QUEENSTOWN LAKES DISTRICT COUNCIL

QLDC Council
24 March 2017

Report for Agenda Item: 3

Department: Finance & Regulatory

Proposed Amendment to Policy on Development Contributions

Purpose

To amend the Policy on Development Contributions in order to recover the growth related capital costs of the Eastern Access Road (Frankton Flats) from development contributions.

Recommendation

That Council:

1. **Note** the contents of this report; and
2. **Adopt** the amendments to the 2016/17 Policy on Development Contributions as described in Part B of the Revised Statement of Proposal [refer to Attachment A] in accordance with section 102(4)(b) of the Local Government Act 2002.

Prepared by:	Reviewed by:
Stewart Burns Chief Financial Officer	Mike Theelen Chief Executive Officer
9/03/2017	10/03/2017

Background

1. The Local Government Act 2002 (LGA) allows Council to amend the Policy on Development Contributions at any time in accordance with section 102 (4) (b) of the Local Government Act 2002.
2. On 6 October, 2016, Council gave approval to enter into consultation on the proposed amendment to the Policy on Development Contributions to allow for the introduction of a new targeted transport development contribution for the Frankton Flats and for an increase to the existing ward based transport development contribution as soon as is practicable.
3. The recommended outcome of the consultation process is included in the Revised Statement of Proposal (refer to Attachment A).

Hearing Process

4. There is no requirement to have used the Special Consultative Procedure (SCP), however, Council decided to handle the consultation in a similar manner:

   6 October 2016 – Approval to commence consultation

   10 October 2016 – Commence consultation

   10 November 2016 – Consultation ends

   2 December 2016 – Hearing of submissions

   9 December 2016 to 23 February 2017 – Deliberations (including the consideration of expert advice).

   24 March 2017 – Final decision by Council

5. Council appointed the following Councillors to the hearing panel to consider the submissions received: Councillors Forbes, McRobie and Hill.

6. A total of 4 submissions were received in relation to the issue and a hearing was convened on 2 December 2016. A summary table of the submissions received is included in Attachment B. An analysis of the issues raised is included in Attachment C.

7. Legal advice was also sought in relation to the “contractual” argument raised by Remarkables Park Limited (RPL). A copy of this advice is included as a “public excluded” item as it is subject to legal privilege (Attachment G). In summary, Council rejects RPL’s interpretation of the February 2014 deed.

8. It is pertinent to note that if RPL’s interpretation of the deed was, in fact, correct, then this would present a complete defence against the proposal. There would be no need to submit on any other aspects. This however, is not the case with substantive submissions made on various aspects of the proposal’s methodology.

9. Of the 4 submitters, only RPL wished to be heard. At the hearing, further submissions were made on behalf of RPL by the following individuals:

   - Alastair Porter (RPL)
   - John Young (Brookfields Lawyers for RPL)
   - Anthony Penny (Traffic Engineer for RPL)
   - Jai Basrur (Corporate Finance Adviser for RPL)

10. A copy of the hearing minutes is included as Attachment D and copies of all the submissions including those presented at the hearing are included in Attachment E.

Changes to the Proposal as a result of the Submission Process

11. The submission from Queenstown Airport Corporation (QAC) is broadly supportive of the proposal but suggests a minor adjustment to the “contributing area” in relation to a portion of QAC land within the airport designation that is not development land. Council accepts the need for the adjustment. This means that the original proposed DC of $613 (per 100m^2) should increase to

$616 (per 100$m^2$). This is because there is less estimated development to spread the EAR costs across.

12. The submission from Queenstown Central Limited and Queenstown Central E2 Limited (QCL) is not supportive of the proposal and raises several issues of concern with regard to the methodology. QCL proposes that a more reasonable and equitable approach is through the development of a private developer agreement (PDA).

13. It is relevant to note that considerable progress was made in regard to the resolution of the issues of concern and that a PDA was successfully negotiated between QLDC and QCL between the date of the submission and the hearing. The final PDA requires the payment of a lump sum contribution for the EAR and is based on the methodology within the proposal. During this process it was agreed that certain development yield assumptions within the cost allocation model for some of the QCL land were overstated.

14. The original development assumptions were compared to actual consented plans for development on the QCL land and it was agreed that an adjustment to the estimate for overall developed Gross Floor Area (GFA) was warranted. This included a reduction to the development assumptions for RPL. Overall, developed GFA has decreased by around 15.5%. This means that the original proposed DC of $613 (per 100$m^2$) should increase to $721 (per 100$m^2$). This is because there is less estimated development to spread the EAR costs across.

15. This means that the cumulative impact of the changes agreed above is that the original proposed DC of $613 (per 100$m^2$) should increase to $724 (per 100$m^2$).

