

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 GLENDHU BAY TRUSTEES LIMITED EVIDENCE

1. Our Seventh Procedural Minute dated 25 January directed a sequential exchange of evidence, with the Council going first with its evidence supporting its s42A report on 25 March, submitter evidence following on 4 April and rebuttal evidence on 28 April. In subsequent Minutes, those dates were varied in response to applications from particular parties, but save as regards arrangements made specifically for the Council's development capacity modelling evidence, that sequential approach remained in place.
2. Glendhu Bay Trustees Limited's ("GBT's") submission sought rezoning of a substantial block of land in Parkins Bay and Glendhu Bay. GBT lodged a comprehensive suite of evidence in support of its submission in accordance with our hearing directions and the Council rebuttal evidence filed in accordance with our directions responded to that evidence across a range of disciplines.
3. In an application dated 23 May seeking caucusing of expert witnesses, Counsel for GBT foreshadowed a "*refining*" of GBT's position in response to the Council's rebuttal evidence, and to the verbal evidence of Council witnesses when they appeared before us. Counsel noted specifically that the most pivotal amendments proposed would be addressed by Mr Ferguson, the planning witness for GBT, including in the form of marked up changes to the Proposed Zone Provisions he had produced with his evidence in chief.

4. The first two witnesses for GBT (Mr McRae and Dr Roper-Lindsay) were heard out of order on 1 June to accommodate their personal unavailability when the bulk of the GBT evidence was due to be heard on 8 June.
5. Late in the evening of 6 June, the hearing administrator received a Supplementary Statement of Evidence of Mr Ferguson, comprising a 14 page brief of evidence discussing matters raised in the Council's rebuttal evidence, and providing Mr Ferguson's point by point response. The Brief of Evidence had five appendices, including a comprehensive revision of the 39 pages of Proposed Zone Provisions and an evaluation under Section 32AA of the Act of an alternative form of relief Mr Ferguson suggested.
6. The following day, at 5pm, Counsel for GBT lodged a Supplementary Statement of Evidence of Ms Yvonne Pfluger, the landscape witness for GBT. Ms Pfluger's Supplementary Brief was somewhat more modest than that of Mr Ferguson, occupying 5 pages, but attached several detailed plans providing further information and analysis regarding the eight additional home sites (beyond those previously the subject of resource consent) proposed by GBT.
7. When the hearing commenced at 10 am the following day, counsel (Mr Page) for John May, a further submitter opposing the GBT submission, asked to be heard on the question of whether we should receive the Supplementary Ferguson Brief of Evidence. Mr Page was unaware that the Supplementary Ferguson evidence had been followed by Ms Pfluger's Supplementary Evidence, but when alerted to its existence, opposed receipt of that too.
8. Given that lodgement of supplementary briefs of evidence was clearly not provided for in the hearing directions, and was indeed contrary to the whole scheme of those directions (as described above), we invited counsel for GBT (Ms Baker-Galloway), to apply for a waiver of those directions, if she wished them to be received. Ms Baker-Galloway accordingly made a verbal application to us. She emphasised that the evidence produced by Mr Ferguson was refining points of difference between himself and Mr Barr in lieu of the expert caucusing that we had declined to direct for the reasons set out in our Minute of 25 May 2017. As regards Ms Pfluger's supplementary evidence, counsel argued that it was in direct response to the Council's rebuttal evidence, clearly relevant and put information on the table that the Council witnesses had identified as being lacking.
9. Mr Page, in response, suggested that GBT was treating the process as if it were an application for a resource consent where the only parties were the applicant and the

Council. In this case, there are a number of parties, not limited to Mr May, with an interest in the matter. He emphasised the difficulty that the repeated revisions of GBT's planning position placed Mr May and his witnesses because it meant that the evidence lodged for Mr May had effectively been overtaken so that the evidence was now out of sequence. Mr Page suggested that there was no clarity as to whether Mr Ferguson was making a formal refinement of the relief sought by GBT or putting up alternative planning options. Mr Page also observed that the Council's rebuttal evidence was no longer the last word on the matters raised by the GBT submission. The question of the most appropriate planning provisions for the GBT land had become a movable feast which, in his submission, needed to stop.

