

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 12-  
Upper Clutha Mapping

**MINUTE CONCERNING APPLICATION BY ALLENBY FARMS LIMITED FOR  
WAIVER OF LATE SUBMISSION OF EVIDENCE**

**Background**

1. Evidence in chief for submitters on Upper Clutha mapping matters was required to be lodged at or before noon on 4 April 2017 unless the subject of direction otherwise: refer our seventh and eighth procedural Minutes dated 25 January 2017 and 28 March 2017.
2. A number of parties who found themselves in difficulties meeting this deadline, for various reasons, were granted waivers on terms that enabled any prejudice to third parties to be addressed. In the Minutes granting those applications, we noted on a number of occasions the early advice that had been given to all parties regarding the likely timeframes for this hearing, in order that it might run smoothly and efficiently.
3. Allenby Farms Limited has previously advised of its intention to take a significant role at the forthcoming Upper Clutha Mapping Hearing, having requested a full day's hearing time for hearing of its submissions and evidence.
4. Allenby Farms Limited did not apply for waiver of late submission of its evidence in chief prior to the deadline. The first indication that there might be an issue with meeting the directions of the Hearing Panel was via an email from Allenby Farms counsel at 10:56am on 4 April stating that due to conflicting commitments of its experts it was likely that it would

not meet the noon deadline. That email stated that the submitter hoped to be in a position to upload the evidence by the end of that day (i.e. 4 April).

5. In the event, Allenby Farms evidence (four briefs of evidence in a range of expert disciplines, together with a brief from its Managing Director and explanatory legal submissions) has been lodged a little after 11am on 6 April, that is to say nearly two full days after the deadline.
6. We required the submitter to lodge a formal application for waiver of its late submission of evidence. That application explains that the problem arose due to Allenby Farms planning witness (Mr White) having 9 briefs of evidence for different submitters to complete within the deadline we had fixed and being unable to complete all of them within the required time.
7. Counsel's memorandum notes that the balance of Allenby Farms' evidence was held back on the basis of advice from the Hearing Administrator that if any evidence was unable to be completed within time, it was preferable that all evidence be submitted at the same time, rather than in stages as available.
8. Lastly, Counsel advises that Allenby Farms would have no objection if the Council's rebuttal evidence was similarly two days late.
9. Given that the sole further submitter on the Allenby Farms submission has not given notice of his intention to appear at the hearing, we sought input only from the Council on Allenby Farms application. Council does not oppose the application.
10. At one level, the problem faced by the submitter is understandable. We appreciate that where individual experts are acting for multiple parties at the hearing, meeting the hearing directions is a challenge. In this case, Mr White's evidence is a substantial brief providing a full planning analysis of the issues raised by the Allenby Farms submission.
11. We have not as yet had the opportunity to review Mr White's evidence in any detail, but even a cursory study of Mr White's executive summary indicates that his evidence is likely to be helpful to the Hearing Panel's consideration of Allenby Farm's application, particularly given that the relief sought has changed. Given the length of time Mr White has taken to complete his brief of evidence, however, it is unfortunate that the submitter apparently held the balance of the evidence pending Mr White's evidence becoming available. We note in this regard that the Hearing Administrator's advice that it was preferable that all evidence be lodged together was in relation to an inquiry on behalf of

another of counsel's clients, and against the background of advice from counsel that the entire package of evidence would be able to be filed by close of business on 4 April.

12. The Hearing Administrator advised the Chair that she had provided that advice and we had no difficulty with it in the context within which it was supplied. We would have thought though that, at the very least, when it was apparent that Mr White's evidence would not be available by close of 4 April, further inquiry might have been merited.
13. Counsel for Allenby Farms identifies (correctly in our view), the Council itself as being the only party potentially prejudiced by late submission of Allenby Farm's evidence. Allenby Farms indicates a readiness to accept a correspondingly late submission of the Council's rebuttal evidence. Counsel's memorandum references our 25 January direction (that rebuttal evidence, including that of the Council, be lodged by 28 April).
14. We have addressed the problems the Council will face in providing rebuttal evidence on the substantial volume of submitters' evidence that has been filed within the time available in an earlier minute. Our directions have already provided the Council with additional time for that purpose that means that it will likely be submitted the last business day before our site visits commence (that is, by 5 May). We have previously noted the desirability of our having the Council's rebuttal evidence before we undertake site visits in order that we better understand the issues in contention. The advice we have from Council is that it does not expect to need additional time, but understandably reserves its position in case that confidence is not borne out.
15. Perhaps fortunately, we have not yet finalised the itinerary for our site visits and so it is possible to defer our visit to Allenby Farms until the middle of the week commencing 8 April, thereby allowing the Council further time to prepare rebuttal evidence on the Allenby Farms' evidence, should that be necessary.
16. We will not, however, extend the Council's time to prepare rebuttal evidence at this point in case other issues arise in the interim that we need to address. We merely note that we would be receptive to such an application if it is required, given the late filing of Allenby Farms' evidence.
17. On the substantive point, while a two-day delay in filing evidence is unsatisfactory given the extent of prior warning of the timeframes, particularly when it appears that the bulk of that evidence was in fact ready to be filed, but was only awaiting completion of the planning evidence, refusing a waiver would have a disproportionately adverse effect on the submitter in this case. While, as discussed, the Council will be prejudiced by late

submission of Allenby Farm's evidence, the Council has a substantial window within which to prepare its rebuttal evidence that it believes will be sufficient and, as above, we will be receptive to accommodating the Council should that not be the case. We therefore find that that prejudice is able to be managed.

18. Accordingly, we will grant Allenby Farm's application.

**Directions**

19. Late submission of the evidence in chief for Allenby Farms Limited (Submitter 502/Further Submitter 1254) is hereby waived and the evidence of L Cleugh, S Galloway, K Lloyd, P Baxter and D White accepted for consideration at the forthcoming hearing.

**For the Upper Clutha Mapping Hearing Panel**

A handwritten signature in blue ink, appearing to read 'T. Robinson', with a large, stylized flourish extending upwards and to the right.

**Trevor Robinson (Chair)**

**6 April 2017**