

IN THE MATTER of the Resource  
Management Act 1991

AND

IN THE MATTER of the Proposed  
Queenstown Lakes District  
Plan

AND

IN THE MATTER of Late Submissions and  
Further Submissions

### **DECISION OF COMMISSIONER DENIS NUGENT**

#### **Introduction**

1. I have been appointed by the Queenstown Lakes District Council as Chair of the Hearings Panel which is charged with the hearing of, and making recommendations on, the submissions and further submissions on the Proposed District Plan (PDP). I have also been delegated the Council's powers under s.34A of the Act in relation to procedural matters in relation to those hearings, including the Council's powers under s.37 to waive or extend time limits in respect of the lodgement of submissions and further submissions and to deal with omissions and inaccuracies in submissions and further submissions.
2. The PDP was publicly notified on 26 August 2015 and the period for lodging submissions closed on 23 October 2015. The summary of submissions was notified on 3 December 2015 and the period for lodging further submissions closed on 18 December 2015.
3. Thirty-seven submissions were received after the closing date of 23 October 2015. In addition, 13 amended submissions were lodged after that date. In other words, the original submissions were lodged in time, but the submitter subsequently lodged material to replace the original submission in whole or in part, and that replacement material was received after 23 October 2015.
4. Eight further submissions were received after 18 December 2015. In addition, three purported submissions or further submissions were lodged which did not meet the statutory requirements for further submissions. I deal with two of those in this decision. The third has been subject to a separate decision.

5. I attach as Appendix A the list of submissions and further submissions divided into the groups described above, with the date of lodgement.

### **Powers in Relation to Waiving and Extending Time Limits**

6. Section 37 provides that the Council may waive time limits, subject to the requirements of s.37A. Section 37A requires that I take into account:
- a) The interests of any person who, in my opinion, may be directly affected by the extension or waiver;
  - b) The interests of the community in achieving adequate assessment of the effects of the proposed district plan;
  - c) The Council's duty under s.21 to avoid unreasonable delay.

### **Powers in Relation to Inaccurate or Omitted Information**

7. Section 37(2) provides as follows:

*If a person is required to provide information under this Act, regulations, or a plan and the information is inaccurate or omitted, or a procedural requirement is omitted, the consent authority or local authority may –*

- a) *wave compliance with the requirement; or*
- b) *direct that the omission or inaccuracy be rectified on such terms as the consent authority or local authority thinks fit.*

### **Principles to Guide Use of the Powers under s.37**

8. There is no requirement for a formal application for a waiver to be made under s.37 or 37A.<sup>1</sup> As there are no rights of appeal in respect of decisions under s.37 there is little case law to guide the decision making process. The best analogy is the power of the Environment Court to grant waivers under s.281.
9. The most apposite guidance is provided in the Court's observation in *Omaha Park Ltd v Rodney DC*<sup>2</sup> that the Act "*encourages participation (in an orderly way, certainly) in the decision-making process, with the general philosophy that the possible inconvenience, delays and costs caused are hopefully outweighed by better informed decision-making and better environmental outcomes*".<sup>3</sup>

<sup>1</sup> *Butel Park Homeowners Assn v Queenstown Lakes DC* (2007) 13 ELRNZ 104

<sup>2</sup> A46/08

<sup>3</sup> Quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZEnvC 60

10. Based on that guidance, I will consider the interests of submitters and further submitters along with the interests of the community in achieving an adequate assessment of the PDP, giving weight to the encouragement given to public participation in the process, while taking account of the timing of hearings and the considerable amount of co-ordination needed to undertake those hearings.

### **Late Submissions**

11. The 37 submissions lodged late can be divided into two groups: those which were lodged within sufficient time for the Council staff to include a summary of them in the summary of submissions notified on 3 December 2015 (31 late submissions); and those which were received too late for such inclusion (six).
12. As the Council included in the summary of submissions those thirty-one submissions received in sufficient time for inclusion in that document, the interests of the submitters and the public have been adequately served, and no delay to the process will result.
13. Consequently, for those reasons, I will waive the time limits for lodgement of submissions for those thirty-one submissions.
14. The six remaining submissions require individual consideration.

