

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 13:
Queenstown Mapping

**DECISION ON APPLICATION TO STRIKE OUT
FURTHER SUBMISSIONS 1275 & 1277**

1. At the hearing on 12 September 2017, Ms Macdonald, counsel for Submitter 361¹, applied to strike out Further Submissions 1275² and 1277³ on the grounds that neither further submission was served on the submitter at the address for service stated on the submission.
2. I have been delegated the Council's powers under s.34A of the Act in relation to procedural matters in relation to these hearings. This includes the power to waive time limits under s.37A and to make directions under s.41C.
3. In support of her application Ms Macdonald provided copies of emails she had sent to Mr Fergusson, in respect of FS1275, and Mr Coburn, in respect of FS1277, dated 6 July 2017 and 24 August 2017. Each advised that she had not received the relevant further submission and requested proof of service. In addition, Ms Macdonald provided a copy of an email sent to Anderson Lloyd on 10 July 2017, similarly seeking confirmation of service. Ms Macdonald advised that no confirmation has been provided.
4. I issued a Minute on 13 September 2017 providing a timetable for the two further submitters to proof of service (by 20 September 2017), and the opportunity for Submitter 361 to respond to any such material received (by 27 September 2017).

¹ Grant Hylton Hensman, Sharyn Hensman and Bruce Herbert Robertson, Scope Resources Limited, Trojan Holdings Limited and Grant Hylton Hensman and Noel Thomas van Wichen

² Lodged by Jacks Point Residential No. 2 Limited, Jacks Point Village Holdings Limited, Jacks Point Developments Limited, Jacks Point Land Limited, Jacks Point Land No. 2 Limited, Jacks Point Management Limited, Henley downs Land Holdings Limited, Henley Downs Farm Holdings Limited, Coneburn Preserve Holdings Limited, Willow Pond Farm Limited

³ Lodged by Jacks Point Residents and Owners Association

5. On 20 September 2017 I received a Memorandum from Ms Baker-Galloway, counsel for the two further submitters. No further communication has been received from Submitter 361.
6. Ms Baker-Galloway provided a copy of the email sent by Mr Fergusson serving a copy of FS1275 at 4:29pm on 18 December 2015. This email was sent to 24 email addresses, one of which is listed as "Jayne MacDonald" [sic].
7. Ms Baker-Galloway confirmed that FS1277 was filed with the Council on 18 December 2015, but was unable to provide evidence that it had been served on submitters. The explanation for lack of evidence was that the Jacks Point organisation periodically deletes emails off its server, thus record of service may not be complete. She submitted that it was more likely than not that service had been effected, but in the interests of caution, Ms Baker-Galloway sought a waiver of time to serve the further submission, having completed service the same date as the Memorandum.
8. I have reviewed counsels' submissions on this matter and make the following comments:
 - a) Section 352 of the Act states that a document may be served:
 - (f) *sending it to an email address that the person has specified as an address for service:*
 - b) Submission 361 specified Ms Macdonald's email address as an address for service. Mr Fergusson has sent FS1275 to that email address. The Act is silent as to what occurs if an email does not arrive in the intended recipient's email inbox, but it is the sending which effects service, not the arrival. Thus, from the copy provided of the email sent by Mr Fergusson, I must accept FS1275 was served on the submitter.
 - c) From the email address provided by counsel, it is apparent that FS1277 was lodged by a member of staff of the Jacks Point group. I find it surprising that such an organisation does not retain copies of emails sent.. I am also surprised that counsel did not ask the Council if it could provide a copy of the email it received when the further submission was lodged.

If the same email was copied to original submitters in the manner Mr Fergusson's was, evidence of service would have been available. I note also that FS1277 was framed as supporting or opposing nine other submitters, including the Jacks Point group. Enquiry of one of those submitters may equally have unearthed a copy of the email of service.

- d) FS1277 is not a facsimile of FS1275 as it adds the issue of light spill as a reason to oppose the submission. However, that is only an expansion of "effects on landscape and visual values" expressed in FS1275. I note also, from the evidence the Hearing Panel has heard over the past 18 months, there appears to be little real distinction between the Jacks Point group that lodged FS1275 and the Jacks Point Residents and Owners Association. This is perhaps evidenced by FS1277 being lodged by a staff member of the Jacks Point group.
- e) Submitter 361 has not lodged any opposition to the application for waiver of time to serve FS1277. While on the face of it the first the submitter knew of FS1277 was receipt of the Council's Section 42A Report, FS1275 had been served in accordance with the Act and any lack of knowledge of that further submission was not as a result of a failure by the further submitter. Thus, the opposition from Jacks Point and the reasons for that opposition were in play.
- f) Ms Baker-Galloway has referred to an ability to view further submissions related to a submission on the Council website. I attempted to achieve the results she submitted were available to the submitter, but could not. Therefore, I do not accept that information was readily available to the submitter.
- g) Looking at the situation in the round, it appears that there is no reason not to grant a waiver of time to serve FS1277. In my view there is an artificial distinction between the two further submissions as they relate to Submission 361. I also accept Ms Baker-Galloway's submissions that Submitter 361 presented legal submissions and evidence to the Hearing Panel addressing the matters raised by both further submitters.

9. 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.
10. As I have explained above, I do not consider Submitter 361's interests are adversely affected by granting the waiver. The same issues were raised by a parallel party, albeit notice of that did not arrive in Ms Macdonald's inbox. I also note that, having been given the opportunity to oppose this application for waiver, the submitter has not raised any issue of prejudice.
11. In all other respects, I consider granting the waiver is neutral in respect of the requirements of s.37A.
12. For those reasons, I waive the time for service of FS1277 on Submitter 361 and allow it to be served on 20 September 2017.
13. Finally, I note that Ms Macdonald provided evidence of several requests she had made of signatories on the two relevant further submissions, and of Ms Baker-Galloway's firm, seeking confirmation that service had been effected. I find it very disappointing that the prospect of the further submissions being struck out had to be raised before any response was forthcoming. A timely and appropriate response would have probably avoided the need for this matter to come before me for a ruling.

Dated 9 October 2017



Denis Nugent
Hearing Panel Chair