Compliance with Local Government Act 2002 (LGA)

16. It is alleged by RPL that Council has not met the requirements of the LGA section 101(3) in the proposed methodology for funding the costs associated by the new road.

17. This section requires Council to consider a number of factors when considering the funding needs of the local authority:

    (3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—

    (a) in relation to each activity to be funded,—

    (i) the community outcomes to which the activity primarily contributes; and

    (ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and

    (iii) the period in or over which those benefits are expected to occur; and

    (iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and

(v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and

(b) the overall impact of any allocation of liability for revenue needs on the community.

18. The proposed methodology for the allocation of costs in relation to the EAR has taken into account each of the section 101(3) factors. It also follows the pre-existing policy position of Council, which is to use development contributions to recover capital expenditure required due to growth (Revenue & Financing Policy).

19. In light of the technical nature of the RPL submissions from Messrs Penny and Basrur presented at the hearing, Council has requested an assessment of the proposed methodology by suitably qualified independent expert. All of the background material, including copies of the submissions was sent to Chris Jenkins; director of SPM Assets. Chris is a senior consultant who is an expert in cost allocation methodology and development contributions.

20. The outcome of the SPM Assets review is that "*the cost allocation proposed for the assessment of the cost of growth for the EAR is appropriate"*. (page 7 SPM Report). A copy of the SPM Report is included as Attachment F.

21. A very important point that SPM make is that: "*We are aware that there are a number of cost allocation methodologies used by Councils for the determination of the cost of growth. The analysis is not an exact science and the analyst will be required to exercise some judgement in achieving the final result. The pragmatic result will be the one that recognises the requirements of the three primary stakeholders – the Developer, the Council and the Community and seeks a balanced outcome."* (page 3 SPM Report)

22. The approach that Council has used in assessing the benefits provided by the EAR is to recognise both the benefits to the road user as well to the adjacent land owners. Much of the technical submissions focus on the traffic analysis; raising issues such as transitional benefits (to existing community); trip analysis and timeframes. These all relate primarily to the benefits associated with the road user.

23. There is no doubt that the EAR (when complete) will provide considerable benefit to the existing and future road users. Congestion will be reduced, travel times will improve, resulting in fuel savings and greater choices will be available for motorists. These public benefits are the principle reasons why NZTA have decided to provide financial assistance for the road. The significant 51% contribution from NZTA reflects the wider public benefit of the EAR.

24. There is also a significant private benefit aspect of the new road which Council must take into account. The EAR provides access to undeveloped zoned land within the Frankton Flats area on both sides of the runway. Without road access, this land cannot be developed. It is appropriate that this benefit be recognised and that the costs associated with it be apportioned based on development potential.

Transportation - Eastern Access Road Contributing Area.

25. The EAR will provide multiple access points along its length to allow for zoned land to be opened up for development. The proposed methodology recognises this benefit in a fair and justifiable way.

26. It is pertinent to consider the scenario that would exist if this road were to be constructed as part of a normal greenfield development (i.e. with a single developer). The road would be approved as part of the subdivision approval process and the developer would be required to design and construct the road. Once completed the road would vest in Council.

27. Numerous examples exist of major roads delivered in this way. The only difference with the EAR is that Council has assumed responsibility for the construction of the road because of the need to construct around the end of the runway (RESA) and that there are multiple land owners to accommodate. Council has recognised that it is best placed to coordinate the planning and delivery of the road.

