

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes
Proposed District Plan

DECISION ON LATE SUBMISSIONS

Introduction

The Council has received 4 submissions on Stage 2 of the Proposed District Plan after the end of the submission period on 23 February 2018. In each case these submissions are replacements for submissions lodged in time.

I have been delegated the Council's power to waive the time for submissions on the proposed District Plan under s.37 of the Act.

The relevant submissions and the date they were received, are as follows:

Submission Number	Submitter	Date Received
2313	Hogans Gully Farm Limited	26 February 2018
2388	Waterfall Park Developments Limited	16 March 2018
2448	Millenium & Copthorne Hotels NZ Limited	26 February 2018
2489	Ladies Mile Consortium	25 February 2018

Powers in Relation to Waiving and Extending Time Limits

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:

- a) The interests of any person who, in my opinion, may be directly affected by the extension or waiver;
- b) 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

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.

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

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.

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, the question is whether anyone would be prejudiced by the lateness of the submission, not by the substance of the relief sought in the submissions.

Discussion

The Council has yet to notify the summary of submissions under clause 7 of the First Schedule to the Act. Any waiver granted now which enabled these submissions to be included in that summary would ensure that there was no prejudice to the interests of other participants in the Stage 2 process. I understand the submissions have been summarised and can be notified with other submissions received.

Even if a summary of these submissions was notified separately, the Stage 2 process is at such a stage that no delays to the process would ensue, and other participants would not be prejudiced.

The interests of these submitters would be better served by granting the waiver and the interests of the community would be better served by enabling a fuller assessment of the Stage 2 provisions by allowing these submissions to be heard.

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)

I note that Submission 2489 included two amendments: an amendment to the reference to the submission number at Stage 1, and an amendment to the map attached as Appendix 3. I have previously granted a waiver allowing amendments to the Stage 1 submissions, including the the updated Appendix 3⁴. I doubt that a waiver is required in respect of the particular amendments to that submission as the amendments do not affect the parts of the submission directed to Stage 2. Notwithstanding those doubts I will grant the waiver to minimise the prospect of some future procedural difficulty for the submitters involved.

Decision

For those reasons, under s.37 of the Act I waive the time for lodgement for Submissions 2313, 2388, 2448 and 2489 as listed in paragraph 3 above. I note that, as a consequence, those submissions should not be described as “late”, nor marked as “late”.

4 April 2018



Denis Nugent
Hearing Panel Chair

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See Decision dated 13 March 2018