

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes Proposed
District Plan

AND

IN THE MATTER of Hearing Stream 12 – Upper Clutha
Mapping

**MEMORANDUM OF COUNSEL FOR M BERESFORD (SUBMITTER 149)
OPPOSING LATE FURTHER SUBMISSION BY P A J SMITH**

Dated 22 February 2017

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MAY IT PLEASE THE CHAIR:

1. I represent M Beresford, who lodged an Original Submission to the Queenstown Lakes Proposed District Plan (Submission 149).
2. Mr Beresford is in receipt of a late Further Submission on the Queenstown Lakes Proposed District Plan.
3. The Further Submitter (Mr Phillip Alexander John Smith) seeks a waiver on the basis that the significance of the relief being sought by Mr Beresford was not apparent from the terms of the Original Submission, only coming to light following his attendance at a public meeting on the future of Sticky Forest in Wanaka on 14 February 2017.
4. Mr Beresford **opposes** the Council accepting the late Further Submission.
5. Pursuant to s37 of the Resource Management Act (**the Act**), the Council may extend a time period specified in the Act within which a further submission (inter alia) is to be lodged, although, by s37A(1), the Council is **not** able to extend a time limit unless (relevantly):
 - It has taken into account the interests of the original submitter; and
 - The time extension does not exceed twice the maximum time specified in the Act within which the further submission was to have been lodged in the first instance.

Floodgates would open

6. In respect of these statutory considerations, there is a significant floodgate potential if the late Further Submission is allowed.
7. Mr Smith claims that he was not aware that the land was to be rezoned until learning about that at the 14 February meeting. However, this is despite the clear and precise terms upon which the submission was lodged in the first instance.
8. There can be **no** confusion at all as to the relief that Mr Beresford is seeking in relation to the Sticky Forest land, when reading the terms of his original submission.

9. The meeting at the Lake Wanaka Centre on 14 February was (according to an article on Stuff) attended by an estimated 450 people. Any such attendees opposing the rezoning could also assert that the significance of the rezoning only became apparent having attended that meeting.
10. If Mr Smith's late Further Submission is allowed by the Council, one can easily anticipate that there will be a floodgate of further applications for late Further Submissions from the other 449 attendees (or thereabouts) at the 14 February meeting (or at least those of them who are opposed to the rezoning).
11. In this regard, it has not gone unnoticed that the Further Submission has been lodged by Mr Ian Greaves (on behalf of Mr Smith), who was also in attendance as a member of the Panel of Conveners. The (reasonable) inference is that following that meeting, some discussion has taken place between Mr Greaves and Mr Smith (and possibly other meeting attendees) about the district plan process.

No standing

12. In terms of Mr Smith's standing to further submit, as an adjacent landowner he claims to have an interest greater than the interest held by the general public. However, the grounds he raises in opposition to the rezoning give rise to public interest, and not neighbour/neighbour issues.
13. As such, they are not grounds that make out Mr Smith's interest in the proposal in a way, or to an extent, that transcends the general public interest. If Mr Smith is granted a waiver to file a further submission, there will be no tenable basis for declining any other application for the filing of a late further submission from persons who also wish to oppose the rezoning.

Prejudice to Mr Beresford

14. Mr Beresford has also instructed experts to commence preparation of evidence which is due to be exchanged on 4 April. Mr Beresford has previously sought an enlargement of time for lodging evidence, although that was declined.
15. Accordingly, Mr Beresford would be seriously prejudiced if he has to give a late brief to his experts, so as to enable a response to matters raised in the Further

Submission, given that the experts are already underway in the preparation of their evidence.

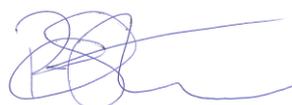
Statutory time periods exceeded

16. As a final ground of opposition, it is noted that the two week period for lodging a further submission closed on 16 December 2015. Under the Act, the 10 working day time period for lodging a further submission is not able to be extended for a period exceeding a further 10 working days from 16 December 2015.
17. This time period can only be exceeded if there are special circumstances by reason of the scale or complexity of the matter and the Council has taken into account matters specified in s37A(1) (relevantly). This includes the interests of Mr Beresford, who would be seriously prejudiced by such an extension.

Unreasonable delay

18. The Council's duty under s21 to avoid unreasonable delay is also a relevant matter, and in this regard, Mr Smith is seeking to lodge a Further Submission well over a year after the close of the further submission period, this being an unreasonable delay.
19. For the reasons contained herein, Mr Beresford submits that the Council should **decline** to accept the late Further Submission.

Dated this 22nd day February 2017.



P A Steven QC
Counsel for M Beresford (Submitter 149)