

**IN THE MATTER**

of the Resource  
Management Act 1991

**AND**

**IN THE MATTER**

of Stage 3 of the  
Queenstown Lakes  
Proposed District Plan

## **MINUTE 22 – WAIVER OF EVIDENCE DEADLINE (6)**

### **Introduction**

1. This Minute addresses another three evidence timeline issues.
2. In Minute 12, I directed that evidence in chief be filed by 1pm on 29 May, with rebuttal evidence to be filed by 1pm on 12 June. While those dates were varied for a number of submitters in subsequent minutes, that remained the position for evidence in relation to the Chapters 29, 36 and 38 – Open Space and Recreation Variations.
3. At 4:38pm on 12 June, the legal advisors for Queenstown Wharves (GP) Limited (“QWL”- #3319) filed a planning brief of evidence of Mr Williams. Upon receipt of same I asked the Hearing Administrator to point out to QWL’s legal advisors that Mr Williams evidence was more than two weeks late and that leave would be required before it would be accepted.
4. Late afternoon on 18 June, counsel for QWL filed an application for a waiver of the time limit in relation to filing of Mr Williams evidence. Mr Ashton’s memorandum advised that late filing of the evidence was due to an administrative oversight, identifying the rebuttal evidence date as the relevant date, rather than that for the evidence in chief. He submitted that no undue prejudice arose to the parties to the variation the subject of Mr Williams evidence, that the provisions the subject of evidence affected its interests in Queenstown Bay, and that the evidence is both relevant and considered to assist the Panel.
5. Mr Ashton also advised that counsel had circulated Mr Williams evidence to the parties to the variation, including the Council, enquiring whether they considered

any prejudice arose from its late filing, and had received no response. On that basis, counsel submitted that those other parties did not consider they would be unduly prejudiced and that it was unnecessary to provide any party with the opportunity to file reply evidence.

6. Counsel also drew my attention to the fact that Mr Williams evidence is relatively short and that only one other statement of evidence has been filed on the variation, meaning that the volume of material for the Council and the Panel to review prior to the hearing is relatively low.
7. Following hard on the heels of Mr Ashton's memorandum, Ms Scott for the Council advised that silence did not mean acceptance on the part of the Council, that the Council team had had to respond to numerous late evidence briefs, but that the Council had adopted the pragmatic approach of preparing rebuttal evidence to Mr Williams brief, which it would file on 19 June.
8. As already noted, other submitters were subject to different deadlines. In particular, in Minute 15 I directed that rebuttal evidence to the Evidence in Chief of Scope Resources Limited ("Scope") and Cardrona Cattle Company Limited ("CCCL") be filed on or before 1pm on 19 June. Cardrona Cattle Company Limited filed one brief of evidence (that of its planner Mr Giddens) within that timeframe, followed by a traffic brief of evidence (of Mr Edwards) to the evidence for Scope. The latter was filed at 3:35pm, accompanied by an Application for Waiver by Ms Steven QC. Ms Steven advised that preparation of CCCL's traffic evidence had been delayed, awaiting relevant traffic count information from the Council. In the event, the latter was not received, and evidence was finalised without it.
9. In another variation from the position QWL was in, I directed that submitters' evidence on Wāhi Tūpuna matters be filed on or before 1pm on 19 June. Late afternoon the following day, a brief of Mr Simpson's was filed for Kingston Lifestyle Properties Ltd, accompanied by an application by Mr Gardner-Hopkins for leave. Counsel noted that the substance of the evidence was a series of photographs that might have been produced at the hearing, and therefore late filing created no prejudice.

## **Discussion**

10. Addressing the easier matters first, the CCCL traffic rebuttal was only marginally late. Ms Steven has explained the reasons for the delay. I do not think that any

prejudice can arise, particularly since the primary evidence to which it relates will not be heard for several weeks. I grant a waiver accordingly.

11. Similarly, the Kingston Lifestyle Properties evidence was only marginally late. In addition, as Mr Gardner-Hopkins points out, the nature of the evidence means its late receipt cannot cause any party prejudice. I waive its late receipt accordingly.
12. The position is less clear for QWL. The evidence was filed very late. If, as advised, QWL's legal advisors had mistakenly identified the rebuttal deadline as the date they were working to, they did not even meet that (it was three and a half hours late for that deadline). Furthermore, while I accept that QWL and its legal advisors may have been mistaken, Mr Williams prepared expert evidence for two other submitters that was filed on the correct date. He was therefore presumably well aware of the timetabling requirements I had directed, even if QWL's counsel were not.
13. Further, I would have thought that having been apprised of their error, counsel for QWL might have moved with rather more urgency to apply for leave, in order that potential prejudice to other parties, including in particular the Council, might be addressed than appears to have been the case.
14. While, as Mr Ashton observes, there is very little evidence for the relevant Section 42A author (Ms Edgley) to consider, the same is not the case for counsel for the Council, who have had to manage the Council's evidential response to a very substantial volume of evidence, with a succession of briefs having been filed late, doubtless adding to their workload (and stress). I consider that Ms Scott's response in the circumstances to the suggestion that silence from counsel while they dealt with that workload meant that the Council was not prejudiced, and no provision needed to be made for its evidential response to be admirably restrained in the circumstances.
15. While I accept that Mr Williams evidence is relatively short and, given it addresses quite a complex planning position, likely to assist the Hearing Panel, I consider that QWL is exceedingly fortunate that the Council team took such a pragmatic and constructive view of the situation.
16. If the Council had taken the quite reasonable stance of awaiting a decision as to whether Mr Williams' evidence would be accepted, I would likely not have accepted the evidence due to the prejudice to it.

17. As it is, however, the Council having already filed its rebuttal (from Ms Edgley) the balance of convenience is clearly on accepting both Mr Williams' Evidence in Chief and Ms Edgley's rebuttal thereon.
18. I therefore waive the late receipt of Mr Williams' Evidence in Chief for QWL, and the consequential late receipt of the rebuttal evidence for Council in respect of that evidence in chief.

**Dated 22 June 2020**

A handwritten signature in blue ink, appearing to read 'TR', with a large vertical stroke extending downwards from the 'R'.

**Trevor Robinson  
Chair  
Stage 3 Hearing Panel**