

QLDC Council
26 July 2018**Report for Agenda Item: 8****Department: Planning & Development****Delegated Authority for Proposed District Plan Appeals****Purpose**

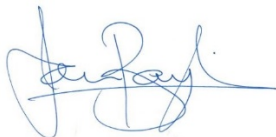
The purpose of this report is to consider providing delegations to the General Manager Planning and Development, Manager Planning Policy, and Principal Planner Planning Policy under section 34(1) of the Resource Management Act 1991 for the purpose of the resolution if the appeals on Stage 1 of the Queenstown Lakes District Council Proposed District Plan (**PDP**).

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Note** that the Appeals Subcommittee has the delegated power to approve the resolution of Environment Court appeals and mediations under the Resource Management Act 1991.
3. **Delegate** to the General Manager Planning and Development, Manager Planning Policy, and Principal Planner Planning Policy (acting severally) the authority to represent and participate on behalf of Queenstown Lakes District Council in mediation and/or alternative dispute resolution for appeals to the Council's decisions on Stage 1 of the PDP and reach an agreement within the guidelines and parameters set by the Appeals Subcommittee.
4. **Note** that once a decision on the district plan is appealed to the Environment Court, the ultimate decision on the outcome of that appeal will be directed by the Court and is not for the Council to decide.

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Background

- 1 At its meeting on 3 May 2018, the Council adopted recommendations from the Independent Hearing Panel as its decisions on submissions on Stage 1 of the Proposed District Plan (**PDP**) (**decisions**).
- 2 The decisions address 34 chapters of the PDP and related planning maps. The decisions affect the zoning of about 90% of the land in the District. The decisions also confirmed the Council's designations contained in the PDP.
- 3 On 19 June 2018 other requiring authorities issued their decisions on their requirements contained in the PDP.
- 4 Appeals on the provisions of the PDP and the Council's designations were due on 19 June 2018. 98 appeals and two additional proceedings (an application for a declaration and an application for an enforcement order) were filed resulting in a total of 100 separate proceedings. The appeals relate to a broad range of matters contained within the PDP. Given the breadth of the appeals it is likely that the PDP will not be able to be treated as operative until the appeals are resolved.
- 5 Appeals on the other requiring authorities' designations are due to be filed within 30 working days of the notice of decision being issued. As such, at the time of writing this report it is not yet known what appeals will be received on the other requiring authorities' designations.

Environment Court

- 6 The management of the appeals is in the hands of the Environment Court. As it currently stands the Court has directed the Council to review all notices of appeal, to identify the relevant topics covered by each appeal and report back to the Court by 31 July 2018 as to how the appeals should be managed.
- 7 It is anticipated that the following processes will take place for the resolution of appeals (subject to any alternative direction from the Court):
 - a. informal negotiations will begin in early August 2018 on appeals that are amenable to be resolved in this manner;
 - b. Court assisted mediations on all other appeals will begin in mid-October 2018 (the Council will seek to mediate on the appeals wherever possible. However, it is possible that some appeals will not be able to be resolved through mediation); and
 - c. Environment Court hearings will commence in early 2019 for any appeals that are not able to be resolved through informal negotiation and Court assisted mediation. It is possible that some of those appeals that reach the stage of Environment Court hearing will take years to resolve.
- 8 The Council has engaged additional legal support in the form of a secondment lawyer (from May 2018-October 2018) to assist in the management of the appeals process.

- 9 While the management of the appeals is in the hands of the Court, this does not alter the convention that final decisions on the District Plan are made by Full Council. In other words, once the Environment Court appeals are resolved, Stage 1 of the PDP will go back to Full Council to be formally approved and made operative. Also, if any significant changes are recommended to Stage 1 of the PDP though the appeals process that go outside of the scope of what was notified, then those changes will be presented to the Full Council to approve in the form of a variation.