### Submission by Kingston Community Assn received 30 November 2015

15. On 30 November 2015 Ms Diane Holloway, secretary of the Association, sent by email a copy of a submission made by the Association in April 2015 on the Council's 10-year Plan and asked that it be treated as a submission.
16. The submission relates to sewage disposal in Kingston and does not relate to any provision in the Proposed District Plan.
17. No purpose would be served in waiving the time limit for lodging this submission.

### Submission 1359 by Grant Keeley received 15 December 2015

18. Mr Keeley made a submission on the draft residential provisions in March 2015. In an email to the council dated 14 December 2015 (8:34 pm) Mr Keeley stated that he had assumed this submission on the draft provisions would be treated as a formal submission on the PDP in due course.
19. The submission relates to a specific group of properties in Kent Street, Queenstown, and opposes the high density residential zoning of those properties. Mr Keeley claims to speak for the majority of the landowners of those properties.

20. The submission raises legitimate resource management issues, although these were not accepted by the Council during the informal consultation earlier in the year. It is understandable that people not totally familiar with the Resource Management Act processes would get confused as to the status of their submissions, especially when provisions are repeatedly consulted on prior to the statutory submission period.
21. I also note that no similar submission appears to have been lodged by any other person.
22. In terms of the provisions of s.37A, it would be in the interests of both the submitter, the landowners of the affected properties, and the general public to have this submission heard. However, so as not to prejudice any person, it would be necessary for a summary of the submission to be publicly notified to enable further submissions by those persons entitled to under the Act. As the submission relates to a mapping issue which is unlikely to be heard for some months, the notification of a summary of this submission will not cause any unreasonable delay provided it is dealt with expeditiously.

Submission 1360 by Christine Byrch received 18 December 2015

23. Although this submission is entitled "Further Submission" the text makes it clear that Ms Byrch is attempting to add additional material to her original submission 243. The content she seeks to include is not directly germane to the resource management issues dealt with in the PDP, apart from her comment that too many activities are classified as discretionary.
24. If it were a further submission it fails to limit itself to supporting or opposing an original submission, nor does it identify the relevant original submission.
25. I do not consider the interests of the community would be served by waiving the time limit on this submission. It provides no assistance in assessing the PDP.

Submission 1361 by Jim Schmidt received 21 December 2015

26. By an email sent at 8:25pm on 18 December 2015 Mr Schmidt sought to have the classification of the hawthorne hedge on his property at 11 Berkshire Street, Arrowtown, removed. No other submission sought to delete the hedge notation, although a neighbouring property sought to have an identified tree notation removed.
27. While Mr Schmidt, in his submission noted acceptance that it was late, it does raise matters that the interests of Mr Schmidt and those of the community would be best

served by having the submission heard. As the submission relates to matters that will not be heard until June at the earliest, if a summary of this submission was notified for further submissions promptly, then no delays to the hearing process would be expected.

Submission 1362 by Wakatipu Wilding Conifer Control Group received 18 December 2015

28. By an email sent at 1:20 pm on 18 December 2015 Mr Peter Willsman, Chair of the Group, sought to add additional material to the Group's original submission – no. 740.
29. The material included expands upon the submission without adding any additional substance. It is material that would be better presented to the Hearing Panel when the Group's submission is heard.
30. Waiving the time limit to include this material is unnecessary.

Submission 1363 by Trish Glasson received 18 December 2015

31. By a letter dated 16 December 2015 but received by the Council on 18 December 2015 Ms Glasson raised concerns with regard to:
  - a) Traffic congestion;
  - b) Water quality;
  - c) Public transport; and
  - d) Visual values.
32. The matters covered in (a) and (c) are not directly relevant to the PDP. While the matters covered in (b) and (d) are relevant to the PDP, the submission made relates to high level strategic policies which will be heard by the Hearing Panel first, commencing in early March 2016. While the views of Ms Glasson may have assisted the Hearing Panel, neither her interests nor the interests of the wider community are dependent upon the time for receipt of this submission being waived. In addition, if the time were waived it would be necessary to notify a summary of the submission for further submissions. Doing that would delay the commencement of the hearing process.
33. Consequently, the time limit for receipt of this submission will not be waived.

