

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Stage 3 of the
Queenstown Lakes
Proposed District Plan

**MINUTE 14 – DEFERRAL OF WAYFARE GROUP LIMITED
SUBMISSION RE WALTER PEAK RURAL VISITOR ZONE**

Introduction

1. I have received a Joint Memorandum of Counsel for the Council and for Wayfare Group Limited (“*Wayfare*”) seeking a direction that hearing of the latter’s submission¹ on zoning of land at Walter Peak be deferred for approximately 12 months.
2. Counsel’s Joint Memorandum discusses the nature of the submission. In summary, it seeks enlargement of the area the subject of the notified Rural Visitor Zone and either substitution of the Operative District Plan provisions as they relate to that area or substantial amendments to the provisions of the Rural Visitor Zone as it would relate to Walter Peak. I will discuss the ambit of the relief sought below, but it essentially seeks a new special zone applying to Walter Peak.
3. The Joint Memorandum notes the extent of the Wayfare’s interests at Walter Peak, which are well known to me and need no embellishment. It records that the submitter’s business more broadly has been significantly impacted by the Covid-19 pandemic, also something I have no difficulty accepting, and I strongly suspect Wayfare will not be alone among submitters in that regard.
4. The message I draw from counsel’s memorandum is that in these abnormal times, the submitter needs to focus on remaining afloat, in every sense.

¹ #31024

5. Counsel's Joint Memorandum emphasises also the standalone nature of Wayfare's submission. Counsel submit that this means it can be compartmentalised off without prejudice to the hearing and formulation of recommendations by the Hearing Panel on the Rural Visitor Zone, and indeed all of the other provisions forming part of Stage 3 of the 'Proposed District Plan'.
6. Lastly, Counsel emphasise that Wayfare's submission is the subject of only one further submission, that of Airbnb Australia Pty Limited (#31050), which supports the submission insofar as it seeks that residential visitor accommodation be permitted in the Rural Visitor Zone.

Discussion

7. The basis of the Joint Application before me is obvious. I do not need evidence to convince me of the significance of the measures that have been taken by Central Government to address the Covid-19 Pandemic to a business such as that of Wayfare.
8. I also accept that the nature of Wayfare's submission is such that properly pursuing it before the Hearing Panel will require significant resources at a time of significant stress for the company, including the input of a wide range of experts to formulate and justify the bespoke planning provisions the submission seeks. I infer that there is significant potential that the evidence of Wayfare will be less helpful than the Panel would wish as a result. It is relevant that the Walter Peak area is both significant from a tourist industry perspective and requires careful planning by reason of the outstanding natural landscape values that are present.
9. I note in passing that if hearing of the submission is deferred, as sought, the Hearing Panel will be likely be materially assisted by better definition of those outstanding natural landscape values through the process Mr Barr describes in his strategic evidence flowing from resolution of appeals to the Environment Court on Stage 1 of the 'Proposed District Plan' (assuming the relevant provisions survive further appeal).
10. The fact that Council supports deferral is also a relevant consideration.
11. As against the benefits of delay, I must weigh the general direction in Section 21 of the Act that functions, powers and duties under the Act should be undertaken "*as promptly as is reasonable in the circumstances*".

12. I also have to bear in mind the desirability of putting in place an efficient hearing process, and generally, acting in a way which best advances the purpose of the Act.
13. The history of previous stages of the 'Proposed District Plan' is one of significant interest by the community, evidenced by the number of appeals to the Environment Court. I have no reason to believe Stage 3 will be different in that regard. An efficient first instance hearing process means that the Environment Court will be seized of the matters the subject of Stage 3 sooner rather than later, advancing, in turn, the date on which the 'Proposed District Plan' will ultimately be made operative.
14. Lastly, I have to ensure that to the extent that there is any prejudice to any other party, that prejudice is properly addressed, and provisions put in place to minimise it. Counsel's contention that there is no prejudice to any other party from the deferral sought is based on the premise that Wayfare's submission seeks site-specific relief. I am not satisfied this is entirely correct.
15. While submission #31024 is principally directed at the planning regime for Walter Peak, the relief sought is not, as I read it, limited to Walter Peak. Clause 18(b) seeks that, for instance, amendment of the RVZ provisions "*as they relate to Walter Peak*". Clause 18(d) refers to redrafting of provision "*applying to the Walter Peak RVZ*".
16. There are two ways in which such relief can be read. First, it can be read to seek an entirely site-specific planning response. This is the interpretation counsel advance. Secondly, it can be read more generally, seeking amendments to the notified RVZ that would apply both to Walter Peak and to other locations with that zoning. The fact that clause 18(d) of Wayfare's submission refers in the alternative to redrafting of the provisions applying to the Walter Peak RVZ or redrafting "*as a bespoke Walter Peak Tourism Zone*" tends to support the latter characterisation.
17. I note that that the further submitter appears to have read the submission in the same way, given that in the reasons for its further submission, it makes it clear that it is seeking relief to the Rural Visitor Zone generally, rather than being limited to the position at Walter Peak.
18. I also note that the Wayfare submission contains general relief related to "*the strategic provisions*" and to "*any similar, alternative, consequential and/or other relief as necessary to address the issues raised in the submission*" (Clauses 18(i)