Comment

- 10 The Appeals Subcommittee has the following power delegated to it from Full Council:

“The Appeals Subcommittee will approve the resolution of Environment Court appeals and mediations under the Resource Management Act 1991, including resolving or withdrawing any proceedings and providing guidelines and settlement parameters to officers responsible for participating in mediations.”

- 11 Currently the Manager Planning Practice and the Manager Resource Consents have the delegation to participate and resolve Environment Court mediations and alternative dispute resolution subject to the guidance of the Appeals Subcommittee. This has been necessary for the resolution of appeals on resource consent decisions. Given that the PDP appeals relate to district plan policy matters it is considered appropriate to extend this delegation to the General Manager Planning and Development, Manager Planning Policy, or Principal Planner Planning Policy for the purpose of resolving the PDP appeals. The Manager Planning Practice and the Manager Resource Consents are not actively involved in the PDP’s development and hearings and they do not currently have the necessary in depth knowledge of the appeals, underlying issues and reasoning behind the decisions.
- 12 The status quo arrangements provide for the Manager Planning Practice to report to the Appeals Subcommittee on each appeal separately including the background to each appeal, relevant factors relating to the decision and an exploration of the implications of each appeal. Members of the Appeals Subcommittee can discuss parameters for informal discussions, mediation and resolving each appeal with the Manager Planning Practice and receive updates at regular (currently 6 weekly) intervals. In reality current commitments would not allow them to serve the needs of the Court and participate in a large number of potentially fast moving appeals and to keep the Appeals Subcommittee abreast of them in an efficient manner.
- 13 Due to the large number of appeals that have been received it is intended that the following process will be proposed to the Appeal Subcommittee for the purpose of keeping Councillors informed of the progress of the resolution of the appeals:
 - a. The Manager Planning Policy, or Principal Planner Planning Policy will present a report to the Appeals subcommittee in August summarising the appeals and their scope and seeking guidelines and parameters to be set for the resolution of such appeals;

- b. The Appeals Subcommittee will meet roughly once every three weeks or more frequently as required, subject to the timing of other Council meetings and commitments;
 - c. The Appeals Subcommittee will be provided with an update at each meeting on all current appeals to the PDP, including details of any changes to Council's position in relation to those appeals and any proposals to resolve or withdraw from proceedings.
- 14 The approach proposed above will enable the Appeals Subcommittee to maintain an oversight of the appeals on the PDP and their progress, through the mediation rounds and subsequent Environment Court hearings where a hearing is necessary. It is important that a flexible and responsive approach is taken to this next stage of the PDP processing as it is the Environment Court that will be setting the timing of the mediations and hearings. Staff entering into the mediation processes will be expected to have the authority to be able to consider and commit to a mediated settlement. Providing regular reporting to the Appeals Subcommittee and discussing possible appeal parameters will enable that to occur.
- 15 Under the Local Government Official Information and Meetings Act 1987 section 7(2)(g) and (i) discussions and correspondence relating to the above can be considered outside of public meetings and kept confidential in order to maintain legal professional privilege and to enable the Council to conduct any necessary negotiations with the other parties. It should also be noted that while standing orders provide for a public forum at the start of each meeting, in the case of PDP appeals, no such public forum shall be held because the matters relate to negotiations with other parties in respect of the resolution of the appeals.

Options

- 16 Option 1 Retain the Status Quo where delegated authority to act on Council's behalf to participate in and resolve appeals sits with the Manager Planning Practice and the Resource Consents Manager

Advantages:

- 17 The Manager Planning Practice and the Resource Consents Manager would have the delegation to participate and resolve Environment Court mediations and alternative dispute resolution in respect of the PDP. If time and staff resources permitted, the Appeals Subcommittee would receive detailed individual reports setting out detailed information about each of the 98 different appeals including the background to each appeal, relevant factors relating to the decision and an exploration of the implications of each appeal. Members of the Appeals Subcommittee could discuss parameters for informal discussions, mediation and resolving each appeal with the Manager Planning Practice (and in theory the Resource Consents Manager) and receive updates at regular (currently 6 weekly) intervals.