10. We discussed with Mr Page whether, had Mr Ferguson not put his further thoughts in writing, he and the witnesses for Mr May might well have been in the same position, because Mr Ferguson would presumably have produced the same answers when the members of the Hearing Panel put Mr Barr's concerns to him. Mr Page replied that that might still happen, but, in his submission, that was something beyond his ability to manage. His key concern was that he needed to know what Mr May's witnesses were responding to, because it seemed to be a constantly moving target.
11. We observed to Ms Baker-Galloway that Mr Page had asked a fair question regarding the status of the amended planning provisions Mr Ferguson was proffering and invited her comment. She advised that GBT was not formally changing its submission but the evidence before the Hearing Panel was in respect of the further revised zone provisions. She emphasised that the process was one of refinement and reduction and therefore did not raise jurisdiction issues.
12. We asked Mr Page whether he contended that the further evidence raised jurisdictional issues. He advised that he was not in a position to address this aspect. His argument was one of fair process. He also noted that Mr Ferguson's supplementary evidence referred to informal discussions he had had with Mr Barr. As Mr Page observed, those discussions had occurred without Mr Taylor's participation and therefore he would be giving evidence without any understanding of the Council response, which he ought properly to have available to him.
13. Mr Barr did not seek to be heard on behalf of the Council in relation to the matter.
14. In reply, Ms Baker-Galloway emphasised the point we had asked Mr Page about, namely that what GBT had done was clearer and less prejudicial to further submitters who would

follow it than would have been the case if the evidence had not been filed and was entirely the subject of verbal discussion in the hearing. In her submission, the nature of a substantial rezoning proposal such as that of GBT was always going to be an iterative one.

15. The Commissioners retired to discuss the position. Upon the resumption of the hearing, the Chair confirmed the Supplementary Briefs of Mr Ferguson and Ms Pfluger would be received. The purpose of this Minute is accordingly to record the reasons for that decision, and to confirm our consequential directions.
16. The reason for our decision to receive GBT's supplementary evidence was that while lodgement of substantial volumes of new information and analysis was both unsatisfactory and prejudicial to the other parties (including in this regard the Hearing Panel, which had some 37 hours to absorb a substantial body of planning evidence while they were also continuing to hear other parties), ultimately, further submitters (and indeed the Council) were in a better position with Mr Ferguson's revised views on paper than they would be if those views emerged in the course of a lengthy discussion with the Hearing Panel members. This is because, if leave were refused, or indeed had Mr Ferguson's Supplementary Brief of Evidence never been lodged, the Hearing Panel intended to canvas the concerns Mr Barr had raised in his rebuttal evidence with Mr Ferguson. Similarly with Ms Pfluger's supplementary brief of evidence, which sought to answer concerns Dr Read had raised for Council.
17. We do not regard the fact that Mr Ferguson had informal discussions with Mr Barr and reflected those discussions in his supplementary evidence as being untoward. The planning witnesses for further submitters have the same ability to contact Mr Barr, and we are sure he would extend them the same courtesy.
18. Notwithstanding that, provision needed to be made to enable further submitters on the GBT submission to properly address the late running material lodged by GBT. The Chair noted that the Hearing Panel would accept supplementary briefs of evidence from the further submitters prior to their being heard in the week of 12 June and would give further submitters leave to file submissions and/or evidence after they were heard provided that was in the hands of the hearing administrator not later than 5pm on 21 June.
19. Ms Baker-Galloway observed that none of the further submitters had lodged rebuttal evidence and therefore enquired whether the leave reserved was general or limited to the additional matters set out in Mr Ferguson's brief of evidence (that is to say the proposed changes to the zone provisions). The Chair confirmed that the same logic that had

prompted the Panel to agree to receive the supplementary briefs of evidence applied. Notwithstanding the absence of any rebuttal evidence, the Hearing Panel would have discussed all aspects of the GBT relief with Mr Taylor, in particular. Accordingly, he ought to have the freedom to comment on all aspects of that relief in any further brief of evidence he might lodge pursuant to the leave reserved.

20. In summary, therefore, the Hearing Panel has directed:

- (1) The Supplementary Briefs of Evidence of Christopher Bruce Ferguson and Yvonne Pfluger for Glendhu Bay Trustees Limited would be received.
- (2) Further submitters on GBT's submission would have leave either to file evidence responding to those supplementary briefs of evidence prior to their being heard in the week of 12 June or, alternatively, would have leave to file submissions and/or evidence on that material after being heard, provided that such submissions and/or evidence is in the hands of the hearing administrator not later than 5pm on 21 June 2017, time being of the essence.

For the Upper Clutha Mapping Hearing Panel



Trevor Robinson (Chair)

12 June 2017