

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes
Proposed District Plan

AND

IN THE MATTER a Request to Strike-out
Submission #789

DECISION OF COMMISSIONER DENIS NUGENT

Introduction

1. On 3 March 2017 the Council received an application filed by counsel for the Jack's Point group of submitters¹ requesting that Submission No. 789 lodged by Vivo Capital Limited be struck out under s.41C of the Act.
2. On 6 March 2017 I issued a Minute offering Vivo Capital Ltd the opportunity to lodge submissions in respect of this application, and set a timetable for receipt of any such submissions and reply from the Jack's Point group. As it transpires, no submissions were lodged by Vivo Capital Ltd.
3. I have been delegated the Council's powers under s.39B of the Act to make procedural decisions in relation to hearing submissions on the proposed District Plan ("PDP"). Section 41C(7) provides that a submission may be struck out if it is considered:
 - (a) *that the whole submission, or the part, is frivolous or vexatious; or*
 - (b) *that the whole submission, or the part, discloses no reasonable or relevant case; or*
 - (c) *that it would otherwise be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.*
4. Jack's Point group relies on clauses (b) and (c) of s.41C(7) to support its request and counsel has set out reasons in respect of each ground.

¹ Jack's Point Residential No.2 Ltd, Jack's Point Village Holdings Ltd, Jack's Point Developments Ltd, Jack's Point Land Ltd, Jack's Point Land No. 2 Ltd, Jack's Point Management Ltd, Henley Downs Land Holdings Ltd, Henley Downs Farm Holdings Ltd, Coneburn Preserve Holdings Ltd, Willow Pond Farm Ltd (Submitter No's #762, #856 and #1275)

(b) No Reasonable Case Disclosed

5. Under this ground, counsel submits that the failure of Vivo capital Ltd to appear at the hearing means that there is no further particularity of the Submission presented to enable the Hearing Panel or other submitters to interpret the relief sought, and that there was no reasonable or relevant case put forward in the Submission to enable meaningful public engagement with the relief sought.
6. Submission #789 seeks that specified land within the Jack's Point Structure Plan area, outside of the area identified as being an outstanding natural landscape, be zoned for residential purposes, with provision also made for a village centre. The reasons contained in the submission include:
 - a) The area at issue is contained within the Urban Growth Boundaries as notified in the PDP;
 - b) The size of the property (some 65 ha) is insufficient to form an economic farming unit;
 - c) The distribution of village centres within the Jack's Point Structure Plan is insufficient to stimulate the development of a walkable community;
 - d) Views of development from State Highway 6 within the site can be mitigated;
 - e) The addition of the northern village centre would increase amenity provision and accessibility for residents and support the suburban residential development on the remaining Henley Downs land.
7. The relief sought by the submission was (in summary):
 - a) The replacement of the Highway Landscape Protection Area over the specified land with Village Woolshed Road and Residential Woolshed Road;
 - b) The identification of structure plan elements for this area;
 - c) The incorporation of an appropriate Outline Development Plan, policies, rules and guidelines for the site be incorporated into the Jacks Point Zone; and
 - d) Such other additional or consequential relief that would give effect to the submission.
8. On the face of it, I cannot say that no reasonable or relevant case has been disclosed. The land in question has been identified by the Council as being

appropriate for urban development of some form by including it within the Urban Growth Boundaries. The submission outlines how and why this land could be zoned consistent with that identification. The fact that the submission does not detail the policies, rules or other plan provisions that could apply cannot be fatal. If it were, many submissions to the PDP would have to be classed as disclosing no reasonable or relevant case.

9. It is difficult to understand the Jack's Point group's submission on this point, given that in its further submission opposing² Submission #789, it stated:

The expansion of the JPZ and increased scale of development is opposed as it will reduce open space, detract from landscape values and put increased pressure on infrastructure.

10. This statement suggests a clear understanding by Jack's Point group of the implications of the submission, enabling it to engage in opposing the relief sought.
11. In addition, in the s.42A Report, prepared by the Council and presented to the Hearing Panel when hearing submissions on the Jacks Point Zone, paragraphs 13.28 to 13.35 inclusive specifically address this submission. I note that the Council's landscape architect considered the implications of the relief sought and supported it, at least in part. The Council planner's conclusion that the relief should not be granted was based on the lack of a full s.32 analysis of the proposal in terms of servicing, traffic and landscape effects, not that there was no reasonable case disclosed.
12. I am satisfied that Submission #789 disclosed a reasonable and relevant case such that other submitters and the Council were able to respond to it by way of further submissions and/or evidence.

(c) Abuse of Process

13. Counsel for the Jack's Point group submits that the failure of Vivo Capital Ltd to appear at the hearing means that allowing the relief sought in Submission #789 to remain live would be an abuse of process. I understand the thrust of counsel's submissions to be that as the Jack's Point group (and others) have taken the opportunity to appear at the hearings and adduce evidence, those submitters would be disadvantaged if Vivo Capital Ltd were to lodge an appeal on any Council decision on Submission #789.
14. Taken at face value, counsel's submission suggests that in any circumstance where a submitter on the PDP fails to appear at the hearing, it would be an abuse

² Further Submission 1275

of process to allow that submission to remain live. I do not accept that failure to appear at a hearing amounts to an abuse of process.

15. Clause 10 of the First Schedule to the Act contemplates that local authorities will make decisions on submissions where the submitter has not been heard. Clause 14 also contemplates that any person who made a submission on a proposed plan may lodge an appeal to the Environment Court in relation to their submission, whether or not they appeared at a hearing.
16. The consequences of striking out a submission is that such submission ceases to exist. The Council would be unable to make a decision on it and the submitter would be deprived of any appeal rights. That is not consistent with the approach in Clauses 10 and 14.
17. I do not consider allowing Submission #789 to be taken further would be an abuse of process. On the contrary, the Act contemplates submissions such as this being dealt with through the full First Schedule process.

Conclusion

18. The request by the Jack's Point group that Submission #789 be struck out under s.41C of the Act is refused.

Dated 27 March 2017

A handwritten signature in blue ink, appearing to read 'Nugent', is written over a light blue circular stamp.

Denis Nugent

Hearing Panel Chair