

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes
Proposed District Plan

DECISION CONCERNING FURTHER SUBMISSIONS LODGED LATE

Introduction

1. On 8 May 2018 counsel for the Council filed a Memorandum advising the Panel of errors in the Summary of Submissions, and that the Council intended to provide a further 5 working days for persons to lodge further submissions, ending on 18 May 2018. Counsel noted that as there was no provision in the Act for such additional time for lodging further submissions, any lodged would be technically late, and that the Council would not oppose a waiver of time being granted for the lodgement of any further submissions received within that additional period. I note that the original period for lodgement of further submissions closed on 27 April 2018.
2. During the period described above, the Council received a request from Airbnb for an extension of time to 25 May 2018 to lodge any further submissions. I granted this request in a decision dated 16 May 2018.
3. I have been delegated the Council's power to extend the time for lodgement of submissions and further submissions on the proposed District Plan under s.37 of the Act.

Additional Further Submissions Received

4. The following further submissions have been received after the close of the further submission period on 27 April 2018.

Received Within Extended Period by 18 May 2018(or as provided for in waiver)

FS Number	Further Submitter	Date Received
2802	Tucker Beach Residents	17/05/2018
2768	Airbnb	25/05/2018

Received After Extended Period

FS Number	Further Submitter	Date Received
2803	Keryn Smith	23/05/2018
2804	Sally Mingaye	23/05/2018
2805	Michael Cook	23/05/2018
2806	Susan & John Vercoe	23/05/2018
2807	Ross & Madeline Healy	23/05/2018
2808	Steve Couper	23/05/2018
2809	Robin & Prue Martin	24/05/2018
2810	Ross Richardson	24/05/2018
2811	Nigel Buchanan & Lisa Hoerlein	23/05/2018
2812	Malcolm Buchanan	24/05/2018
2813	Bruce Miller	24/05/2018
2814	Chris & Laura Brown	24/05/2018
2815	David Shepherd	25/05/2018
2816	Rosemary Barnett & Tom Buckley	25/05/2018
2817	Michell & Neil Burrow	27/05/2018
2818	Michelle Rudd	28/05/2018
2819	Victoria Onions	28/05/2018
2820	Michael Green	28/05/2018

5. The only submitter that requested a waiver of time was Mr Shepherd (FS2815). He indicated that he was away for two weeks in April/May and had an initial problem accessing all of the information online.
6. Other than Mr Shepherd, it appears that all those who lodged further submissions after 18 May 2018 are residents or land-owners in Tucker Beach Road and opposed Submission 2332. Mr Shepherd's further submission seeks to oppose Submission 2229 and Further Submission 2773.

Powers in Relation to Waiving and Extending Time Limits

7. Section 37 provides that the Council may waive and extend 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

8. 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.
9. The most apposite guidance is provided in the Court's observation in *Omaha Park Ltd v Rodney DC*¹ 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".²
10. 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.

Discussion

11. My decision of 18 May 2018³ effectively granted Airbnb the waiver of time required to lodge the further submission received on 25 May 2018. Thus, I need not deal with that any further.
12. As I noted in the Airbnb decision, the renotification for further submissions by the Council was purely to ensure no party was disadvantaged by an error in

¹ A46/08

² Quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZEnvC 60

³ Decision Extending Time for Lodgement of Further Submissions, 18 May 2018

the summary of submissions. I do not consider the error to have been material to assessment of the Summary of Submissions, but as the Council chose to renotify and stated that it would not oppose waivers being granted for further submissions lodged within the extra 5 working days (to 18 May 2018), I accept that it is appropriate to grant a waiver of time to Tucker Beach Residents for the lodgement of Further Submission 2802.

13. Mr Shepherd has requested a waiver for lodging a further submission 20 working days late. He does not explain what precluded him from lodging this further submission prior to 27 April 2018. I note that Mr Shepherd lodged an original submission. I take from that that he was aware of the process of submissions and further submissions on Stage 2.
14. The further submission Mr Shepherd lodged relates to matters to be heard in Stream 14. Evidence and planning reports were lodged by the Council on the 28th and 30th of May 2018. Lodgement of the further submission on the working day prior to the first lodgement date would have deprived the Council staff of any opportunity to consider this further submission. While I accept that a further submission may only support or oppose a submission (not another further submission as Mr Shepherd attempts to do), the reasons for the opposition or support are relevant matters for reporting officers to consider.
15. In my view this further submission has been lodged too late to be considered for a waiver of time. I refuse to grant a waiver of time for its lodgement.
16. It appears that the other 17 further submissions lodged after 18 May 2017 are similar to that lodged by the Tucker Beach Residents (FS2802). Although it is unnecessary for an application to be made for a waiver of time for late lodgement, I would have expected further submissions lodged between 18 and 21 days after the close of further submissions to provide some reason for the tardiness.
17. Again, all of these further submissions relate to matters in Stream 14. They have all been lodged too late for the reporting officers to consider the reasons for their opposition to Submission 2332. Allowing them to be treated as valid further submissions would not be in the interests of avoiding unreasonable delay. In addition, adequate assessment of the issues raised has been ensured by the further submission lodged by Tucker Beach Residents.

Decision

18. Under section 37 of the Act, for the reasons set out above in paragraph 12, the time for lodging Further Submission 2802 by Tucker Beach Residents is waived.

19. Under section 37 of the Act, for the reasons set out above in paragraphs 13 to 17 above inclusive, a waiver of time to lodge purported Further Submissions 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819 and 2820 is refused and these are not to be considered as further submissions.

2 June 2018



Denis Nugent
Hearing Panel Chair