

IN THE MATTER

of the Resource  
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes  
Proposed District Plan:  
Stage 2

## **DECISION ON APPLICATION TO AMEND SUBMISSION**

### **Introduction**

1. The Council has received an application from Trojan Helmet Limited, dated 11 April 2018, for a waiver of time to amend Submission 2387 by attaching a complete Landscape and Visual Effects Assessment.
2. The application explained that the submission as lodged (in time) included the graphic attachment to Assessment, but not the text.
3. I have been delegated the Council's power to waive the time for submissions on the proposed District Plan under s.37 of the Act.

### **Powers in Relation to Waiving and Extending Time Limits**

4. 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**

5. 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.
6. The most apposite guidance is provided in the Court's observation in *Omaha Park Ltd v Rodney DC*<sup>1</sup> that the Act "encourages participation (in an orderly

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<sup>1</sup> A46/08

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".<sup>2</sup>

7. 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.
8. The question of whether a waiver should be granted is purely a procedural one. This extends to the question of "undue prejudice" under s.281<sup>3</sup>, 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.

### **Discussion**

9. The submitter is not seeking to amend the substantive part of the submission in any way, just improve accessibility to the landscape assessment that the relief is apparently founded upon. As the application notes, this material could be lodged as evidence. Lodgement with the submission will enable the Council and any other person interested to consider this material earlier in the hearing process.
10. I note that the Council has notified the summary of submissions under clause 7 of the First Schedule to the Act. This submission has been included in that summary. Including the additional material will assist those persons considering whether to lodge further submissions.
11. Overall, I consider that allowing this amendment to the submission as lodged to be beneficial to the submitter, other persons and the process.

### **Decision**

12. For those reasons under s.37 of the Act I waive the time for lodgement of additional material to amend Submission 2387.

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<sup>2</sup> Quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZEnvC 60  
<sup>3</sup> *Orr v Tauranga District Council*, A149/97 (EC)

13. I note that in her affidavit, Ms Hutton offered to provide a complete submission including the additional material. It would assist the process if this could be provided as soon as possible and the Council included that version in its database to assist those examining the submissions.

13 April 2018

A handwritten signature in blue ink, appearing to read "Nugent", is written in a cursive style.

Denis Nugent  
Hearing Panel Chair