

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 an Application by
Wanaka View Motel
Limited

DECISION ON APPLICATION OF WAIVER OF TIME TO LODGE SUBMISSION

Introduction

1. The Council received an application dated 22 June 2018 from Wanaka View Motel Limited ("the applicant") for a waiver of time to lodge a late submission. I note that I received this application on 27 June 2018.
2. I have been delegated the Council's powers to make decisions on applications for waiver in relation to submissions and further submissions on the PDP under section 37 of the Act.
3. The application states that the reason the applicant needs to make this submission late arises from a procedural error by the Council.
4. As notified in August 2015, the proposed zoning of the applicant's land at 122 Brownston Street, Wanaka was Low Density Residential with a Visitor Accommodation Sub-Zone overlay¹.
5. On 23 October 2015 the Council resolved to withdraw under Clause 8D of the First Schedule to the Act the provisions relating to visitor accommodation from various zones, including the proposed Low Density Residential Zone. It appears from the Council website that public notice of this withdrawal was given, but it is unclear on what date. That public notice did not state that map notations had changed as a result of the Clause 8D withdrawal. The planning maps dated 19/12/2016, produced to incorporate changes resulting from Council resolutions withdrawing certain provisions and to show errors corrected under Clause 16(2) of the First Schedule to the Act, showed the applicant's site zoned Low Density Residential without a Visitor

¹ See Planning Map 21 dated 26/08/2015

Accommodation Sub-zone notation. That situation remained unchanged as a result of the Council decisions on Stage 1 of the PDP, other than the name of the zone changing to Lower Density Suburban Residential. It should be noted that generally the sites on the south side of Brownston Street between McDougal and Dungarvon Streets are zoned Medium Density Residential. The exceptions are the applicant's site and another property closer to Dungarvon Street, which are both zoned Lower Density Suburban Residential.

6. The application states: "It was expected given the removal of the Visitor Accommodation sub-zones the zoning of the property would revert to Medium Density Residential (in accordance with the surrounding zoning) however instead the property was zoned Low Density Residential. This zoning was confirmed in the Council's decisions on Stage 1."
7. Counsel for the applicant considers this situation can be corrected by allowing the applicant to submit on Stage 2 of the PDP and seek an underlying zoning of Medium Density Residential. I note that the applicant has not lodged a submission within time on Stage 2.

Powers in Relation to Waiving and Extending Time Limits

8. 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

9. As there are no rights of appeal in respect of decisions under section 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 section 281.
10. 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

² A46/08

that the possible inconvenience, delays and costs caused are hopefully outweighed by better informed decision-making and better environmental outcomes".³

11. Based on that guidance, I need to consider the interests of the submitter 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 providing recommendations to the Council for decision-making.
12. The question of whether a waiver should be granted is purely a procedural one. This extends to the question of "undue prejudice" under s.281⁴, and, I conclude, it would similarly extend to the "interests" question under s.37A(1)(a). In other words, the question is whether anyone would be prejudiced by the lateness of the submission, not by the substance of the relief sought in the submission.

Issues of Scope

13. A submission must be within scope of the Plan, variation or change at issue. Stage 2, which was notified in November 2017, contains provisions relating to visitor accommodation in several zones, including what is now the Lower Density Suburban Residential and Medium Density Residential Zones. It also applied Visitor Accommodation Sub-zones to identified sites.
14. Importantly, the public notice of Stage 2 stated the following:

It is important to be aware that the hearings for Stage 1 are now complete. Stage 2 consists of three new district wide chapters, two new zone chapters and planning maps; and new provisions for and consequential variations to 18 Stage 1 chapters. Submissions can only be made on these provisions, variations and planning maps.

In terms of geographic area, the new district wide chapters apply to all Stage 1 and Stage 2 land. The zones apply where they have been notified on the Stage 2 planning maps – Stage 1 zones on the planning maps cannot otherwise be submitted on. The exception to this is that the Council will consider submissions seeking that the Visitor Accommodation sub-zone be applied to areas not notified in Stage 2 on the planning maps.

15. The concession by the Council in the last sentence of the quote is important, as land not notified in Stage 2 on the planning maps is not part of Stage 2,

³ Quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZEnvC 60
⁴ *Orr v Tauranga District Council*, A149/97 (EC)

and hence not within the scope of Stage 2. The concession means that the part of the applicant's submission which seeks the application of the Visitor Accommodation sub-zone to the applicant's property will be considered by the Council to be on Stage 2 if I waive the time for lodgement.

16. However, I consider the zoning of the applicant's land as Lower Density Suburban Residential Zone is not in the same category. As I understand it, there are no appeals in relation to the zoning of the applicant's land. Consequently, in accordance with section 86F of the Act, the rules of the Lower Density Suburban Residential Zone, to the extent they are not subject to appeal, are to be treated as operative on this site.
17. It is clear from the public notice for Stage 2 that submissions on Stage 2 could not challenge the zoning applied by Stage 1. If the applicant is seeking a waiver to lodge a submission on Stage 1 seeking the zoning change, I consider that to be too late to be considered given that the hearings on these matters were heard in mid-2017 and the Council's decisions made in May 2018.

Discussion

18. As I have noted above, there is no ability for the applicant to lodge a submission on the zoning of the property to seek Medium Density Residential at this time. Stage 1 is past the point at which submissions can be heard, and the relief sought is not "on" Stage 2, as is made clear by the wording of the public notice. In my view the only way the zoning can be changed to Medium Density Residential now would be by variation.
19. Thus, I will not waive the time for lodging the submission in relation to the second paragraph of the relief sought or the second paragraph of the reasons for the submission.
20. On the other hand, the Council specifically provided the opportunity for persons to lodge submissions seeking the application of Visitor Accommodation sub-zones on land which was otherwise only open to submission in Stage 1. Thus, if I am satisfied that the waiver should be granted after taking into account the matters in section 37A of the Act, it would be appropriate to grant a waiver allowing late lodgement of the submission, subject to it excluding paragraph 2 of the reasons and paragraph 2 of the relief sought.

21. The applicant's property contains an existing visitor accommodation activity. I consider it reasonable that the applicant has the opportunity to seek the application of the Visitor Accommodation sub-zone to its property. The interests of the community will be better served by having that considered as part of the Stage 2 process than leaving the applicant to pursue other procedural options.
22. It is proposed to hear submissions relating to visitor accommodation in September 2018. Thus, there is sufficient time for public notice to be given for further submissions on this submission without delaying the hearing process. Providing the opportunity for further submissions to be lodged would remove any prejudice to potentially affected third parties.

Decision

23. Pursuant to sections 37 and 37A of the Act I grant a waiver of time for Wanaka View Motel Limited to lodge the submission enclosed with the application for waiver insofar as it relates to seeking the Visitor Accommodation sub-zone on 122 Brownston Street, Wanaka, subject to the following:
 - a) The Council publicly notify the submission under Clause 7 of the First Schedule of the Act; and
 - b) Prior to such notification, the Council redact paragraph 2 under the heading "My Submission is" and paragraph 2 under the heading "I Seek the Following from the Local Authority".

28 June 2018



Denis Nugent
Hearing Panel Chair