

**QLDC Council
3 May 2018****Report for Agenda Item: 12****Department: Planning & Development****Proposed District Plan Decisions on Stage 1 Chapters****Purpose**

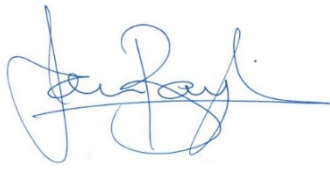
The purpose of this report is to provide the reports and recommendations of independent commissioners on provisions and matters raised in submissions for the 33 chapters of the Proposed District Plan that make up Stage 1 of the district plan review and to seek ratification as a Council decision. A resolution from Council is sought to notify a decision on chapters 1-17, 21-23, 26-28, 30, 32-36, 41, 42 and 44 in accordance with Clause 10 and 11 of the First Schedule of the Resource Management Act 1991.

Recommendation

That Council:

1. **Notes** the contents of this report;
2. **Adopts** the Independent Commissioners' reports and recommendations as the Council's decision and direct staff to notify the decision in accordance with Clause 10 and 11 of the First Schedule of the Resource Management Act 1991;
3. **Directs** staff to alter the Proposed District Plan provisions to reflect the Independent Commissioners' recommended chapters and to correct minor errors and make changes of minor effect in accordance with Clause 16(2) of the First Schedule of the Resource Management Act 1991 as recommended in the reports and recommendations;
4. **Notes** that in the case of designations, the Council has conferred on Commissioners Nugent, McMahon, Rogers and Taylor the power to act on Council's behalf, making recommendations to requiring authorities under section 171 of the Act, and in the case of designations where the Council is the requiring authority, to make decisions pursuant to section 168A of the Resource Management Act; and
5. **Notes** that adopting the reports and recommendations as the Council's decision does not mean Council has formed a view on possible future variations and investigations mentioned in the reports and recommendations.

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17/04/2018

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20/04/2018

Background

Proposed District Plan – Stage 1

- 1 The District Plan is an important lever for promoting sustainable growth and managing economic development in the Queenstown District (District) in a way that achieves economic, social and environmental outcomes. Completing the District Plan review is a matter of some urgency as most of the Operative District Plan (the ODP) which is the current statutory planning instrument being used in the District, was 10 years old when this review formally commenced in April 2014. Section 79(1) of the Resource Management Act 1991 (RMA) requires that the provisions of the District Plan be reviewed every 10 years.
- 2 The Proposed District Plan (PDP) is the result of a review of the ODP under section 79(4) of the RMA. It is being developed and reviewed in stages as an activity based plan intended to be a “streamlined document that is easier to understand, provides for greater certainty and better planning outcomes”¹.

Scope of Stage 1 of the PDP

- 3 The scope of the PDP is determined by the document itself - that is, the chapters and the planning maps that form the PDP.
- 4 The Stage 1 planning maps include zones, designations, overlays and other annotations covering more than 90% of the land in the district, the surface and margins of lakes and apply new plan provisions. When notified, Stage 1 of the PDP contained 32 chapters set out in Figure 1.
- 5 Initially excluded from the review were the Signs, Transport, Affordable Housing, Open Space, Hazardous Substances Signs and Earthworks chapters of the ODP and provisions relating to the Frankton Flats, Remarkables Park, Mount Cardrona Station, Penrith Park, Hydro-Generation, Industrial, Business and Three Parks Zones. Also excluded are the Arrowtown South, Kingston Village, Ballantyne Road, Peninsula Bay North, Shotover Country Estate and Northlake Special zones as well as the land affected by the Queenstown Town Centre extension.