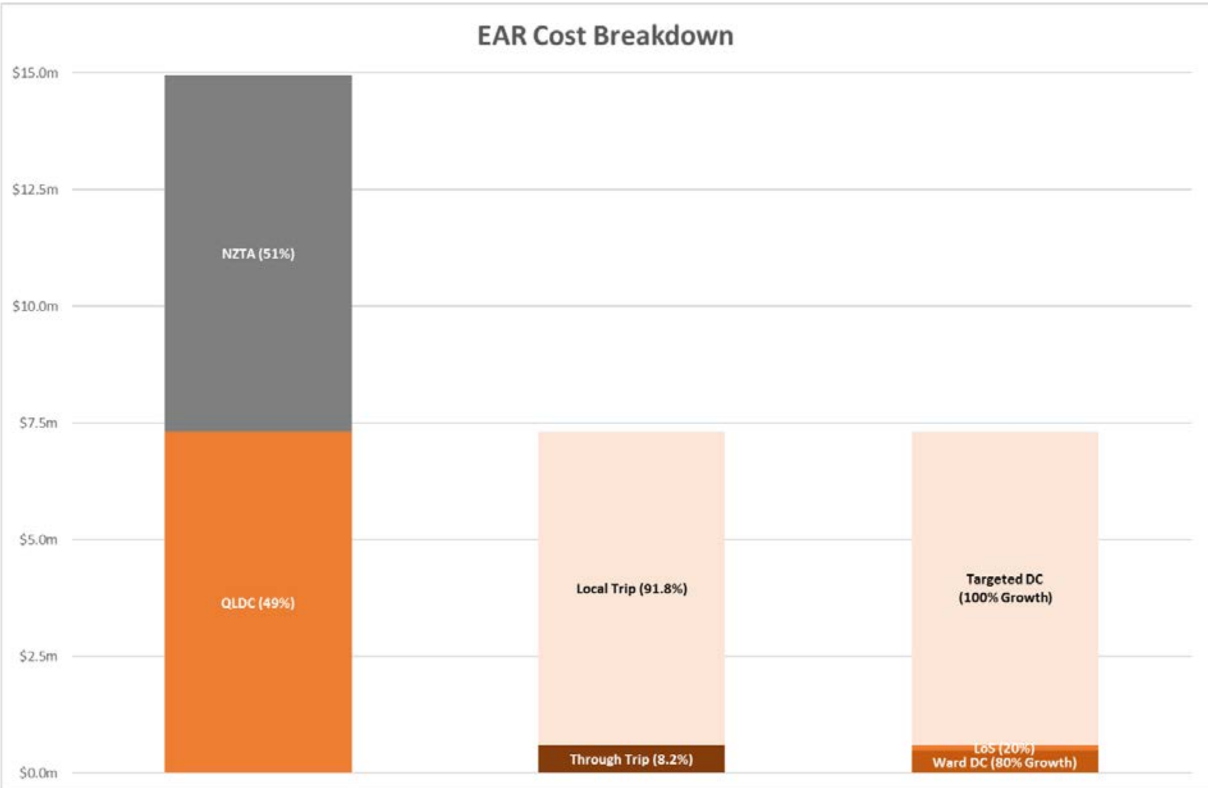
28. It is relevant to consider how the two existing end portions of the road have been funded. At the State Highway 6 end, the road was constructed with each of the adjacent benefitting landowners contributing to the cost on the basis of relative road frontage. At the Remarkables Park end, the road has been 100% developer funded.

29. Council has taken a completely consistent approach in assessing the private benefit associated with the provision of access to existing zoned land. It is clear that there should be a significant developer contribution based on the principle that the road is a prerequisite for future development. It is also fair that the required contribution should match development potential (i.e. future private economic benefit).

30. The methodology used in defining the wider public benefit of the local share of the EAR is to use the trip data when the land is fully developed (2045). It shows that 8.2% of the trips are through trips. This means that developers should fund 91.8% of the local share (which equates to around 45% of the total cost of the road.)

31. The proposed funding scenario for the $14.95m capital cost of the EAR is as follows:

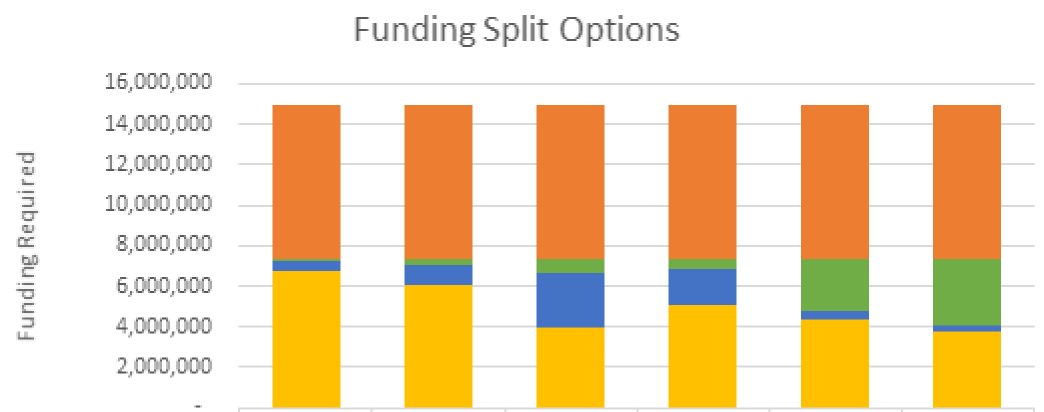
Funding Mechanism	Funding ($)	Percentage
NZTA	7,624,500	51%
QLDC (*Breakdown below*)	7,325,500	49%
Total	**$14,950,000**	
Targeted EAR DC	*6,724,809*	*45%*
Wakatipu Ward Transportation DC	*480,553*	*3.2%*
Rates	*120,138*	*0.8%*
Total QLDC	**$7,325,500**	



Options

32. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

33. The panel have considered the reasoning and financial impact of all of the various alternative proposals presented by the submitters. Most of the alternative proposals result in a significant shift away from the Targeted DC to either rates or to the ward based DC.



