

IN THE MATTER OF *the Resource Management Act 1991*

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IN THE MATTER OF *an application by Káinga Ora on behalf of the Department of Corrections for a resource consent to use an existing property at 14 Bristol Street, St Albans, Christchurch to provide residential accommodation for men as part of a rehabilitative and reintegrative programme*

(RMA/2020/173)

*MINUTE OF COMMISSIONERS APPOINTED BY THE
CHRISTCHURCH CITY COUNCIL*

DATED 27 AUGUST 2021

1. *Application by Bristol Street Community Network Incorporated for further extension of time to file expert evidence*

This morning we received a memorandum of counsel dated 26 August 2021 on behalf of the Bristol Street Community Network Incorporated ("the Network") seeking a further extension of time to file expert evidence.

In that memorandum counsel for the Network noted that in the earlier memorandum filed on behalf of the Network some of the difficulties which were confronted in relation to the preparation of expert evidence was outlined. In this memorandum counsel for the Network has stated that the difficulties faced by the Network's expert witness remain as set out in the earlier memorandum and that these difficulties also extend to other members of the network's team who are involved in the review of various iterations of the evidence and/or approval of the final draft. It was noted that it was all but impossible to maintain productivity levels when working at home with reduced technical and administrative support as well as young dependents to care for.

The memorandum went on to state that filing the evidence today would disadvantage the network due to intervening circumstances which are said to be both challenging in many ways and beyond its control.

The memorandum went on to note the position of the network as a community group and factors which relate to engaging in the proceedings on what is said to be a level footing with the applicant, leading to the comment that the Network wants to ensure that the quality of Mr Gidden's evidence is unaffected by the incidence of lockdown.

In the result the Network seeks a further extension. It is noted that the original timetable required submitter evidence five working days before commencement of the hearing and that the Network could commit to filing its expert evidence in accordance with that requirement with the exact date to be confirmed once a new hearing date was scheduled.

It is submitted that this timetable is reasonable for the applicant and will not cause any prejudice as it maintains the integrity of the original timetable. In addition it is said that it is only one brief of evidence for the applicant's suite of legal advisers and witnesses to consider.

Further it is submitted on behalf of the Network that a date which relates to, and is proximate to, the actual hearing, is fairer and more cost efficient for it. It is noted that an exchange date that is removed from a hearing date will inevitably entail a degree of duplication in preparations and for a community group like the Network the costs of preparing twice present a barrier to thorough preparation in the proceedings. It is therefore submitted that the Network's request will enhance access to justice and will maximise the Network's chances of "putting its best foot forward".

2. *Memorandum in response on behalf of Ara Poutama Aotearoa/Department of Corrections dated 27 August 2021*

We have received a memorandum in response by counsel for the applicant.

The applicant opposes the extension sought.

It is submitted by counsel that the very late filing of the request provides the commissioners with no ability to require adherence to the original extended timeframe and effectively precludes the applicant from objecting in any substantive manner to the submitter's failure to comply.

The memorandum goes on to note the challenges that are faced by all parties with the move to Alert Level 4. The memorandum notes that the applicant had anticipated receiving the evidence of Mr Giddens at 9am this morning and resourced itself accordingly. It is said that the late request requires the applicant to abandon those arrangements which places additional pressure on the applicant's ongoing resourcing.

Thereafter counsel notes the assumption that Mr Giddens and the Network had been working assiduously to comply with the required lodgement timeframe and “fallen short” at the eleventh hour. Counsel states that in those circumstances, a short extension to allow completion might be entertained. It is said that the request from the Network goes significantly beyond that.

The memorandum goes on to comment on the able representation of the Network and the experience of Mr Giddens noting that a large team of planners are employed in his business.

Counsel notes that the s42A officer’s report was provided to all parties on 26 July 2021 and Mr Giddens and the Network have had some 24 working days with that material, 15 of which occurred prior to the current Alert Level 4. Counsel notes the expectation that Mr Giddens commenced his evidence preparation at some point prior to or immediately receiving the officer’s report.

The memorandum concludes by observing that the applicant’s evidence was filed on 16 August 2021 and provided to all parties on the following morning and that Mr Giddens and the Network have had some nine working days with that material. Counsel states that in those circumstances, and given the resources available to the submitter as set out in the memorandum, it is not clear why an unlimited extension is either necessary or warranted and on that basis the application is opposed.

3. *Our consideration of the request*

By way of background we note that on Tuesday 24 August 2021 the parties were advised that due to the change in Covid Alert levels at that time, the hearing scheduled for the following week would no longer be able to go ahead and had been postponed until further notice.

When the hearing is re-scheduled, it will be necessary for there to be ten working days’ notice given of the new hearing date in accordance with the provisions of the Resource Management Act

1991 ("the Act"). We have been advised that there will be a necessity to wait until the North Island is in Level 2 (or at least Wellington and the Waikato) as some of the applicant's and Council's expert witnesses need to be able to travel to Christchurch. In these circumstances it seems that the resumption of the hearing is still some way off although the precise timing of the rescheduled hearing is unable to be identified at this time.

We have given careful consideration to the request on behalf of the Network. We appreciate the difficulties which have been associated with the Alert Level 4 lockdown and given the unusual circumstances which pertain at the present time, we are of the view that any directions that we make as to steps to be taken prior to the hearing should reflect our understanding of these difficulties.

Further, any direction which we make regarding the late filing of evidence needs to reflect our concern to ensure that all parties are given a proper opportunity to present their evidence, but at the same time we also need to consider whether the late filing of evidence would cause any prejudice to the applicant.

In reaching a decision in this matter we have been required to achieve a balance which is fair to both parties. Given that the re-scheduled hearing is clearly some time off, we are of the view that we should grant a further extension of time for the filing of the evidence, given the difficulties outlined by the Network in the memorandum filed on its behalf. We note that counsel for the applicant has, sensibly in our view, taken the position that a short extension to allow completion might be entertained, observing that the request by the Network goes significantly beyond that. In the circumstances outlined in the memoranda, we have formed the view that we should grant a further extension of time until 9am on Friday 10 September 2021. We are of the view that we should not grant the extension sought by the Network which is linked to any re-scheduled hearing. We believe that an extension of ten working days represents a proper response to the difficulties which have occurred to this date associated with the lockdown. Further, we do not believe

that this extension will prejudice the applicant. However, as with our previous minute, should the applicant require further time to consider the evidence filed (for whatever reason) we will consider that matter should it arise and anticipate giving further directions with a view to ensuring that the applicant has a proper opportunity to consider the evidence in question.

The above direction is given pursuant to s41B(3) of the Act which provides for directions to be given in relation to the provision of briefs of evidence. To the extent that either s37 or s37A of the Act may be relevant, we have taken into account the interests of each party and the duty to avoid unreasonable delay. Further we consider that special circumstances apply in this case, justifying the direction which has been given in this case.

DATED this 27th day of August 2021

A C Hughes-Johnson

A C HUGHES-JOHNSON QC
COMMISSIONER



K LAWN
COMMISSIONER