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# SCOPE OF SUBMISSIONS

WHAT HAPPENS WHEN A  
SUBMISSION GOES BEYOND  
THE PLAN CHANGE USING  
CASE LAW TO EXAMINE  
PAST EXPERIENCES.

The First Schedule of the Resource Management Act 1991 ("the Act") requires that any change to a district plan is publicly notified for submissions. Auckland City Council ("the Council") has found that an increasing amount of the relief sought by submissions is beyond the scope of the plan change to which that relief is meant to relate.

Therefore this relief cannot be granted through the plan change process. An example of this is a plan change which sought to schedule a number of buildings for protection in the Auckland City District Plan (Isthmus Section) ("the Scheduling Plan Change"). Some of the submissions to the Scheduling Plan Change, from both the community and planning professionals, sought to schedule buildings additional to those proposed by the Council.

The receipt of such submissions has prompted the Council to investigate the issue of the "scope of submissions" and the options for processing and addressing such submissions. Set out below is the relevant law on the scope of submissions as well as the Council's approach that was taken for the submissions that were beyond the scope of the Scheduling Plan Change. In short, the key legal test is whether or not a submission is on the plan change." If it is not, the Council's approach to that submission is to advise the submitter that the submission is beyond the scope of the plan change and that it will not be considered by the Council or notified in the summary of submissions.

## LEGISLATION AND CASE LAW

The starting point for the investigation referred to above is the relevant sections of the Act, which are set out below:

- Clause 6 of the First Schedule of the Act provides that "any person ...may, in the prescribed form, make a submission to the relevant local authority on a proposed...plan [change] that is publicly notified..."

- Clause 7(1) (a) of the First Schedule provides that "a local authority shall publicly notify...the availability of a summary of all decisions requested by persons making submissions on a proposed...plan [change]..."

- Clause SB provides that "a local authority shall hold a hearing into submissions on its

proposed...plan [change]..."

The scope of submissions was considered in *Halswater Holdings Ltd v Selwyn District Council (C36/99)* ("Halswater"). In *Halswater* it was found that whether a submission goes beyond the scope of a proposed plan change "is a question of degree to be dealt with in a pragmatic fashion." *Halswater* also indicates that a useful starting point for determining whether a submission is beyond the scope of a plan change is to ask whether the submission (or, more specifically, the relief sought) deals with the type of change that is being proposed. For example:

- If the plan change is only in relation to the rules governing a specific zone, a submission dealing with the extent of the zoning is unlikely to be on the plan change (for example, *Striker Holdings (No 3) Ltd v Paparua County Council* (1989) 13 SZTPA 420);

- If, on the other hand, the plan change is proposing changes to the extent of a certain zone, it is unlikely that a submission suggesting changes to the rules governing that zone would be on the plan change (for example, *Taylor V Manukau City Council* (1979) 8 NZTPA 71).

The key legal test that comes from the provisions of the Act and from *Halswater* is whether or not the submission is "on the Plan Change." and applying this test is a matter of degree that must be done in a pragmatic fashion. In addition, a key concern in the planning process is whether parties who may be adversely affected by the relief sought in a submission have had the opportunity to voice their concerns by lodging a further submission. If the relief sought in a submission is beyond the scope of the plan change to which it is meant to relate it is unlikely that affected parties would be notified of the submission or would think to review the summary of submissions, and as such it is doubtful that they would lodge a further submission. Consequently, to allow submissions beyond the scope of the plan change would unduly extend its scope and cover matters which the public are unlikely to have had a chance to comment on.

Finally, where a party wishes to go beyond the scope of a proposed plan change, the Act anticipates that this should be done by seeking a variation under Clause I 6A, or requesting a private plan change under Clause 21 of the First Schedule of the Act. Both of these processes

would enable potentially affected parties to become involved.

## PROCESSING SUBMISSIONS THAT ARE BEYOND THE SCOPE OF A PLAN CHANGE

Having reviewed the legal issues: the Council had to decide how submissions beyond the scope of the Scheduling Plan Change would be addressed. The practice adopted was to send each submitter a letter advising that their submission sought items of relief that were beyond the scope of the Scheduling Plan Change and, as such, it would be inappropriate for the Council to notify or consider that part of their submission.

The letters also advised submitters that if they disagreed with Council's treatment of their submissions they could seek a declaration from the Environment Court as to whether the relief was in fact beyond the scope of the Scheduling Plan Change. The Council also decided that if a submitter indicated that a declaration would be sought, it would be wise to wait to notify the summary of submissions until the declaration was given, thereby avoiding any possibility of having to renotify the summary. Alternatively, the Council could have themselves sought a declaration from the Environment Court as to whether to notify and/or consider the submissions. However, in the circumstances, it seemed unfair that the Council should have to bear the costs involved in such a proceeding.

It was also considered appropriate to inform the submitters about the other options that were available to them. These options included applying for a private plan change or attending the public forum of the relevant Council committee to seek that the matter be investigated. In some instances, it may be that the submitters' concerns can be forwarded to the appropriate part of Council for investigation and/or action, for example, where their relief requests alteration to roading layouts to solve safety issues or an increase in parking time limits. It must be remembered that participating in the planning process can be quite daunting and unknown to lay submitters, and the submission process is sometimes used to express concerns on other matters relating to a submitter's neighbourhood or particular concerns.

Following the notification of the summary of submissions, it is usual for some submitters to request a full copy of some or all of the submissions. It was decided that if a copy was

requested of a submission which sought relief that was beyond the scope of the Scheduling Plan Change, that the invalid relief of the submission would be tagged so that it could be identified by further submitters. This was by placing brackets around the relevant text and explaining in a note written on the submission that the Council considered those parts of the text to be invalid. This practice meant that Council would then have been entitled to treat any further submission that was lodged in respect of the invalid text as also being beyond the scope of the plan change and hence invalid.

Clause 10 (1) of the First Schedule requires that the Council "give its decisions, which shall include the reasons for accepting or rejecting any submissions (grouped by subject matter or individually)." While it is acknowledged that this clause does not have the proviso found in other clauses, namely that the submission must be on the plan change, legal advice was that no mention need be made of submissions or parts of submissions which were found to be beyond the scope of the Scheduling Plan Change. The Council does not have the jurisdiction to consider whether to accept or reject submissions that are beyond the scope of a plan change, and, therefore, invalid submissions do not meet the point of the process to which Clause 10 applies. Submissions that are beyond the scope of a plan change ultimately do not enter the plan change process.

This approach can also be seen as being one of commonsense given that it would create an anomaly if mention were to be made of an irrelevant submission in a hearing report when it has been excluded from the summary of submissions as irrelevant and not to be considered by the Council.

## CONCLUSION

The issue of submissions being beyond the scope of plan changes are now a matter that the Council is taking into account for all submissions received to plan changes.

The outcome of the above investigation has concluded that there are clear circumstances where the relief sought in a submission is beyond the scope of the change to which it meant to relate. Procedures need to be reviewed and altered accordingly and, in such situations, the matters raised in the submission will not be considered by the Council and will not be included in the summary of submissions. It is important to remember that each situation must be assessed on a case by case basis and that it is quite likely that

there may be a degree of greyness in some submissions.

Form 3 in the Act sets out the information requirements on making submissions to plan changes. As part of the above review of procedures, the Council is also amending its submission form to give more guidance to submitters on how to fill in the form and what sort of information should be provided. This includes what should be considered when advising Council of the relief that a submitter is seeking. **13**