

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:
Submission 425

DECISION ON APPLICATION TO AMEND SUBMISSION
OR LODGE LATE SUBMISSION

Introduction

1. Counsel for F. S. Mee Developments Co Limited¹ has lodged a Memorandum seeking leave to either:
 - a) Amend Submission 425; or
 - b) Lodge a late submission.
2. The purpose of this application is to provide an amended relief to rezone areas of land not included in the relief of the submission as lodged.
3. I have been delegated the Council's powers under s.34A of the Act in relation to procedural matters in relation to these hearings, including the Council's powers under s.37 to waive or extend time limits in respect of the lodgement of submissions and further submissions and to deal with omissions and inaccuracies in submissions and further submissions.

Background

4. F S Mee Developments Co Limited, in its submission on the PDP lodged on 23 October 2015, sought that two areas of land zoned Rural in Kelvin Heights be rezoned Low Density Residential². The northern-most area was shown as containing some 6.1 ha, and the southern area some 11.99 ha, making a total of 18.0 ha.

¹ Submission 425

² See Baxter Design Group Plan 2593-SK-05 dated 23 October 2015 attached to Submission 425

5. At the hearing on 21 August 2017, the submitter sought amended areas to be rezoned, as shown on Attachment B to Mr Baxter's evidence³. I note at this point that Mr Baxter's evidence was not pre-lodged in accordance our standard procedures. Rather, by a Memorandum of Counsel lodged on 4 August 2017, the submitter sought leave to be heard, noting that, in respect of this part of the submission:

(a) The Submitter wishes to pursue this rezoning request, although possibly only in part;

(b) The Submitter proposes to present summary evidence from Mr Paddy Baxter based on the Site Assessment and Recommendations dated October 2015 which accompanied Submission 425;

(c) It is likely that further consultation with Mr Baxter between the date of this Memorandum and the hearing date may result in an amended proposal being presented by the Submitter within the scope of the original submission;

(d) The Submitter does not otherwise seek to present any additional evidence.⁴

6. The amended proposal shown on Mr Baxter's plan comprised the following:
- a) Reduction of the northern area of rezoning (identified as Area A) at the eastern end by some 0.38 ha ("Area A Green");
 - b) An increase in the size of Area A along its southern boundary by some 2.24 ha ("Area A Blue");
 - c) A reduction in the southern area of rezoning sought (identified as Area B) by some 5.92 ha ("Area B Green");
 - d) An increase at the northwest corner of Area B (size not given although it scales at 0.99 ha) ("Area B Blue");
 - e) A rezoning of some 3.6 ha of land notified as Low Density Residential to Rural at the southeast corner of the Low Density Residential zoned land ("Area D").

7. In his Memorandum, Mr Goldsmith suggested that as alternative to (e), the same area of land remain Low Density Residential but have a Building

³ Baxter Design Group – Mee-Kelvin Heights Proposed Zone Changes, Ref: 2593-SK13 dated 21 August 2017

⁴ Memorandum of Counsel for F S Mee Developments Co Limited, 4 August 2017, at paragraph 9

Restriction Area imposed over it. He advised that such an arrangement would be acceptable to the submitter.

8. One further submitter supported⁵ the original submission and 30 opposed it⁶. During the hearing, one further submitter, which had opposed Submission 425, stated that it supported the proposed rezoning of Area D⁷.

Powers in Relation to Waiving and Extending Time Limits

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.

Principles to Guide Use of the Powers under s.37

10. As there are no rights of appeal in respect of decisions under s.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 s.281.
11. The most apposite guidance is provided in the Court's observation in *Omaha Park Ltd v Rodney DC*⁸ that the Act "*encourages participation (in an orderly way, certainly) in the decision-making process, with the general philosophy that the possible inconvenience, delays and costs caused are hopefully outweighed by better informed decision-making and better environmental outcomes*".⁹
12. Based on that guidance, I need to consider the interests of the submitter and further submitters 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

⁵ FS1277

⁶ FS1078, FS1168, FS1169, FS1171, FS1173, FS1174, FS1175, FS1176, FS1178, FS1180, FS1181, FS1184, FS1185, FS1187, FS1188, FS1190, FS1194, FS1196, FS1199, FS1201, FS1204, FS1205, FS1213, FS1230, FS1233, FS1240, FS1243, FS1277, FS132, FS1340

⁷ Oral submission of Ms Baker-Galloway on behalf of FS1277 Jacks Point Residents and Owners Association

⁸ A46/08

⁹ Quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZEnvC 60

timing of hearings and providing recommendations to the Council for decision-making.

