

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

MINUTE CONCERNING APPLICATION FOR VARIATION OF STREAM 12
HEARING DIRECTIONS BY GLENDHU BAY TRUSTEES LIMITED

Background

1. We have received a request from Counsel for Glendhu Bay Trustees Limited (GBT – submitter 583) seeking a variation of the timetabling arrangements the subject of our seventh procedural minute dated 25 January 2017. The issue arises as a result of the involvement of GBT’s landscape expert (Ms Pfluger) in the implementation of urgent work being progressed under the Hurunui/Kaikoura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016. As the title of the order suggests, this is part of the legislative response to the devastation associated with the Kaikoura earthquakes that occurred in November 2016. The specific work Ms Pfluger is engaged in relates to the recovery of State Highway 1. The Hearing Panel are of course aware that State Highway 1 has been rendered impassable by the earthquake, causing major disruption to the residents of the Kaikoura area and to the travelling public.
2. Counsel for GBT advises that Ms Pfluger’s involvement in the State Highway 1 recovery exercise will conclude at the end of this month, contemporaneously with the revocation of the Order in Council (on 31 March 2017).
3. Our hearing directions require submitters’ evidence to be circulated on or before 4 April. Counsel for GBT proposes that GBT’s evidence would be circulated on 13 April (that is to say an extension of some 9 days). She recognises that the suggested extension of time has the potential to compromise other submitters who wish to be heard in relation to GBT’s

submission and suggests that the date for rebuttal evidence on GBT's evidence be varied from 28 April to 9 May 2017 (that is to say a deferral of 11 days).

4. Having received Counsel's application on 6 March, we directed that it be circulated to the further submitters on GBT's application and to the Council, in order that they might have the opportunity to comment. We received two responses.
5. The first response from Mr Haworth on behalf of Upper Clutha Environmental Society Inc (further submitter 1034) noted that all parties have been aware of the evidence timetable for this particular hearing for a considerable period of time and suggested that there was no valid reason why the timetable should be extended in this case.
6. The second response, on behalf of the Council by its Counsel expressed sympathy for the submitter's position and concern that the Kaikoura Earthquake Recovery Work not be adversely affected. Nevertheless, Counsel stated the Council's opposition to the request, noting:
 - The existing challenges for Council staff, experts and legal counsel complying with the timetable we have fixed;
 - The disruption to the Council team by having a comprehensive rezoning proposal pushed out by 9 days;
 - The potential for other submitters to view any extension of time granted to GBT as a precedent they might seek to reply on;
 - Potential confusion for Council staff and for lay people by reason of a staggered hearing programme;
 - The potential for GBT to utilise the services of another senior landscape architect in Boffa Miskell, or from another consultancy, if necessary. Counsel pointed in particular to the fact that submitter evidence was not due for almost a month from the time of writing.
7. Given the reasons for opposition provided by Counsel for the Council, we felt it appropriate to give Counsel for GBT the opportunity to briefly reply. Her reply:
 - Noted that Ms Pfluger has been required to assist on the earthquake recovery work at short notice, which has in turn meant that GBT only recently became aware of the issue;

- Emphasised that Ms Pfluger is involved in an urgent national response to a natural disaster;
- Emphasised that Ms Pfluger's colleagues at Boffa Miskell are likewise heavily engaged in earthquake recovery work, meaning that they are not available to step in;
- Emphasising Ms Pfluger's previous work on related issues in relation to the Proposed District Plan hearings, meaning it would be inefficient to brief a new expert;
- Challenging the suggestion that this might legitimately be utilised as a precedent by other submitters;
- Arguing that the Council and other parties would not be prejudiced by a seven day deferral;
- Arguing that the failure to grant an extension would result in a disproportionate disadvantage to GBT.

8. We accept Mr Howarth's point, that all parties have known for a considerable time of the proposed arrangements for the Upper Clutha Mapping hearing. In an earlier Minute¹, we noted the nature and extent of the steps already taken to ensure this relatively large hearing is able to proceed smoothly, as planned. It follows from the extent of those preparations that we would not lightly grant a variation of the timetabling arrangements. Nevertheless, we recognise that the Kaikoura earthquakes are an extraordinary event. In that regard, we have no difficulty accepting Counsel for GBT's submission that restoration of the State Highway 1 link north of Kaikoura is a matter of national importance and we consider that to the extent that Ms Pfluger has a role in that exercise, we should endeavour to accommodate that, if we can do so without undue prejudice to other parties.

9. It follows that there is force in Counsel for GBT's contention that any extension granted in response to this situation would not provide a general precedent for other submitters.