and 18(j)). Such widely expressed relief has the potential to open the door to submissions and evidence not limited to Walter Peak.

19. To the extent that submission #31024 can be read as seeking relief applying outside the Walter Peak area, I could not properly entertain Counsel's joint application without considering possible prejudice to other parties, giving those parties the opportunity to make comment. I would also need to consider the potential for disruption to the preparation of the Panel's recommendations on the provisions applying outside Walter Peak, and Council's decisions thereon.
20. Counsel's Joint Memorandum emphasises the urgency of their application given the imminent deadline for circulation of Wayfare's evidence in chief. That urgency is not quite so pressing as Counsel suggest given the leave I granted Wayfare in Minute 12, to file Mr Farrell's evidence on or before 12 June. Even so, pausing to elicit the views of other parties and consider those views would likely largely defeat the rationale for the application being made at all.
21. In the absence of an opportunity for fuller consideration of the issues I have identified and the views of other parties thereon, I am not prepared to defer hearing of the submission (or the Airbnb further submission supporting it in part) to the extent that submission #31024 seeks relief that would apply other than at Walter Peak
22. However, largely for the reasons set out in Counsel's Joint Memorandum, I am prepared to defer hearing of submission #31024 insofar as it seeks relief solely applying to the Walter Peak area.
23. In effect, the deferred submission points will become Stream 19.
24. As to the length of any deferral, as Counsel observe, the ultimate deadline is that provided by clause 10(4)(a) of the First Schedule of the Act, namely that the Council's decisions are made within two years of public notification. Counsel's Joint Memorandum does not address when that deadline actually occurs. There are two possibilities. The two years could run from notification of the provisions the subject of submission (i.e. from 31 October 2019), or alternatively, if those provisions are treated as having merged with the balance of Stage 3, it could run from 19 September 2019. I consider the former the better view because the provisions of Chapter 46 (and the related mapping) are a stand-alone Plan Change, rather than a variation to the Stage 3 Plan Changes to which Clauses 16A and 16B of the First Schedule would apply.

25. I note that the way Mr Barr describes it in his Strategic Overview evidence is that *“the two separately notified components of Stage 3 are at the same procedural stage”*². If Mr Barr intended to imply they have therefore merged, I do not believe that to be correct.
26. The procedural position is admittedly confused though, because the provisions of Stage 3b included a variation to Chapter 20 which Clause 16B would classify as having merged with the provisions that were earlier notified as part of Stage 3.
27. In the absence of any input on the point from Counsel, however, I take the more conservative position, that Council decisions on the deferred submission points would need to be made at latest by mid-September 2021. Working back from there, it seems to me that a 12 month delay from now before any steps are taken to bring the Wayfare submission points to hearing could be too long. Rather than err too far in the other direction, I propose to make an order directing that the relevant submission points be deferred for the moment, on the basis that I will seek further feedback as to when would be an appropriate time to restart the clock following conclusion of our forthcoming hearing (at the moment mid-August).

Conclusion

28. I direct that those parts of submission #31024 and supporting further submission #31050 relating solely to the planning provisions governing the notified Rural Visitor Zone land at Walter Peak (and any land or water surface immediately adjacent thereto) be heard separately from the balance of submissions scheduled for hearing commencing 29 June 2020 and be subject to further directions, to be advised in due course. To that extent only, the directions in my Minutes 6, 12, and 13 are suspended.
29. Conversely, to the extent that submission #31024 and the supporting Further Submission #31050 relate to planning provisions applying beyond the Walter Peak area and its immediate environs, the hearing directions in my previous Minutes (in particular Minutes 6, 12 and 13) continue to apply.
30. Any party with an interest in the matters canvassed in this Minute has leave to apply for further directions, as required. I note specifically that I have not had the benefit of input from Airbnb to this point.

² Craig Barr, Strategic Overview Evidence in chief, page 10

Dated 20 May 2020

A handwritten signature in blue ink, consisting of a large, stylized 'T' followed by a horizontal line and a small flourish.

**Trevor Robinson
Chair
Stage 3 Hearing Panel**