### **Submissions Amended After Close of Submission Period**

34. Thirteen submissions fall into this category. The submission number and date the amendments were received are detailed in Appendix A.
35. All the amendments were received prior to the end of October 2015. Thus, at the time the summary of submissions was notified, the copies of the full submissions included the amended material and the summary was a summary of the amended submission.
36. The interests of the community have already been served by the inclusion of the amendments in the published version of the submissions and inclusion in the summary of submissions. The interests of the submitter in each case would be best served by waiving the time limit.

### **Late Further Submissions**

#### Further Submission 1350 by Crane and Mactaggart lodged on 21 December 2015

37. This further submission opposes parts of, and supports parts of, submission 604 by Jackie Gillies. The further submitters own land potentially affected by Ms Gillies submission.
38. The only persons I consider directly affected here are the further submitters. No interests of Ms Gillies would be affected by waiving of the time for lodgement.
39. In terms of achieving adequate assessment of the PDP, I consider it would be worthwhile having the views of the land owners in making that assessment.
40. The timing of the hearings is such that no delay would be caused by waiving the time for lodging this further submission.
41. I will waive the time for lodging further submission 1350 by Crane and Mactaggart.

#### Further Submission 1351 by Woodlot Properties Limited lodged on 21 December 2015

42. This further submission supports submission 277.2 by Alexander Reid. Woodlot Properties Ltd has stated that it is representing a relevant aspect of the public interest, but has specified no grounds for saying that it comes within this category.
43. Before I determine whether the time for lodgement should be waived I will require Woodlot Properties Ltd to specify the grounds on which it claims to represent a

relevant aspect of the public interest, or alternatively, show that it has an interest in the submission greater than the interest the general public has. If either of these cannot be adequately demonstrated, I will have no alternative but to determine the document does not comply with the requirements to be considered a further submission. Woodlot Properties Ltd will have 5 working days to provide this information.

Further Submission 1352 by Kawarau Village Holdings Limited lodged on 21 December 2015

44. This further submission relates to four (4) submissions – 529 by Lakes Edge Developments Ltd; 533 by Winton Partners Funds Management Ltd; 429 by F S Mee Developments; and 72 by Kelvin Peninsula Community Association. The provisions referred to in the further submission are matters which will be dealt with some months into the hearing process.
45. The covering email lodging this further submission notes difficulties in lodging the further submission electronically on 18 December 2015.
46. It is apparent from the further submission that further submitter has interests which would be adversely affected if the waiver of time for lodgement were not granted. It is not apparent that any interests of the submitters are affected by granting the waiver. The Act envisages that those lodging submissions will receive further submissions supporting or opposing them.
47. The timing of the hearings is such that no delay would be caused by waiving the time for lodging this further submission.
48. I will waive the time limit for lodging further submission 1352 by Kawarau Village Holdings Ltd.

Further Submission 1353 by Philip Vautier lodged on 21 December 2015

49. Mr Vautier's further submission opposes submission 626 lodged by Barnhill Corporate Trustee Ltd, & DE, ME Bunn & LA Green. Mr Vautier has stated that he is representing a relevant aspect of the public interest, but has specified no grounds for saying that he comes within this category.
50. Before I determine whether the time for lodgement should be waived I will require Mr Vautier to specify the grounds on which he claims to represent a relevant aspect of the public interest, or alternatively, show that he has an interest in the submission greater than the interest the general public has. If either of these cannot be adequately demonstrated, I will have no alternative but to determine the

document does not comply with the requirements to be considered a further submission. Mr Vautier will have 5 working days to provide this information.

Further Submission 1354 by Henry van Asch lodged on 22 December 2015

51. Mr van Asch's further submission relates to submission 761 by ORFEL Limited. It does not indicate whether it supports or opposes this submission.
52. Mr van Asch has indicated that he has an interest in the submission greater than the interest the general public has, but has failed to explain the grounds for saying he comes within this category.
53. Before I determine whether the time for lodgement should be waived I will require Mr van Asch to specify the grounds on which he claims to have an interest in the submission greater than the interest the general public has and to identify whether he supports or opposes submission 761. If it cannot be adequately demonstrated that Mr van Asch has an interest in the submission greater than the public, I will have no alternative but to determine the document does not comply with the requirements to be considered a further submission. Mr van Asch will have 5 working days to provide this information.

