

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of Stage 3 of the  
Queenstown Lakes  
Proposed District Plan

## **MINUTE 2 – LATE SUBMISSIONS**

### **Introduction**

1. By Council resolution on 27 June 2019, I was appointed Chair of the Hearings Panel for Stage 3 of the Proposed District Plan (PDP) with delegated authority to determine procedural and jurisdictional matters relating to the PDP, including specifically the power to waive and extend time limits in accordance with section 37 of the RMA.
2. Stage 3 of the PDP was publicly notified in two tranches. The first tranche was notified on 19 September 2019 and the closing date for submissions was Monday, 18 November 2019. The second tranche (labelled Stage 3B) was publicly notified on 31 October 2019 with submissions closing Monday 2 December 2019.
3. A number of submissions were lodged late in terms of the filing requirements as above, and accordingly, I need to determine whether the failure to comply with the requirements of the Act can be waived.

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

4. Section 37 of the Act provides a general authority for the Council to waive time limits. Section 37A of the Act states that general power may only be exercised if the Council has taken into account:
  - (a) The interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
  - (b) The interests of the community in achieving an adequate assessment of the effects of (in this case) the PDP; and
  - (c) The Council's duty under section 21 to avoid unreasonable delay.

5. Section 37(2) provides separately for provision of information or procedural requirements as follows:

*“If a person is required to provide information under this Act, regulations, or a plan and the information is inaccurate or omitted, or a procedural requirement is omitted, the consent authority or local authority may –*

*(a) Waive compliance with the requirement; or*

*(b) Direct that the omission or inaccuracy be rectified on such terms as the consent authority or local authority thinks fit.”*

6. By virtue of the Council resolution as above, I stand in the Council’s shoes for those purposes.
7. There is no requirement for a formal application for waiver to be made under section 37 or 37A<sup>1</sup>, although I note that in a number of cases, submitters who have lodged late submissions have made such an application with reasons, and I will take those reasons into account.
8. As there are no rights of appeal in respect of decisions under section 37, there is little case law to guide the decision-making process and as for previous stages of the PDP, I will apply the principles established in the context of the Environment Court’s power to grant waivers under section 281.
9. I note in particular, the Court’s observation in *Omaha Park Limited v Rodney DC*<sup>2</sup>, 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”*. I apply the statutory requirements against that background.
10. I also record that I have been advised by the Council that the preparation of the summary of submissions is underway and that, so long as any procedural flaws are addressed by the grant of waivers in each case, all submissions received to date will be able to be included within the summary of submissions that is publicly notified later this month.

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<sup>1</sup> *Butel Park Homeowners Assn v Queenstown Lakes DC* (2007) 13 ELNZ 104,

<sup>2</sup> A46/08; quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZ EnvC 60

## Late Submissions

11. The submissions that I have to consider fall into a number of categories. First, a number of submissions were filed without all of the information required by the relevant regulations (e.g. advice as to whether the submitter wished to be heard). Generally, these were individual submissions lodged by lay people and the Council's administrative team emailed the submitter by return requesting that the omission be corrected. In some cases, I have noted that this did not occur until after the submission lodgement deadline. This is a technical non-compliance with the requirements of the regulations and the Act, but no other party is adversely affected and accepting the submissions will cause no delay to the First Schedule process. I grant a general waiver in such cases.
12. Turning to the submissions on the first tranche of PDP provisions that were filed after the deadline of 18 November, I have listed the relevant submissions in the Table following:

Submitter	Submitter Reference	Date Received
Blackthorn Ltd	3391	19 November 2019
Eileen and Roman Stewart	3392	19 November 2019
Murray Scott and Joy McDonald	3393	20 November 2019
Dynamic Guest House Ltd, Nicola and Mark Vryenhoek	3394	21 November 2019
R Buckham	3395	27 November 2019
New Zermott Properties Ltd	3396	27 November 2019
LC Hasselman	3397	27 November 2019
Chris Willett	3398	28 November 2019
Cattle Flat Station and Aspiring Helicopters Ltd	3399	2 December 2019
Cardrona Village Ltd	3404	2 December 2019 <sup>3</sup>
Upper Clutha Maternity Trust	3403	13 December 2019

13. The first four submissions were filed only a matter of a few days after the deadline. In the case of the Dynamic Guest House Ltd/Vryenhoek submission, what was filed on 21 November was in fact a replacement for a submission filed only one day after the deadline, correcting minor errors. Clearly, no person could be adversely affected by my waiving late receipt of those submissions and I grant waivers accordingly.

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<sup>3</sup> This submitter disputes whether its submission was 'late'. I discuss that issue below.

