

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Submissions and Further
Submissions on the
Proposed Wellington City
District Plan

Minute 18:

Application to Lodge Late Submission

Introduction

1. We have received an application to lodge a late submission made on behalf of The Salvation Army New Zealand Trust (**TSA**). Counsel making the application notes that the focus of the proposed submission is the potential listing of a building owned by TSA at 92 Vivian Street as a heritage building. A draft submission limited to that issue is attached to counsel's memorandum. The building in question, known as the Citadel, was not listed in the notified PDP, but several submitters have sought its listing.
2. Counsel's Memorandum advises that TSA was unaware that these submissions had been made and had only recently learned of this.
3. The application seeks a waiver in order that TSA might lodge a submission supporting the notified Plan in this respect, and therefore (implicitly) opposing the submissions seeking its listing.
4. Counsel argues that no party will be prejudiced by acceptance of the TSA submission, that TSA as the owner of the Citadel can provide useful evidence bearing on its possible listing, and that although the Stream 3 hearing is scheduled to commence on 9 May, no unreasonable delay would be caused if the TSA submission were accepted, because it can provide evidence within the currently directed timeframe (i.e. by 24 April).

Jurisdiction

5. We outlined the matters relevant to an application of this kind in Minute 3. We rely on that description.

Discussion

6. Clearly, this submission is seriously late. Submissions closed in mid September 2022 and two hearings have already been held.
7. Having said that, we accept that TSA was not aware of the third party submissions seeking to have its Wellington Citadel listed as a heritage building and the delay is understandable. While a number of submissions have been lodged supporting elements of the PDP as notified, it would be counsel of perfection to suggest that every building owner in Wellington should have done that in order to protect their interests.
8. Nor do we ascribe fault to TSA that it did not observe, among the thousands of submission points summarised by Council, that the status of its Citadel was

an issue. While in theory, the further submission process is available to parties to indicate their interest, in a full District Plan review, with a very large number of submission points, it is understandable that a party would not go to the trouble of analysing the summary of submissions unless alerted to a potential issue through some other route. In this case, the risk that a building constructed in 1990 might be listed for its historic heritage values would not one that immediately comes to mind.

9. We accept also that the submitters seeking the listing of the Citadel¹ will not be unduly prejudiced if the TSA submission is accepted. The status quo is that Citadel is not scheduled as an historic building. Submitters need to make the case that it should be listed against a background where the recommendation of the Section 42A Report is that while there may be a case in future to list the Citadel, it should not be listed as part of the current process. While obviously TSA would seek to support that recommendation, we do not see its participation as materially prejudicing the submitters seeking the contrary conclusion. Indeed, given that one of the reasons provided by the Section 42A Report author for his recommendation is the absence of any advice as to the position of the landowner, those submitters might even be assisted if TSA is able to participate.
10. Nor do we consider the Section 42A author prejudiced given that TSA would presumably seek to support the Officers' recommendation.
11. We also accept that the interests of the community would be advanced insofar as the participation of TSA would enable better assessment of the effects of a heritage listing of the Citadel.
12. As regards the potential for unreasonable delay, as noted in Minute 3, the requirement in Section 37A(2) that any extension not be greater than twice the maximum time period specified in the Act, does not apply in respect of late submissions (because the RMA does not specify a maximum time period for lodging submissions). We observe that this is presumably why TSA has sought to lodge a late submission, rather than a late further submission (recognising that the limitation in Section 37A(2) would likely be an insuperable obstacle to the latter option).

¹ Historic Places Wellington (#182); Wellington's Character Charitable Trust (#233); Wayne Coffey and Gregory Young (#347)

13. The proposed submission is limited to the specific issue of the potential listing of the Citadel as an historic building. Neither of the first two hearings that have already been held addressed that issue, and so the fact that they have concluded is not a ground for rejecting the application.
14. We also accept counsel's advice that if the TSA submission is accepted, the submitter can lodge its evidence within the existing deadline of 24 April, avoiding problems that might otherwise arise on that account.
15. However, there is one problem that Counsel for TSA have not addressed. This is the fact that if a late submission is accepted, a summary of it must be publicly notified and interested parties given the opportunity to lodge further submissions not later than ten working days from the date on which that public notice is given (as per Clause 7 of the First Schedule).
16. Any further submitters on TSA's submission would then have to be given the right to call evidence and be heard as part of Stream 3.
17. With expert evidence required to be lodged by 24 April, and the Stream 3 hearing commencing on 9 May, there is simply no time to undertake these additional procedural steps.
18. The timetable for the Stream 3 hearing was fixed in December of last year. All parties have been working towards the forthcoming Stream 3 hearing, based on that advice.
19. As we have observed repeatedly, the Hearing Panel is operating under a very tight timetable. It does not have the ability to make special arrangements to defer the hearing of particular submissions and extend the timeframe of the Stream 3 hearing.
20. We find, therefore, that although understandable in the circumstances, the delay in making this application is unreasonable, because the procedural steps that would necessarily accompany its receipt will prejudice the Stream 3 hearing process, and potentially other hearing streams, and therefore all of the participants in the hearing process. We therefore decline TSA's application.
21. We consider this an unfortunate end result. Through no fault of its own, TSA is effectively excluded from the hearing process on a matter of direct interest to it. If we had been able to find a way to give it the ability to appear without disrupting the entire hearing process, we would have done so.



Trevor Robinson
Chair

For the Wellington City Proposed District Plan Hearings Panel
Dated: 19 April 2023