Further Submission 1355 by Evan Bloomfield & Family lodged on 22 December 2015

54. Mr Bloomfield's further submission relates to submission 761 by ORFEL Limited. It does not indicate whether it supports or opposes this submission.
55. Mr Bloomfield has indicated that he (and his family) has an interest in the submission greater than the interest the general public has, but has failed to explain the grounds for saying he comes within this category.
56. Before I determine whether the time for lodgement should be waived I will require Mr Bloomfield to specify the grounds on which he claims to have an interest in the submission greater than the interest the general public has and to identify whether he supports or opposes submission 761. If it cannot be adequately demonstrated that Mr Bloomfield has an interest in the submission greater than the public, I will have no alternative but to determine the document does not comply with the requirements to be considered a further submission. Mr Bloomfield will have 5 working days to provide this information.

Further Submission 1356 by Cabo Limited lodged on 23 December 2015

57. Cabo Limited opposes submission 519 lodged by New Zealand Tungsten Mining Ltd. Cabo is the registered proprietor of land that would be adversely affected by the relief sought in the submission.
58. It is apparent from the further submission that the further submitter has interests which would be adversely affected if the waiver of time for lodgement were not granted. It is not apparent that any interests of the submitters are affected by granting the waiver. The Act envisages that those lodging submissions will receive further submissions supporting or opposing them.
59. The timing of the hearings is such that no delay would be caused by waiving the time for lodging this further submission.
60. I will waive the time limit for lodging further submission 1356 by Cabo Ltd.

Further Submission 1358 by R Buckham lodged on 3 January 2016

61. Mr Buckham's purported further submission fails to identify the submissions it supports or opposes. I will give Mr Buckham five (5) working days to identify such submissions before I consider whether the time for lodgement should be waived. For each submission supported or opposed, Mr Buckham is to show that he comes within one of the categories set out in Clause 8 of the First Schedule to the Act. If such information is not provided the document will fail to comply with the requirements of the Act for a further submission and will not be considered.

Further Submission lodged by LJV (NZ) Limited on 28 January 2016

62. LJV (NZ) Ltd ("LJV") lodged a further submission in opposition to submission 574 lodged by Skyline Enterprises Ltd ("Skyline") on 28 January 2016, some 14 working days late. This was accompanied by an application for a waiver of the time for lodging the further submission. In that application it was explained that the failure to lodge on time was due to an oversight when reviewing the summary of submissions.
63. I am required to consider the interests of persons I consider may be directly affected by granting the waiver. Obviously the interests of LJV would be enhanced. The interests of Skyline are affected to the extent that LJV would be given the opportunity to present a case to the Hearing Panel in opposition to its submission. However, the Act provides the opportunity for persons to oppose submissions. Thus Skyline would not be put in a worse position than is anticipated by the Act.

64. Achieving adequate assessment of district plan provisions is enhanced by hearing from multiple parties. Thus, waiving the time for lodgement would allow improved assessment of the plan provisions.
65. Submission 574 seeks to apply a special form of zoning over land Skyline uses and adjacent land. This involves changes to the Rural Zone provisions and map changes. These matters are not likely to be heard for several months. Waiving the time within which this further submission is lodged is not likely to give rise to any delay at all, and certainly no unreasonable delay.
66. I will waive the time for lodgement of LJV's further submission.

### **Further Submissions Containing Omissions or Inaccuracies**

#### Further Submission 1058 by Marc Scaife

67. This purports to be a further submission on Mr Scaife's original submission (no. 811). It neither supports nor opposes the original submission but appears to seek to broaden the scope of the original submission and oppose the application of the Visitor Accommodation Subzone to the Matakauri Lodge property.
68. A further submission may not extend the scope of the submission it relates to. In addition, I understand the Visitor Accommodation Subzone to not be within Part 1 of the PDP, notwithstanding it being shown on the planning maps. It is arguable that there is even jurisdiction for the Council to consider the content of this purported further submission.
69. The omissions and inaccuracies in this purported further submission are such that nothing would be served by waiving compliance with them. The purported further submission is not to be considered a further submission.