Disadvantages:

- 18 The Parties currently delegated to represent and participate in appeals are not the parties in the best position to do so due to lack of involvement in the formulation

and review of the PDP. Current commitments would not allow the Manager Planning Practice and the Resource Consents Manager to get to grips with all the details of a large number of potentially fast moving appeals in an efficient manner. Keeping abreast of the details of the plan appeals would also be a very significant task for members of the Appeals Subcommittee. This investment of time does not appear to be justified given the limits on the role of elected members in the Environment Court processes, which as they progress are extensively driven by lawyers and experts and will ultimately be decided by a Judge.

19 Option 2 – Delegate to first and second tier managers and elected officials only the authority to determine Council's position and to act on Council's behalf in the mediation and hearing of appeals to the PDP

Advantages:

- 20 More senior officials have a range of experience and a broad understanding of Council and community interests.

Disadvantages:

- 21 In addition to the disadvantages of Option 1, current commitments would not allow these senior officials to get to grips with all the details of a large number of potentially fast moving appeals and to participate in Environment Court processes in an efficient manner.

22 Option 3 – Delegate to the General Manager Planning and Development, Manager Planning Policy or Principal Planner Planning Policy the authority to determine Council's position and to act on Council's behalf in the mediation and alternative dispute resolution of appeals to the PDP

Advantages

- 23 Allows those officers with specific knowledge of the PDP to participate in the appeals process and in various forms of mediation, and for these officials to have authority to act on Council's behalf after first obtaining appropriate direction from the Appeals Subcommittee.
- 24 Retains an appropriate level of oversight from elected members.

Disadvantages

- 25 Requires a high level of trust between elected members and officials. However, this disadvantage is mitigated by the reporting process proposed intended to be put in place between the officers and the Appeals Subcommittee.

- 26 This report recommends **Option 3** for addressing the matter.

Significance and Engagement

27 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it is a decision relating to the administration of Council affairs.

Risk

28 This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)', as documented in the Council's risk register. The recommended option considered above mitigates the risk by appointing Council officers to make decisions that affect the 'Current and future development needs of the community (including environmental protection)'.

29 The recommended option considered above mitigates the risk by:

Treating the risk - putting measures in place which directly impact the risk.

Financial Implications

30 There are no financial implications as a result of this proposal.

Local Government Act 2002 Purpose Provisions

31 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;
- 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.

Consultation: Community Views and Preferences

32 No persons are considered to be affected by this matter.

Attachments

A Queenstown Lakes District Council Register of Delegations February 2018 (Extracts showing delegations for Planning and Strategy Committee and Appeals Subcommittee)

QUEENSTOWN LAKES DISTRICT COUNCIL REGISTER OF DELEGATIONS



LAST UPDATE JUNE 2018

Planning & Strategy Committee

Terms of Reference

Membership

The Planning & Strategy Committee will have six appointed members – Councillors Tony Hill, Calum McLeod, Ross McRobie, Valerie Miller, John MacDonald and Quentin Smith

Quorum

The quorum for every meeting shall be three members

Chair

Councillor Tony Hill will be the Chair and Councillor Calum McLeod will be Deputy

Frequency of Meetings

The Planning & Strategy Committee will meet six weekly.

Parent Body

The Committee reports to the Queenstown Lakes District Council.

Objectives of the Committee

To recommend strategies, plans and policies that advance the Council's vision and goals for the District and ensure integrated and sustainable management of the natural and physical resources of the District in accordance with the Resource Management Act 1991.

In fulfilling their role on the Planning & Strategy Committee, members shall be impartial and independent at all times.

Terms of Reference

Activity Areas

- District Plan
- District Plan review
- Private Plan changes

- RMA appeals
- Growth management
- Environmental sustainability
- Affordable housing
- Building control
- Monitoring of Resource Consents

Key Projects

1. Delivery of Annual Work Programme

Delegated Authority

The Planning & Strategy Committee will have delegated authority to carry out activities within its terms of reference and the activity areas listed above (excluding all powers reserved to the Council by law, or by resolution of the Council).

