

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Stage 3 of the
Queenstown Lakes
Proposed District Plan

MINUTE 30 – MALAGHANS INVESTMENTS LIMITED EVIDENCE

Introduction

1. With his pre-circulated legal submissions for Malaghans Investments Limited (Submitter #31022), Mr Gardner-Hopkins tabled a brief of evidence from Mr Giddens, in his capacity as owner of the site, which included as attachments a geotechnical report addressing relevant natural hazard issues and a letter from a traffic engineer, addressing vehicle access issues to the site.
2. Mr Gardner-Hopkins applied for leave on the basis that Mr Giddens' evidence was marginally longer than the two pages I had previously directed would be accepted, (it was 4 pages in length) and the technical appendices were in the category of material responding to matters raised in the course of the hearing process. Mr Gardner-Hopkins suggested that the Council would have the opportunity to address matters raised in the latter in reply, removing any prejudice. He also suggested that the application was made in good time, the week before the submitter was due to be heard.
3. I asked the Hearing Administrator to refer Mr Gardner-Hopkins application and the attached evidence to counsel for the Council for comment before the submitter was heard on 29 July. The response from Ms Scott was that the Council did not oppose the receipt of the lay brief of Mr Giddens on the basis that it is indeed lay evidence rather than planning evidence (Mr Giddens is a qualified planner who is giving expert evidence for other parties). As regards the attached technical comment. Ms Scott's advice was that the Council did not oppose its receipt on the basis that it cannot constitute expert evidence for the purposes of the hearing. She observed that the weight that could be given to that comment also reflected the fact that the authors of those reports were not attending the hearing to answer questions.

4. Mr Gardner-Hopkins advised when presenting his application that the authors of the two documents were in fact available to answer questions, as required.
5. I directed that Mr Giddens lay evidence would be received as such, including the technical appendices, and that the Panel would not take up Mr Gardner-Hopkins offer to ask the authors any questions. The purpose of this minute is to record my reasons for that direction.

Discussion

6. Although Mr Giddens is a qualified planner, his evidence for Malaghans Investments Ltd is not framed as planning evidence and, given that Mr Gardner-Hopkins disclaimed any reliance on it as such, it is appropriate to receive it. To the extent that it exceeded the pre-set length limit, the exceedance is modest and the evidence is helpful.
7. The attached technical appendices are in a different category. They are clearly framed as technical commentary addressing evidential matters relevant to the hearing. They should have been filed, as evidence, on or before 29 May (refer Minute 12) unless leave had been sought for some alternative arrangement that would have enabled a proper response by Council before the hearing commenced, and the Council opened its case.
8. In my view, it was somewhat disingenuous of Mr Gardner-Hopkins to suggest that his application was filed in good time. It was made less than two working days before the submitter was heard.
9. Mr Gardner-Hopkins suggested that the traffic 'evidence' was in a different category to the natural hazard report because the former was responding to matters that had arisen during the hearing. However, as I observed to him, the Skippers Road that provides the sole road access to the submitter's site is a strong candidate for the most notorious road in the country. I do not think it could have come as a surprise to the submitter that its suitability for access purposes was called into question. It was an issue the submitter could and should have anticipated in the expert evidence it circulated in accordance with my pre-hearing directions.
10. While I accept the suggestion that the authors of the two technical appendices might answer questions from the Panel sought to address a concern that Ms Scott had identified, in my view, if accepted it would just have exacerbated the position, because it would have converted technical commentary into expert evidence, heard at a time where the Council's response is limited to a written reply. This is

unsatisfactory because the Panel would be unable to discuss any aspect of same with the relevant Council experts.

11. In summary, for these reasons, I directed that Mr Giddens' lay evidence would be received, with attachments, as lay evidence, and that we would not hear from the authors of those attachments.

Dated 3 August 2020

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

**Trevor Robinson
Chair
Stage 3 Hearing Panel**