

Memorandum

Date 13 June 2018
To Hearing Commissioners, Proposed District Plan Review
From Warwick Goldsmith
Subject Submission 2388 by Waterfall Park Developments Limited

1. This Memo is lodged on behalf of Submitter 2388 Waterfall Park Developments Limited (WPDL). The purpose of this Memo is to assist the Commissioners in relation to a somewhat complicated issue, and to minimise potentially unnecessary reading of evidence. For the reasons detailed below, Counsel recommends that the Commissioners not read any evidence lodged on behalf of WPDL until Counsel has filed a further Memo next week as signalled below.
2. The issue relates to a recent consent RM171280 issued in respect of a proposed road access from the Arrowtown-Lake Hayes Road to the Waterfall Park Zone (WPZ). The road approved under that consent is illustrated on the plan attached to this Memo.
3. The WPZ was created in the late 1970's or early 1980's. Virtually ever since its creation it has been 'landlocked' because the only legal road access was practically unable to be built. For the past 40 odd years there has been no legal, practical vehicle access into the WPZ.
4. Recently WPDL purchased Ayrburn Farm, and shortly after that WPDL purchased the land containing all of the WPZ. The combination of those two landholdings enables legal and practical vehicle access to be created from the Arrowtown-Lake-Hayes Road to the WPZ through land owned by WPDL.
5. RM171280 grants consent for road access necessary to enable development of the WPZ as zoned, but the appeal period in respect of that decision is still running and does not expire until Tuesday 19 June 2018. If RM171280 is not appealed, that road will be deemed to be part of the existing environment (evidence was given at the RM171280 hearing that, if consent were to be granted and not appealed, or appealed and the appeal is unsuccessful, that road will be built as soon as the consent is operative). However if an appeal is lodged, the consent will not become operative, and that road cannot be deemed to be part of the existing environment.

6. Because of the above situation, the evidence prepared and lodged for WPDL has had to assume that an appeal will be lodged, that the road will not be part of the existing environment, and that creation of legal and practical road access into the WPZ is a significant consideration when determining the appropriate zoning to be applied to Ayrburn Farm. Accordingly virtually all of the evidence which was presented at the RM171280 hearing has been included as part of the evidence lodged for WPDL in respect of the rezoning of Ayrburn Farm. As a consequence, the evidence lodged is extensive.
7. In the event that no appeal is lodged against consent RM171280, and the road can therefore be deemed to be part of the existing environment, there will be two consequences for the hearing of Submission 2388:
 - a. A significant part of the evidence lodged will not have to be read by the Commissioners;
 - b. Some benefits referred to the evidence, which would be consequential upon a rezoning of Ayrburn Farm for residential purposes, will not be relevant because they will be deemed to have already occurred (specifically public access to and along Mill Creek from the Arrowtown-Lake Hayes Road, riparian planting along Mill Creek and the exclusion of stock from Mill Creek, and the creation of roading access necessary to enable development of the WPZ as zoned).
8. Following expiry of the RM171280 appeal period, Counsel will lodge a further Memo to update the Commission. If no appeal is lodged, and if the RM171280 consent has become operative, Counsel will identify those parts of the evidence which has been lodged that do not need to be read by the Commissioners. It follows that, if an appeal is lodged, all of the evidence lodged will be relevant to the hearing of Submission 2388.



Warwick Goldsmith
Barrister

