

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

FOURTH DECISION ON LATE SUBMISSIONS

Introduction

1. On 2 February 2016 I issued a decision dealing with a number of late submissions and further submissions, and also further submissions which did not appear to comply with the requirements of the Act.
2. Within the five working days I allowed, two further submitters provided the Council with an explanation as to how they came within the requirements of Clause 8(1) of the First Schedule to the Act. In addition, one further submitter, whose further submission I had disallowed has provided information that was not previously available and asked that my decision be reconsidered. Finally, Queenstown Airport Corporation have lodged amendments to several of the further submissions they lodged and sought a waiver of time to have those amendments accepted.
3. This decision deals with the above four matters. In addition, it finally determines the status of the late further submissions where additional information sought has not been provided.

Powers in Relation to Waiving and Extending Time Limits

4. 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.

Principles to Guide Use of the Powers under s.37

5. There is no requirement for a formal application for a waiver to be made under s.37 or 37A.¹ 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.
6. The most apposite guidance is provided in the Court's observation in *Omaha Park Ltd v Rodney DC*² 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*".³
7. 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.

Further Submissions 1354 by H van Asch and 1355 by E Bloomfield & Family

8. Both of these further submissions opposed submission 761 lodged by ORFEL Ltd.
9. By way of an email dated 5 February 2016 Mr van Asch's consultant advised that his client owns land immediately to the north of the ORFEL land and both his property and the ORFEL property gain access from Fitzpatrick Road. On that basis, he claimed Mr van Asch had an interest greater than the public generally.
10. By way of an email dated 4 February 2016 Mr Bloomfield advised that his family resided in Fitzpatrick Road and while their land did not directly adjoin the ORFEL land, to rezone that land would impact on their lives. On that basis he claimed an interest greater than the public generally.
11. I accept that residents of nearby land on the same road as requested rezoning would have an interest in the issue greater than the public generally. I note that Fitzpatrick Road is a no-exit road so a change one part could impact on all residents on that road.

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

² A46/08

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

12. Both of these submissions were lodged on the weekday following the close of the further submission period. Given that the Act provides for further submissions in opposition to a submission I do not consider the submitter is prejudiced by such a minor delay in lodgement. The public interest will be better served by having the input of the local residents on the submission, and no delay to the hearing process will occur. Consequently, I will waive the time for lodgement of the further submissions for these two further submissions.

Further Submission 1083

13. This was lodged on 14 December 2015, which was within time, but the issue related to the material lodged. As reported in my decision of 2 February, that amounted to an email chain and it appeared to relate to a suggestion that Queenstown Airport Corporation could uplift a designation by way of further submission.
14. By way of email on 9 February last, Ms Dixon of Clark Fortune McDonald & Associates clarified the situation stating that the further submission was lodged online and the automated email response confirmed receipt of the further submission. She contended this contained an explanation of the ownership of the land in question and full contact details. She asked that I reconsider my 2 February decision.
15. Ms Dixon also lodged a completed Form 6 dated 9 February 2016 identifying that the further submission was lodged on behalf of Aviemore Corporation and that it supported submission 807 lodged by Remarkables Park Ltd, specifically parts 3.3 and 3.4.
16. The record of the online lodgement held by the Council shows that Ms Dixon lodged the further submission in the name of Clark Fortune McDonald, but then went on to state that the firm acts "*for Aviemore Corporation who own the land that is subject to this part of the submission.*" I understand that Ms Dixon had not selected the submission point on which the further submission was lodged, thus it is not possible from the records of the online lodgement to discern that it was in fact submission 807 that was being supported.
17. If I was merely reconsidering the information lodged online on 14 December last, I could only come to the conclusion that the document lodged did not satisfy the requirements for a further submission and my decision would remain unaltered. However, the inclusion of the Form 6, linked with the online information, provides appropriate documentation for it to satisfy the requirements for a further submission. It is, however, almost two months out of time.

18. On reviewing all the material, it appears that no person would be prejudiced by the waiver of time to allow lodgement of this further submission. It is also not apparent that any delay to the hearing process would ensue, and the public interest would be served by enabling the owner of the affected land rights to be heard at the hearing. Consequently, I will waive the time for lodgement of this further submission.

Amended Further Submissions by Queenstown Airport Corporation

19. On 16 February 2016 Queenstown Airport Corporation ("QAC") lodged amendments to nine further submissions to clarify the relief sought, and to two further submissions substituting the correct legal description for the land to which the further submission related. QAC submitted there was no prejudice to any party as the matters at issue would not be heard until late 2016 or in 2017.
20. Having reviewed the amendments, I am satisfied that all but one of the matters covered by the relevant submissions is unlikely to be heard before late 2016. One, submission 704.5, relates to objectives and policies in the Rural Zone. That submission is likely to be heard in May 2016. However, I do not consider that to be so close that any person would be prejudiced by a waiver being granted to allow the amended relief to be lodged. After all, there is a further submission in place lodged in time.
21. Consequently, I will grant a waiver of time for the amendments to the further submissions as sought.

Further Submissions for Which no Clarifying Information was Received

22. In the 2 February decision I sought information from Woodlot Properties Ltd (number 1351), P Vautier (1353) and R Buckham (1358) as to how each of them satisfied the requirements of Clause 8(1) of the First Schedule to the Act. No such information has been received by the Council.
23. Given that these three further submissions do not meet the requirements of the Act I refuse to waive the time for their lodgement.

Decisions

24. Pursuant to sections 37 and 37A of the Act the time to lodge the following further submissions is waived:
- d) 1354 lodged by H van Asch on 22 December 2015;
 - e) 1355 lodged by E Bloomfield & Family on 22 December 2015;

f) 1083 lodged by Aviemore Corporation on 9 February 2016.

25. Pursuant to sections 37 and 37A the time to lodge amendments to further submissions is waived in respect of amendments lodged by Queenstown Airport Corporation on 16 February 2016 in relation to the following submissions:

| Submitter | Submission Number |
|----------------------------------|-------------------|
| Ross & Judith Young Family Trust | 704.5 |
| Ross & Judith Young Family Trust | 704.4 |
| Jeremy Bell Investments Limited | 782.1 |
| Barbara Williams | 141.3 |
| Barbara Williams | 141.6 |
| C and S Hansen | 840.1 |
| C and S Hansen | 840.3 |
| Mount Crystal Limited | 150.1 |
| Mount Crystal Limited | 150.2 |

Dated 17 February 2016



Denis Nugent
Hearing Panel Chair