

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 Submissions 532 and
535 lodged on Stage 1

**DECISION ON APPLICATION FOR WAIVER OF TIME
TO AMEND SUBMISSIONS**

Introduction

1. I have received an application from GW Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain (Submission 535) and Bill and Jan Walker Family Trust (Submission 532) seeking a waiver of time to amend parts of the respective submissions.
2. I have been delegated the Council's powers under s.34A of the Act in relation to procedural matters in relation to Stage 1 hearings, including the Council's powers under s.37 to waive or extend time limits in respect of the lodgement of submissions and further submissions and to deal with omissions and inaccuracies in submissions and further submissions.
3. The submission has been lodged in relation to Stage 2 of the PDP. However, within the submission, the submitters seek to amend and add to the submissions they lodged on Stage 1 of the PDP. This decision relates solely to those parts seeking to amend or enlarge the Stage 1 submissions (Submissions 532 And 535).
4. As lodged, both Submission 532 and 535 were wide ranging with relief sought in various chapters. However, in each case, the submissions also sought that land on Ladies Mile (on opposite sides of SH6) be rezoned from Rural to Rural Lifestyle. In addition, each sought alteration to Chapters 22 and 27 to alter the density and minimum site size provisions of the Rural Lifestyle Zone. Finally, each also sought the inclusion of a setback rule in the Rural Lifestyle Zone to apply along Ladies Mile.

5. When Stage 2 was notified, a new zone, the Wakatipu Basin Zone, including the Wakatipu Basin Lifestyle Precinct, was applied to much of the land within the Wakatipu Basin, including the eastern part of the land sought to be rezoned by Submission 535. However, the remainder of the land which these two submissions sought to have rezoned was unaffected by Stage 2 and associated variations.
6. As a consequence of the notified variations, parts of the two submissions have, through the operation of Clause 16B of the First Schedule of the Act, been transferred to become submissions on the variations. In addition, those parts of the submissions relating to the new zoning, including the area specific provisions proposed, are yet to be heard. I understand the transferred parts of the submissions and those relating to the zoning will be held at the same hearing later this year.
7. In summary, the amendments sought to the Stage 1 submissions are as follows:

Amendment Number	Amendment sought to	Hearings situation
1	Amend the zoning sought for the submitters' land to Wakatipu Basin Lifestyle Precinct	Awaiting hearing
2	Amend Rule 27.5.1	Transferred to Stage 2 hearing
3	Insert building set back	Transferred to Stage 2
4	Insert new policy in Chapter 3	Submissions on chapter heard
5	Amend Objective 3.2.5.5 (reply version)	Submissions on chapter heard
6	Amend Policies 6.3.1.5 and 6.3.2 (reply versions)	Submissions on chapter heard
7	Insert new policy in Chapter 6	Submissions on chapter heard
8	Amend Assessment Matter 21.7.2.3 (reply version)	Submissions on chapter heard

Powers in Relation to Waiving and Extending Time Limits

8. Section 37 provides that the Council may waive time limits, subject to the requirements of s.37A. Section 37A requires that I take into account:
- The interests of any person who, in my opinion, may be directly affected by the extension or waiver;
 - 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

9. 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.
10. 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
11. Based on that guidance, I need to consider the interests of the submitters 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.
12. The question of whether a waiver should be granted is purely a procedural one. This extends to the question of "undue prejudice" under s.281³, and, I conclude, it would similarly extend to the "interests" question under s.37A(1)(a). In other words, in the present case the question is whether anyone would be prejudiced by the lateness of the amendment, not by the substance of the amendments sought.

Scope for Amendments to Relief Sought

13. It is always permissible for a submitter to narrow their relief. However, it is not open to a submitter to materially change or enlarge their relief, because of the potential prejudice to persons who may have opposed the change or enlargement⁴.
14. The key issue is fairness. I note that in *Motor Machinists*, the High Court recognised the possibility that procedural unfairness could be cured by notification, stating that there was less risk of offending this principle "if the

¹ A46/08

² Quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZEnvC 60
³ *Orr v Tauranga District Council*, A149/97 (EC)

⁴ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, at paragraph 82

submitter takes the initiative and ensures the direct notification of those directly affected by further changes submitted"⁵.

