

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 GLENDHU BAY TRUSTEES
LIMITED SEEKING CAUCUSING OF EXPERT WITNESSES

1. On 23 May 2017, counsel for Glendhu Bay Trustees Limited (“GBT”) sought directions that the witnesses giving evidence on planning, traffic and landscape matters in relation to GBT’s submission seeking rezoning of an extensive area of land at Parkins Bay and Glendhu Bay caucus in order to clarify the reasons for any points of difference and to narrow points of difference where possible.
2. The background to this application is that GBT has lodged an extensive suite of evidence supporting its rezoning application with witnesses across a range of expert disciplines, as well as lay evidence from Mr John McRae. Although the GBT submission contained full details of the relief sought, including the zone provisions for the new zone sought, the evidence lodged represented both support for the submission as originally framed, and a substantial refinement/amendment of aspects of the relief. Those amendments meant that some of the evidence already filed by Council as part of its Section 42A Reports and indeed that filed contemporaneously by further submitters on GBT’s submission was misdirected.
3. Accordingly, as part of the Council’s rebuttal evidence, the Council witnesses undertook a further evaluation on the revised GBT proposal and provided commentary on it.

4. The planning evidence for GBT from Mr Ferguson attached a revised draft set of provisions for the new zone sought and Mr Barr, for Council, provided a commentary on those provisions with his rebuttal evidence.
5. GBT now seeks directions that landscape, traffic and planning witnesses on the matter caucus. Counsel's memorandum advises that notwithstanding the amount of work that evidently went into GBT's evidence suite, the relevant witnesses are further refining their position in response to the Council's rebuttal evidence, and to the verbal evidence of Council witnesses when they appeared before us. Counsel advise further that the most pivotal amendments proposed will be addressed by Mr Ferguson, including in the form of marked up changes to the Proposed Zone provisions.
6. As foreshadowed in the Hearing Panel's First Procedural Minute, caucusing between expert witnesses to narrow points of difference is generally desirable.
7. In this case, we think that caucusing of landscape and traffic witnesses would not particularly assist us. The points of difference are already quite well defined through the exchange of evidence and we think these matters are best teased out by the relevant GBT witnesses appearing and presenting their evidence to us in the normal way.
8. The planning evidence is in a different category. Mr Ferguson has prepared a some 19 pages of zone provisions that Mr Barr has reservations about. Our initial reaction, having read the pre-lodged evidence was that caucusing the planning witnesses would be of assistance. Among other things, it would be highly inefficient if we had to devote considerable hearing time to a line by line discussion of Mr Ferguson's draft planning provisions with him. Mr Barr's response when we inquired of his readiness to participate in a witness caucus when he appeared was that he was prepared to do so but it would necessarily have to on the basis that his involvement would be without prejudice to the Council's substantive objection to aspects of the GBT proposal where it is proposed to expand the nature and range of activities and to alter the constraints on those activities from which was previously the subject of a resource consent.
9. While we remain of the view that caucusing of the planning witnesses would likely be of assistance to us, GBT's application presents two immediate practical difficulties. The first is that GBT is scheduled to appear at the hearing on 8 June (apart from two witnesses who have been scheduled earlier to accommodate their unavailability on that day). We are sitting virtually continuously until then and Mr Barr is the sole Council representative attending the hearing, counsel for the Council having retired following completion of the

presentation of the Council's case. Obviously, Mr Barr needs to follow the evidence of submitters in order to be in a position to draft the Council's reply. There is therefore no practical opportunity for him to participate in witness conferencing with Mr Ferguson before 8 June (unless they were to devote the previous weekend to the task, which we would regard as an unreasonable imposition on Mr Barr given the level of commitment he is already making to the hearing process).

10. There is a second practical problem in that the advice from counsel for GBT is that the planning provisions Mr Barr and Mr Ferguson would caucus about are still moving. The implication of Counsel's memorandum is that the amendments may be numerous and substantive. For caucusing to be of any value, the Plan provisions have to stop moving and Mr Barr has to have the opportunity to review them. Again, given Mr Barr's participation in the hearing, we do not think it is practical to direct him to devote the amount of time that would be required to understand the effect of the changes Mr Ferguson is proposing so as to be in a position to conference before 8 June.
11. We also note that when we enquired of the Council what its position was on the GBT application, counsel for the Council advised that it was not prepared to consent to Mr Barr caucusing on provisions relating to the expanded zone area now sought by GBT (compared to the previously granted resource consents) that is to say on a "without prejudice" basis as initially suggested by Mr Barr.
12. Last but not least, counsel for GBT did not address the position of other parties. Mr John May is a further submitter on GBT's submission and has lodged planning evidence of his own (from Mr Graham Taylor). If there is to be a caucus of planning witnesses, Mr Taylor has to have the opportunity of being involved.
13. In summary, we do not think it is practical to direct that the relevant planning witnesses caucus, at least until after conclusion of the hearing (currently programmed for 14 June).
14. We will keep the matter under review and discuss it with counsel for GBT when they appear on 8 June. We think we will be in a better position to reflect on the appropriate way forward after we have heard from Mr Ferguson in any event.
15. We note that if the witnesses for GBT are materially changing aspects of their evidence in the light of the Council's rebuttal evidence, we will have to have details of those changes in hand in order that we might review them well before 8 June (or in the case of Dr Roper-Lindsay, well before 1 June, when she appears).

16. We would therefore encourage (but not direct) GBT to lodge summaries of the evidence its witnesses will present somewhat earlier than might otherwise be the case.

For the Upper Clutha Mapping Hearing Panel

A handwritten signature in blue ink, consisting of a large, stylized initial 'T' followed by a series of connected, wavy lines that form the rest of the name.

Trevor Robinson (Chair)

25 May 2017