Scope to Amend Submission

13. It is always permissible for a submitter to narrow their relief. Thus, it is clearly within scope for the submitter to withdraw Area A Green and Area B Green from the relief sought. However, it is not open to a submitter to materially change or enlarge their relief, because of the potential prejudice to persons who may have opposed the change or enlargement¹⁰.
14. The three additional areas sought to be rezoned (Area A Blue, Area B Blue and Area D) were not subject to any rezoning submissions. I am not aware of any provision in the Act that would give me discretion to amend the submission so as to include those areas within it. Even if there were such discretion, in the light of the 30 further submitters opposing this submission, I would not be minded to allow such a change without some form of consultation.

Lodgement of Late Submission

15. If I were to waive the time limit for lodgement of this submission, the Council would need to publicly notify a summary of the submission in accordance with Clause 7 of the First Schedule and allow 10 working days for further submissions to be lodged. Following that the Council would need to prepare a report under Section 42A of the Act and a hearing may be necessary. I cannot see this occurring in less than 2 months.
16. The Hearing Panel has concluded the last hearing on the matters to be considered prior to providing recommendations to the Council on the bulk of the matters notified in Stage 1 of the PDP¹¹. To add an additional hearing for a single submission would cause delay to the entire district plan process.
17. The submitter has provided no reason for the 22-month delay in presenting revised plans. I note also that the revised plans were presented at the hearing, not lodged in advance in accordance with our procedural directions. Thus, neither the further submitters nor the Council reporting officers had an opportunity to consider it in advance. There is no evidence that copies have been provided to any other persons.

¹⁰ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, at paragraph 82
¹¹ The matters not dealt with are those in the Wakatipu Basin that have been deferred until 2018.

18. While the submitter has provided evidence as to why it considers the proposed zoning re-arrangement will result in an improved environmental outcome, there is no evidence of any urgency for this re-arrangement to occur.
19. Mr Goldsmith submits that the rezoning of Area D amounts to such a positive effect that the net outcome of the re-arrangement is positive. As a result, he submits that neither the further submitters, nor other members of the general public that did not lodge a further submission, but might have, would not be adversely affected. In my view, Mr Goldsmith is transposing considerations that may be relevant in a resource consent application situation to the different regime of the First Schedule and Section 32 of the Act. The option of limited notification, as suggested as a possibility by Mr Goldsmith, is not available under the First Schedule processes. Nor is non-notification. The merits of the proposal are not, in my view, a relevant consideration when considering whether to waive the time for a late submission.
20. I note also that allowing this amended position to be put in front of the Hearing Panel would not improve the information available to it, the Council, or the community to assist decision-making. It merely represents an alternative outcome based on one landscape architect's opinion. It is not the result of a comprehensive analysis of what alternative resource management provisions could apply to this land tested against section 32 of the Act.
21. When considering the application as a whole, I conclude that the submitter has sought to change the submission too late in the process for it to be considered without disrupting the Council's public duty to hear and make decisions on submissions while avoiding unreasonable delay. I also note the Council's duty, under Clause 10 of the First Schedule, to notify its decisions on submissions within 2 years of notifying the district plan. While the Council has extended this time limit, I consider an application to lodge a late submission more than 2 years after the notification date is inconsistent with the intent of the Act to minimise delay.

Conclusions

22. There is no scope to extend the submission onto land which was not subject to a submission and to allow the submitter to lodge a late submission would create unreasonable delay to the district plan process, and would be inconsistent with the provisions in the Act seeking to minimise delay. For all the reasons set out above, I refuse the application to amend Submission 425

and I refuse the application by F. S. Mee Developments Co Limited to lodge a late submission.

23. I note that Mr Goldsmith made it clear in his legal submissions that the proposal was an entire proposal, not a series of proposals. Thus, the submission to be reported on and decided by the Council is that as lodged in October 2015.



Denis Nugent
Hearing Panel Chair
20 September 2017