¹ Minute concerning Application for Variation of Stream 12 Hearing Directions by M Beresford (Submitter 149) 10 February 2017

10. Considering other matters relevant to this application, we note that, as Counsel for GBT observed, this submission is proposed to occupy a full day of hearing (on 8 June) and that GBT has previously advised that it may be represented by up to 7 witnesses.
11. Perusing the GBT submission, it seeks rezoning of a substantial area on the western shores of Lake Wanaka under a proposed new '*Glendhu Station Zone*'. The submission proffers a comprehensive set of planning provisions for the proposed new zone. It also emphasises the amount of work that has already gone into formulation of this rezoning proposal, including among other things, a comprehensive landscape assessment (paragraph 33). We infer from Counsel for GBT's submissions on her application that Ms Pfluger was responsible for that comprehensive landscape assessment. Against that background, and the extraordinary nature of the circumstances leading to Ms Pfluger's competing commitment, we think it would be unreasonable to make directions which would effectively require GBT to instruct a new landscape architect to give evidence on its behalf, particularly given Counsel for GBT's advice that Ms Pfluger's colleagues at Boffa Miskell are similarly committed to Kaikoura earthquake recovery work, if this position can be managed without undue disruption to the existing timetable.
12. Considering the detail of the relief sought by counsel for GBT we bear in mind Counsel for the Council's point regarding the potential disruption to the preparation of rebuttal evidence for the Council. It appears to us that the reasons initially proffered for GBT in support of its application failed to factor in that the Council Staff team would have by far the largest job preparing rebuttal. While most further submitters would be only interested in one, or perhaps a small number, of the applications that we will be considering, the Council will have to consider rebuttal on all of the rezoning applications.
13. We are therefore concerned to ensure that any accommodation provided to GBT is kept to a minimum.
14. In that regard, while the reasons for GBT's application relate to Ms Pfluger's position, the relief sought relates to all of GBT's evidence. The basis for broadening the ambit of relief is the statement for counsel for GBT that many of GBT's expert evidence "*will be dependent on, or related to the evidence of Ms Pfluger*". We have difficulty understanding how this can be the case. As already noted, GBT's application states that the proposed zone provisions were the product, among other things, of an extensive landscape analysis. Those zone provisions are completely fleshed out in the submission. While Ms Pfluger will no doubt draw to our attention any aspects of her previous analysis that she has had second thoughts about, we would have thought, given the amount of work obviously put

in to the submission to date, that such matters would be very much the exception rather than the rule.

15. We also note the previous advice from GBT that its evidential team will be made up of:

- Evidence from the developer (including in relation to the design philosophy);
- Traffic (possibly);
- Economics;
- Planning;
- Recreation (possibly).

16. Of those disciplines, the only one with an obvious direct interface with Ms Pfluger's evidence would seem to be GBT's expert planner, and then only in relation to areas where Ms Pfluger's views had materially changed from that previously factored in to his/her planning assessment.

17. In summary, we are not convinced of the need for a complete deferral of GBT's evidence. While it might be 'cleaner' if all GBT's evidence is lodged as a package, we consider a staged approach is perfectly manageable given the nature of the disciplines involved. We note that to the extent this may lead to a confusing evidential picture, the clarity of the evidence exchange process has already been compromised to a degree by our decision giving leave for the Council to produce the updated outputs from its Dwelling Capacity Model alongside its rebuttal evidence on 28 April, and for other parties to have a further period within which to lodge rebuttal evidence on that material².

18. In terms of the extent of any deferral, as above, counsel for GBT initially suggested a delay of 9 days on provision of evidence. In her reply, she referred to the lack of prejudice in a delay of 7 days.

19. The latter reference might have been an error, but we consider, given the material before us on behalf of GBT as to the extent of landscape analysis that it has already gone into preparation of GBT's position, that a 7 day accommodation should be sufficient. Seven days deferral means that the due date for GBT's evidence would be 11 April. That would

² Refer our Minute Concerning QLDC's Application for Variation of Stream 12 Hearing Directions 6 March 2017

also have the advantage of avoiding any risk that the Council and/or further submitters might not have the evidence to hand before the Easter break.

20. For the reasons set out above, this deferral will relate only to Ms Pfluger's evidence and the planning evidence GBT produces. In case (contrary to our expectation) there are consequential flow on effects into the evidence of GBT's other witnesses, we give those other witnesses leave to produce supplementary/addendum evidence limited to any aspects of their evidence they wish to amend consequential on the finalisation of Ms Pfluger's evidence, and/or the planning evidence relying on it.

21. Turning to rebuttal evidence, we are mindful both of the fact that the period following 11 April has a number of public holidays and that the rationale for the original rebuttal evidence date was in order that the Hearing Panel might have the opportunity to read the rebuttal evidence before undertaking site visits in the week of 8 May. Given that we proposed to allow an additional 7 days for GBT's landscape-related evidence, we will allow a corresponding delay, to 5 May, for any rebuttal on that additional evidence.

Directions

22. We will vary the evidence timetabling directions contained in our 25 January evidence to the effect that:

- The landscape evidence of Ms Yvonne Pfluger and the planning evidence for GBT must be lodged on or before 1pm on 11 April 2017;
- The balance of GBT's evidence must be filed on or before 4 April as previously, save that in the case of any witness whose evidence requires amendment consequential on the final form of Ms Pfluger's evidence, or of GBT's planning evidence, GBT may lodge a supplementary brief of evidence addressing those matters only, such supplementary brief of evidence to be lodged on or before 1pm on 11 April;
- Any rebuttal evidence on evidence lodged by GBT in accordance with the above directions after 4 April shall be lodged on or before 1pm on 5 May 2017.

For the Upper Clutha Mapping Hearing Panel

A handwritten signature in blue ink, consisting of a large, stylized 'T' shape with a horizontal line extending to the right and a vertical line extending downwards.

Trevor Robinson (Chair)

9 March 2017