	QLDC Proposal	17.6%	O/D 50/50	O/D 70/30	Transition	Transition (NPV)
NZTA	7,620,000	7,620,000	7,620,000	7,620,000	7,620,000	7,620,000
Rates	120,000	260,000	670,000	450,000	2,580,000	3,230,000
Wakatipu Ward DC	480,000	1,030,000	2,660,000	1,790,000	390,000	340,000
Targeted EAR DC	6,720,000	6,040,000	4,000,000	5,090,000	4,360,000	3,760,000

The graph above shows the relative impact of the main funding split options based on the issues raised in the submissions.

- 17.6% - is the through trip percentage if BP roundabout is not significantly upgraded (presented to show sensitivity if SH6 not upgraded)
- O/D 50/50 – is splitting the trips 50/50 between their origin and destination.
- O/D 70/30 – as above but 70% to EAR and 30% to Ward. (presented to show sensitivity if different % adopted)
- Transition – uses the network operating cost savings (benefits) to apportion who benefits over time.
- Transition (NPV) – uses the discounted benefits above to apportion who benefits over time.

34. The panel have considered the alternative cost allocations in light of the Section 101(3) requirements and have concluded that the QLDC Proposal results in the fairest overall allocation of cost when considering the benefits provided by the road. The panel considered that the alternative proposals give too much weight to the benefit of road users as opposed to land owners, who will derive considerable economic benefit from the road as it provides access to allow zoned land to be opened up for development

35. The panel also considered the recommendations of SPM in their report: "*We recommend that the contributing area is extended to include existing developed areas that benefit from the implementation of the EAR. We recommend that the Policy clearly defines the Ward Area of Benefit. We recommend that consideration be given to transitional benefits that may be enjoyed by the existing community in the early years after implementation of the EAR.*" (page 7 SPM Report).

36. The construction of the contributing area was something that was very carefully considered in the original proposal. It has deliberately avoided the existing developed land adjacent to the proposed EAR because it is impossible for new DC's to be applied to existing development. It is our strong view that to amend the proposal now to a catchment area that is largely developed would cause considerable confusion and uncertainty among property owners without adding any material benefit to the funding proposal.

37. The panel were of the view that the existing contributing area clearly encapsulates the primary area of benefit for the EAR and that there was not a strong case for variation.

38. The transitional benefits issue has already been considered as part of the discussion on the relative weighting and recognition of the public benefits of the EAR to the road user (largely covered by NZTA subsidy) versus the private economic benefits to adjacent land owners (covered by the targeted DC).

<u>Option 1</u> – Agree to the proposed amendment to the 2016/17 Development Contribution Policy.

Advantages:

39. Agreement to the proposal will allow for the introduction of a funding framework for the local share of the EAR, which provides certainty for council, developers and the community

40. Development contributions can be assessed for development within the contributing area.

Disadvantages:

41. There is the possibility of legal challenge from landowners within the contributing area.

<u>Option 2</u> – Do not agree to the proposed amendment to the 2016/17 Development Contribution Policy.

Advantages:

42. Avoids the risk of legal challenge from landowners within the contributing area.

Disadvantages:

43. Delay in finalising the funding arrangements for the local share of the EAR.

44. Loss of income from Development Contributions for the EAR.

45. The report recommends **Option 1** that the Council agree to the proposal to amend the 2016/17 Development Contribution Policy. The original funding assessment that was completed by Rationale Ltd has been amended as a result of the submission process (see above). Given the funding tools available to QLDC, a targeted development contribution is considered the most appropriate funding mechanism.

Significance and Engagement

46. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because of its importance to the Queenstown Lakes District and community.

Risk

47. This matter relates to the operational risk SR1 Current and future development needs of the community, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because it impacts the ability of the QLDC to recover the growth related capital costs of the proposed Eastern Access Road on the Frankton Flats.

48. The recommended option considered above mitigates the risk by treating the risk through the amendment of the Policy to provide for additional development contribution income.

Financial Implications

49. The proposed amendment to the Development Contribution Policy provides the necessary mechanism to recover the growth related capital costs of the EAR. This equates to $7.2m of future income (excluding interest component).

Council Policies, Strategies and Bylaws

50. The following Council policies, strategies and bylaws were considered:

- 2015-25 Long Term Plan
- 2016/17 Policy on Development Contributions

Consultation

51. There is no requirement to have used the Special Consultative Procedure (SCP), however, Council decided to handle the consultation in a similar manner:

6 October 2016 – Approval to commence consultation

10 October 2016 – Commence consultation

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Local Government Act 2002 Purpose Provisions

52. The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring that the local share of the EAR project is funded in an appropriate manner;

- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Attachments [In Attachments Booklet]

A Revised Statement of Proposal to Amend the Development Contribution Policy
B Summary of the submissions received
C Analysis of the issues raised in submissions
D Hearing minutes 2 December, 2016
E Copies of the submissions received at the hearing
F SPM Report
G Legal Advice on RPL Contractual argument (Public Excluded)