Amendments Sought to Chapters Already Heard

15. The first issue raised by the application is the request to amend the submissions in relation to chapters where the submissions have already been heard (Items 4 - 8 inclusive in my table above).
16. Submissions on Chapters 3 and 6 were heard in March 2016⁶ and submissions on Chapter 212 were heard in May 2016⁷. That included the relevant submission points from Submissions 532 and 535. Procedural fairness requires that if the amended submissions are to be considered, the amendments must be notified in a summary of submissions. Natural justice requires that if the amended submissions are to be considered, the hearing must be reopened.
17. Such a course of action would affect the interests of all other submitters from Hearing Streams 1B and 2 by forcing them to repeat processes they have already completed. It would also affect the interests of the community at large by delaying the Council's decisions on the relevant chapters.
18. As it is, the recommendation reports on Hearing Stream 1B and 2 are complete and will be filed with the Council this month. Delaying these reports would inevitably involve delaying recommendation reports on the remainder of the Stage 1 provisions.
19. The factors listed in the application as justification for the late amendments relate to changed circumstances in Ladies Mile and the promulgation of Stage 2. In my view, those do not comprise sufficient justification to re-open hearings concluded almost 2 years ago on a subject matter that affected the entire district.
20. I conclude that to grant a waiver in those circumstances would be contrary to interests of the community at large and would adversely affect the interests of other submitters on Stage 1 of the District Plan.
21. I refuse to grant a waiver of time for items 4 – 8 inclusive in the table above for those reasons.

⁵ At paragraph [83]
⁶ Hearing Stream 1B
⁷ Hearing Stream 2

Amending Submissions Transferred to Stage 2 Hearings

22. With respect to items 2 and 3 in the table above, the submitters are effectively seeking to enlarge the relief sought by reducing the minimum lot size on their sites and reducing the setback distance from SH6. However, in this instance prejudice to other persons can be avoided as those parts of the submissions can be notified for further submissions concurrently with notification of the summary of submissions on Stage 2.
23. No delay would arise, and it is reasonable to allow the submitters to change their respective positions given the changes at Ladies Mile, as outlined in the application, and the notification of the Wakatipu Basin Zone.
24. Thus, I grant the waiver of time for the amendments listed as 2 and 3 in the table above, subject to the Council publicly notifying a summary of those amendments under Clause 7 of the First Schedule to the Act.

Amending Zoning Sought

25. The zoning of the land on Ladies Mile subject to Submissions 532 and 535 remains open for consideration as rezoning was sought in Stage 1 and those submissions are yet to be heard. As I noted in minutes issued in relation to the Stream 13 hearings⁸, it is open to a submitter to seek any zoning they wish for their land when the land is subject to a review.
26. In this instance, the submitters are seeking a waiver of time to replace the zoning initially sought (Rural Lifestyle) with a zone which did not exist when the PDP was first notified, but which has since been proposed to apply extensively in the Wakatipu Basin. In terms of the hearing process, no delay would occur if I granted the waiver.
27. It is unclear whether any other person would be prejudiced by the grant of a waiver. However, again, that can be overcome by requiring that the amended submission be notified for further submissions in parallel with the notification of the summary of the Stage 2 submissions.

Conclusion

28. Pursuant to sections 37 and 37A of the Act I grant the application by GW Stalker Family Trust, Mike Henry, Mark Tylden, Wayne French, Dave Finlin, Sam Strain (Submission 535) and Bill and Jan Walker Family Trust (Submission 532),

⁸ See the Minutes dated 29 May 2017 and 8 June 2017 concerning submitters seeking the application of the ODP Rural Visitor Zone to their properties.

for a waiver of time to amend portions of the respective submissions, in part, for the reasons set out above. With reference to the table in paragraph 7 above, I grant the waiver in respect of items 1, 2 and 3, and refuse the waiver in respect of the remaining items (items 4 to 8 inclusive).

29. I direct that the submissions be notified in accordance with clause 7 of the First Schedule of the Act concurrently with such notification of the submissions on Stage 2 of the District Plan.
30. To minimise the confusion that may arise from the notification of these amended submissions concurrently with the submissions on Stage 2, I direct that the notice specify that these amendments are additional to any submissions on Stage 2 and persons may lodge submissions on these as if they were new submissions. I also direct that those portions of the submission for which waiver has not been granted (items 4 to 8 in the table in paragraph 7 above) be deleted from the submission held on record by the Council, or redacted in some form, so as to make it clear that those portions are not part of the amendments being notified.



Denis Nugent
Hearing Panel Chair
13 March 2018