#### Further Submission 1083 by Clark Fortune Macdonald Associates

70. Although included in the further submissions this is no more than an email chain that appears to relate to land designated by Queenstown Airport Corporation in Glenda Drive. There is no indication of a submission which it supports or opposes, nor who the further submitter is. From a review of the content of the emails there seems to be a suggestion that it this needs to be treated as a further submission or submission to effect the uplifting of the designation.
71. It is my understanding of the designation provisions of the Act that a requiring authority can remove a designation by using the process set out in s.182 of the Act without using the First Schedule processes, or alter the designation by removing it

in part under s.181. Thus, if this purported further submission is to effect the removal of the designation from some particular land, this purported further submission is unnecessary.

72. The omissions and inaccuracies in this purported further submission are such that nothing would be served by waiving compliance with them. The purported further submission is not to be considered a further submission.

### **Decisions**

73. Pursuant to sections 37 and 37A of the Resource Management Act 1991 the time to lodge submissions is waived for submissions 826 to 856 inclusive as listed in Table 1 of Appendix A. These submissions were listed in the summary of submissions and no further notification is required.
74. Pursuant to sections 37 and 37A of the Resource Management Act 1991 the time to lodge submissions is waived for submissions 1359 and 1361 as listed in Table 1 of Appendix A. A summary of these submissions will need to be notified in accordance with Clause 7 of the First Schedule to the Act.
75. Pursuant to sections 37 and 37A of the Resource Management Act 1991 the time to lodge submissions is waived in respect to the amendments lodged to those submissions listed in Table 2 of Appendix 1 (numbers 407, 430, 437, 607, 615, 632, 636, 638, 655, 702, 716, 774 and 806). These amendments were summarised in the summary of submissions and no further notification is required.
76. Pursuant to sections 37 and 37A of the Resource Management Act 1991 the time to lodge further submissions is waived for further submissions numbered 1350, 1352 and 1356 and that lodged by LJV (NZ) Ltd on 28 January 2016, as listed in Table 3 in Appendix A.
77. Pursuant to section 37(2) of the Resource Management Act 1991 Woodlot Properties Ltd (Further submission number 1351) has five (5) working days to lodge documentation specifying the grounds on which it claims to represent a relevant aspect of the public interest, or to show that it has an interest in the submission greater than the general public has.
78. Pursuant to section 37(2) of the Resource Management Act 1991 Philip Vautier (Further submission number 1353) has five (5) working days to lodge documentation specifying the grounds on which he claims to represent a relevant aspect of the public interest, or to show that he has an interest in the submission greater than the general public has.

79. Pursuant to section 37(2) of the Resource Management Act 1991 Henry van Asch (Further submission number 1354) has five (5) working days to lodge documentation specifying the grounds on which he claims to have an interest in the submission greater than the general public has and to identify whether he supports or opposes submission 761.
80. Pursuant to section 37(2) of the Resource Management Act 1991 Evan Bloomfield (Further submission number 1355) has five (5) working days to lodge documentation specifying the grounds on which he claims to have an interest in the submission greater than the general public has and to identify whether he supports or opposes submission 761.
81. Pursuant to section 37(2) of the Resource Management Act 1991 Mr R Buckham (Further submission number 1358) has five (5) working days to identify the submissions the further submission supports or opposes. At the same time Mr Buckham is to identify the grounds on which he comes within one of the categories of further submitter set out in Clause 8 of the First Schedule to the Act.