14. Turning to the submissions lodged more than a day or two after the deadline:
- (a) Mr Giddens advises on behalf of R Buckham that the submitter misunderstood the Council's letter advising that their property was affected by the wahi tupuna overlay because that letter was addressed to a different property, and only belatedly learned that this was not the case. Mr Giddens suggests that no party would be prejudiced by its acceptance, noting that submissions have not been summarised;
  - (b) Mr Giddens also advises on behalf of New Zermott Properties Ltd that the submitter had only recently returned from overseas and was unaware of the process until then. Again, he points to lack of prejudice to any party and the fact that submissions have not been summarised and notified.
  - (c) Ms Roberts has applied for a waiver on behalf of LC Hasselman on the basis that his interest in Stage 3 was wider than that of the general public and given it was only lodged 7 working days after the deadline and the Council had not prepared its summary of submissions, there will be no prejudice to any third party;
  - (d) Mr Edgar notes on behalf of Aspiring Helicopters and Cattle Flat Station that the submission raises similar matters to those of West Wanaka Station (#3227) and Minaret Station (#3208). I note that Mr Edgar prepared those submissions on behalf of those parties also.
  - (e) Mr Gardiner- Hopkins submits on behalf of Cardrona Village Limited that to the extent that his client's submission on Stage 3B incorporated matters relevant to the first tranche of provisions that were notified, there could be no prejudice to third parties if they are included in the summary of submissions yet to be notified. I address Mr Gardiner-Hopkins' separate submission that those parts of the submission were not in fact late below.
  - (f) The submission of Upper Clutha Maternity Trust, which was the last submission received, is the subject of formal application by Morgan Weathington. The application notes that the Trust only became aware after submissions closed that 101 Ballantyne Road might provide a suitable site for a purpose built maternity facility within Wanaka. The application addresses specifically the section 37A(1) considerations, suggesting that given the summary of submissions is yet to be released, there is unlikely to be any prejudice to any third party so long as it can be included within the summary.

15. I accept the points made in each case. Although the Willett submission is not the subject of specific application (as above, it does not need to be) the same considerations apply to it.
16. In summary, with the summary of submissions yet to be prepared, and all submissions readily able to be included within the summary, so long as that occurs, there can be no prejudice to any third party or delay to the First Schedule process. The interests of the community in achieving adequate assessment of the effects of the PDP are therefore the dominant consideration and on that basis, I waive the lateness of each of the listed submissions as above.
17. There was only one late submission on Stage 3B, that of Nicola Roth-Biester (#31044). This was initially filed one day after the hearing deadline, with the statutory information required being supplied a further day later. This is a minor delay and for the reasons set out above, I waive the lateness of the submission.
18. Although arguably academic, I should address briefly Mr Gardiner-Hopkins' contention that the submission of Cardrona Village Limited was not "*late*". As the name of the submitter suggests, the submission relates to a site on the margins of the settlement of Cardrona, which is proposed to be zoned Rural in part and Rural Visitor in part, largely in substitution for the operative Rural Visitor Zone. As the submission details, the land title position is complicated because the Cardrona River, which bisects the site, has shifted east and the submitter is in the process of regularising the position with the Crown through multiple land swaps. Mr Gardiner-Hopkins submission is that the Cardrona area was specifically excluded from Stage 3, and there was accordingly no need or reasonable expectation on Cardrona Village to submit on Stage 3.
19. Any lateness of the Cardrona Village submission relates only to the elements of the submission seeking amendments to the wahi tupuna provisions of Chapter 39, insofar as they apply to the site. I am unclear why Chapter 39 does not apply to land that at the point of notification, was the subject of an operative zone in the plan progressively being overtaken by the PDP. I note, for instance, that areas identified as wahi tupuna clearly cover land within the Operative Hydro Generation Zone. Certainly, I would not conclude that the contrary is the case without hearing argument on the point.
20. In addition, as a result of the property transactions currently being negotiated as between the Crown and the submitter, as I read the plan supplied by the submitter, not all of the land the subject of submission was within the operative Rural Visitor Zone. The former esplanade strips and riverbed proposed to be transferred to the submitter

by the Crown appear to have been zoned Rural. If this is correct, to that extent the land was clearly caught by Chapter 39, so even if Mr Gardiner-Hopkins principal point is correct, that land would appear to be an exception.

21. Fortunately, perhaps, these issues are academic as a result of the waiver I have granted as above. I note, however, that as regards the former esplanade strips and riverbed, it would be of assistance if Mr Gardiner-Hopkins could consider and address in his legal submissions for the submitter whether the separate submission it makes regarding the ONL classification of the land in question is “on” the Plan Change.

### **Conclusion**

22. I grant a general waiver for submitters who supplied statutory information required by the relevant regulations after the respective filing deadlines and prior to the date of this Minute.
23. I grant a waiver to the submitters specifically noted above in respect of their submissions being lodged with Council after the relevant filing deadline.

**9 January 2020**



**Trevor Robinson**

**Chair**

**Stage 3 PDP Hearing Panel**