Power to Act

1. The Planning & Strategy Committee will:
 - a. approve the adoption of strategies, policies and plans that relate to any activity area listed above where authorised by the Council;
 - b. exercise all of the Council's functions, powers and duties pursuant to section 34(1) of the Resource Management Act 1991 in relation to the consideration of Council-initiated Plan Changes and Variations. (Note: To avoid doubt, a Council-initiated Plan Change includes a private request for a Plan change under clause 22 of Schedule 1 of the Resource Management Act 1991 that has been adopted by the Council under clause 25(2) of that Schedule);
 - c. consider, make determinations and notify variations to the Queenstown Lakes Proposed District Plan, pursuant to the provisions of the Local Government Act 2002 and the Resource Management Act 1991.
 - d. maintain the Council strategic relationships with Government and non-Government agencies and funding bodies (excluding NZ Transport Agency) with respect to any of the activity areas listed above;
 - e. lodge and present submissions to external bodies on policies and legislation relevant to the Planning & Strategy Committee's Terms of Reference and any activity area listed above. (Note: Where timing constraints apply, the Chairperson (or in their absence, the Deputy Chairperson) has the authority to lodge submissions and seek retrospective approval);

- f. approve the review of bylaws under the Planning & Strategy Committee's jurisdiction and consider submissions;
- g. initiate commencement of a consultation process, excluding initiating the special consultative procedure under the Local Government Act 2002 related to any activity area listed above.

Power to Recommend

1. The Planning & Strategy Committee will:
 - a. recommend the adoptions of strategies, policies and plans that relate to any activity area listed above where the final decision must be made by the Council;
 - b. consider any proposal where public consultation is (or may be) required (including the use of the special consultative procedure) related to any activity area listed above, other than a consultative process pursuant to the Resource Management Act 1991 and to make recommendations to the Council as appropriate;
 - c. consider any strategic planning or development matter, including matters related to planning for and managing growth in the District and make recommendations to the Council as appropriate. (Note: this responsibility should be exercised in partnership with any other committee responsible for a particular activity area impacted by specific proposals.)
 - d. recommend adoption of any new or amended bylaw related to any activity area listed above.

Delegation Limitations

The Planning & Strategy Committee may not delegate any of its responsibilities, duties or powers and its powers exclude powers that cannot be delegated to committees under the Local Government Act 2002.

Procedure

The Chairperson will report back to the Council with recommendations of the Planning & Strategy Committee at the next Council meeting following each committee meeting.

Appeals Subcommittee

Terms of Reference

Membership

The Appeals Subcommittee will have three appointed members: The Chair of the Planning & Strategy Committee and any two members of the Planning & Strategy Committee

Quorum

The quorum for every meeting shall be three members

Chair

The Chair of the Planning & Strategy Committee will be the Chair

Frequency of Meetings

The Appeals Subcommittee will meet as required

Parent Body

The Committee reports to the Planning & Strategy Committee

Objectives of the Committee

To guide the resolution of appeals and mediations under the Resource Management Act 1991

In fulfilling their role on the Appeals Subcommittee, members shall be impartial and independent at all times

Terms of Reference

Activity Areas

- RMA appeals

Delegated Authority

The Appeals Subcommittee will have delegated authority to carry out activities within its terms of reference and the activity areas listed above (excluding all powers reserved to the Council by law, or by resolution of the Council).

Power to Act

1. The Appeals Subcommittee will approve the resolution of Environment Court appeals and mediations under the Resource Management Act 1991, including resolving or withdrawing from any proceedings and providing guidelines and settlement parameters to officers responsible for participating in mediations.

Delegation Limitations

The Appeals Subcommittee may not delegate any of its responsibilities, duties or powers and its powers exclude powers that cannot be delegated to committees under the Local Government Act 2002.

Procedure

The Chairperson will report back to the Planning & Strategy Subcommittee at the next Planning & Strategy Committee meeting following each subcommittee meeting.