opposition to them was so that further

submitters could explain the merits and disadvantages of amendments to the proposed policy statement that were sought in the original submissions.

- 14) As the submissions in question were not received in time to be included in the summary of submissions published on 14 March 2009, people who might have lodged further submissions in support of or in opposition to them would be deprived of the opportunity to do so. The Board would be deprived of the potential assistance it could have had from further submissions on them.
- 15) The preparation for the hearing of the submissions is now in hand. The Board expects that submitters will be preparing their cases on the understanding of the scope of amendments to the proposed policy statement sought in the submissions already published. The process has long passed the stage at which new amendments to the policy statement could be raised without unfairly prejudicing people who might have wanted to oppose those amendments.
- 16) In short, those who lodged the late submissions in question have not justified waiving non-compliance with the time for lodging them; and to accept them now would unfairly prejudice potential further submitters.
- 17) The Board therefore judges that it should not waive the lodging of the submissions on behalf of the Bay of Plenty Conservation Board, Te Arawa Lakes Trust and Te Runanga o Ngati Manawa so long after the time for lodging them had closed; and that their submissions should not be accepted as valid submissions on the proposed National Policy Statement on Freshwater Management.

Dated 13 May 2009.

For the Board:



D F G Sheppard (Judge)  
Chairperson