

## MEMORANDUM

**TO:** David Murphy  
**FROM:** Nicholas Jessen  
**DATE:** 19 June 2019  
**SUBJECT:** TIME PERIOD FOR MAKING A DECISION ON PLAN CHANGE

---

### Introduction

1. You seek advice concerning Plan Change B, a private plan change under Schedule 1, Part 2 of Resource Management Act 1991 ("**RMA**") advanced by Pioneer City West, and accepted by the Palmerston North City Council ("**Council**").
2. Plan Change B was publicly notified on 15 August 2013. It proposes a plan change in respect of approx. 73 ha of land described as the Pioneer City West Growth Area.
3. There were 34 submissions lodged with the Council as a response to notification including several submissions requesting decline of the plan change.
4. Approximately six years have elapsed since notification and the plan change has not proceeded to Hearing and it has not been withdrawn.
5. It is understood the copy of this advice will be sent to the applicant prior to our meeting on Friday.

### Schedule 1

6. In respect of a plan change, cl 10 of Schedule 1 of the provides that:
  - (4) the Local Authority must-  
  
...
    - (a) Give its decision no later than two years after notifying the proposed Policy Statement or Plan under Cl. 5  
  
..."
7. The requirement under Cl 10 of Schedule 1 is to give a decision no later than two years after notifying the plan change. This has not been achieved.

8. In my opinion, in order for the Council to comply with Cl 10, what would be required is for the time period to begin afresh. The time period begins from the point in time that the plan change is notified under cl 5. This will require the Council to re-notify the proposed plan change under cl 5 of Schedule 1, before then proceeding to a decision within two years.
9. We consider that the Council should undertake this course of action if the Applicant maintains the request for a hearing.
10. We note that applying cl 10 in this way provides opportunity for effective and meaningful participation for any person who may have (in the six years since 2013) developed an interest in the subject matter of the plan change.

#### **Power to waive or extend period of time**

11. It will be noted by the Applicant that the Council has the power to waive or extend the time period in accordance with its powers under s 37 (subject to the constraints at 37A). The powers held by the local authority are discretionary, and accordingly the local authority is entitled to refuse invoking the powers of waiver of extension of time.
12. While I agree that it is open for the Council to invoke this power, in my opinion there is a rational basis for the Council to refuse to do so if invited by the Applicant. The following reasons would provide justification:
  - (a) If the Council proceeds to a decision on the plan change, the time period between notification and decision would certainly exceed six years. That is over four years longer than the time period provided in the RMA, constituting an extremely significant extension in which the dynamic planning context relating to and surrounding the broader City West area has shifted considerably;
  - (b) Waiving or extending the time period would present a barrier to any opportunity for participation by persons potentially affected by the plan change. As mentioned above, this would potentially include any persons who may have moved into the City West growth area within the last six years or otherwise developed an interest in its subject matter;
13. We note further that the Council must not extend a time limit unless it has first taken into account matters under s 37A(1):
  - (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
14. I suggest that persons who may have developed an interest in the plan change over the course of the intervening six years are persons who would be directly affected by the extension or waiver for the purposes of ss(1)(a). They would be directly affected because

the waiver would present a barrier to their ability to participate through the submission process in circumstances where notification would otherwise be required under cl 5.

15. I stress that I do not necessarily consider that the Council is required to assess the matters under s 37A(1), if the Council simply determines that it will not exercise the powers.

Yours faithfully

**CR LAW**

A handwritten signature in blue ink, appearing to read 'N. Jessen', written in a cursive style.

**Nicholas Jessen**

Partner

[njessen@crlaw.co.nz](mailto:njessen@crlaw.co.nz)