Dated 2 February 2016

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

Denis Nugent  
Hearing Panel Chair

## Appendix A: Late Submissions and Further Submissions

Table 1: Late Submissions

<b>Number</b>	<b>Submitter</b>	<b>Date Received</b>	<b>Waiver</b>
826	Tim Taylor	30/10/2015	Granted
827	Gibbston Valley Station Ltd	29/10/2015	Granted
828	B Giddens	27/10/2015	Granted
829	Anderson Branch Creek Ltd	28/10/2015	Granted
830	D E Robertson	28/10/2015	Granted
831	A Caldwell	28/10/2015	Granted
832	Finz Queenstown Ltd	27/10/2015	Granted
833	R Barnett & T A Buckley	27/10/2015	Granted
834	H McPhail	29/10/2015	Granted
835	Wai Queenstown Ltd	27/10/15	Granted
836	Arcadian Triangle Ltd	27/10/2015	Granted
837	R Buckham	27/10/2015	Granted
838	D Boyd	27/10/2015	Granted
839	J Ace	26/10/2015	Granted
840	C & S Hansen	27/10/2015	Granted
841	M & J Henry	26/10/2015	Granted
842	S Crawford	26/10/2015	Granted
843	Skytrek Tandems Ltd	26/10/2015	Granted
844	Queenstown Congregation of Jehovahs Witnesses	27/10/2015	Granted
845	S Hayes	28/10/2015	Granted
846	P & J B Foster	26/10/2015	Granted
847	FII Holdings Ltd	27/10/2015	Granted
848	M & C Wilson	2/11/2015	Granted
849	Otago Rural Fire Service	2/11/2015	Granted
850	R & R Jones	13/11/2015	Granted

851	J & S Briscoe	28/10/2015	Granted
852	Arrow Irrigation Company Ltd	17/11/2015	Granted
853	N Richards	16/11/2015	Granted
854	Slopehill Properties Ltd	24/11/2015	Granted
855	RCL Queenstown PTY Ltd, RCL Henley Down Ltd, RCL Jacks Point Ltd	24/11/2015	Granted
856	Jacks Point Residential No.2 Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No. 2 Limited, Jacks Point Management Limited, Henley Down Land Holdings Ltd, Henley Downs Farms Holdings Ltd, Coneburn Preserve Holdings Ltd, Willow Pond Farm Ltd	24/11/2015	Granted
No number	Kingston Community Association	30/11/2015	Not granted
1359	G Keeley	15/12/2015	Granted
1360	C Byrch	18/12/2015	Not granted
1361	J Schmidt	21/12/2015	Granted
1362	Wakatipu Wilding Conifer Control Group	18/12/2015	Not granted
1363	T Glasson	18/12/2015	Not granted

Table 2: Submissions Amended After Close of Submission Period

<b>Number</b>	<b>Submitter</b>	<b>Date Amendment Received</b>	<b>Waiver</b>
407	Mount Cardrona Station Ltd	27/10/2015	Granted
430	Ayrburn Farm Estate Ltd	27/10/2015	Granted
437	Trojan Helmet Ltd	5/11/2015	Granted
607	Te Anau Developments Ltd	28/10/2015	Granted

615	Cardrona Alpine Resort Ltd	30/10/2015	Granted
632	RCL Queenstown PTY Ltd, RCL Henley Down Ltd, RCL Jacks Point Ltd	28/10/2015	Granted
636	Crown Range Holdings Ltd	28/10/2015	Granted
638	Northlake Investments Ltd	27/10/2015	Granted
655	Bridesdale Farm Developments Ltd	24/10/2015	Granted
702	Lake Wakatipu Stations Ltd	28/10/2015	Granted
716	Ngai Tahu Tourism Ltd	30/10/2015	Granted
774	Queenstown Chamber of Commerce	27/10/2015	Granted
806	Queenstown Park Ltd	30/10/2015	Granted

Table 3: Late Further Submissions

<b>Number</b>	<b>Further Submitter</b>	<b>Date Received</b>	<b>Decision</b>
1350	J Crane & K Mactaggart	21/12/2015	Waiver granted
1351	Woodlot Properties Ltd	21/12/2015	Information required
1352	Kawarau Village Holdings Ltd	21/12/2015	Waiver granted
1353	P Vautier	21/12/2015	Information required
1354	H van Asch	22/12/2015	Information required
1355	E Bloomfield & Family	22/12/2015	Information required
1356	Cabo Ltd	23/12/2015	Waiver granted
1358	R Buckham	3/1/2016	Information required
No number	LJV (NZ) Ltd	28/1/2016	Waiver granted

Table 4: Purported Submission or Further Submissions

<b>Number</b>	<b>Submitter</b>	<b>Date Received</b>	<b>Decision</b>
1058	M Scaife	18/12/2015	Waiver not granted
1083	Clark Fortune Macdonald	14/12/2015	Waiver not granted