¹ QLDC Council Agenda Report, District Plan Review, 17 April 2014

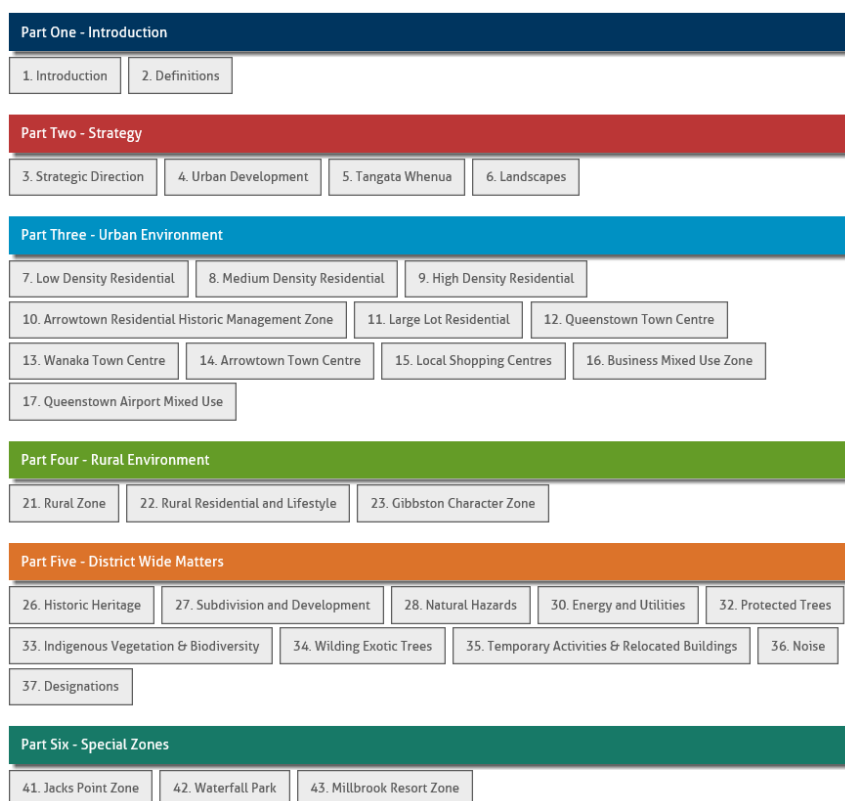


Figure 1. Notified Stage 1 Proposed District Plan Chapters

Consultation and Plan Development

- 6 A substantial amount of monitoring of the District Plan, policy development and community consultation occurred between 2012 and 2015, when the PDP was notified. This included developing a series of monitoring reports, holding an extensive range of meetings with stakeholders and wider community meetings, issuing a series of brochures on specific issues and locations and compiling substantial written feedback.

Submissions.

- 7 The 32 chapters and planning maps that make up Stage 1 of the PDP were notified on 26 August 2015. 845 original submissions and 365 further submissions (referred to in this report as “the submissions”) were received and recorded for consideration.
- 8 Submissions on PDP provisions that have been the subject of a variation as part of Stage 2 of the PDP, including submissions affected by the Wakatipu Basin Variation and the Open Space and Recreation Variation, are automatically transferred to the hearing process for those variations.

Independent Hearings Panel

- 9 A panel of Hearing Commissioners (Panel) was appointed to hear the submissions on the PDP and to make recommendations to the Council on those

matters on 29 October 2015, 26 November 2015 and 24 November 2016. Denis Nugent was appointed to Chair the Panel on 29 October 2015. Trevor Robinson was appointed to Chair the Panel for Upper Clutha Mapping and Zoning.

10 The appointed Hearing Commissioners were:

Lyal Cocks	Brad Coombs	Yvette Couch-Lewis
Jan Crawford	Alexa Forbes	Cath Gilmour
Greg Hill	Jenny Hudson	Ella Lawton
Calum MacLeod	David McMahon	David Mountford
Ian Munro	Bob Nixon	Denis Nugent
Trevor Robinson	Paul Rodgers	Mark St Clair
Simon Stammers-Smith	Scott Stevens	Jane Taylor

Hearings

- 11 Matters raised in submissions were grouped into 14 Hearing Streams and considered at a series of 14 hearings in Queenstown, Wanaka and Hawea. The hearings began on 7 March 2016 with consideration of the Strategic Direction, Urban Development, Tangata Whenua and Landscape chapters then progressed through the chapters addressing the rural and urban environments and through district wide matters. The final Stage 1 hearings in late 2017 addressed Mapping and Zoning in the Wanaka and Queenstown wards and concluded on 12 September 2017.

Designations

- 12 The designations that exist in the District were also notified as part of Stage 1 of the PDP. However, the Council conferred on Commissioners Nugent, McMahon, Rogers and Taylor the power to act on Council's behalf, making recommendations to requiring authorities under section 171 of the Act, and in the case of designations where the Council is the requiring authority, to make decisions pursuant to section 168A of the Resource Management Act. As such, no decision of the Council is requested on the Designations Chapter 37.

Decision on Millbrook Resort Zone

- 13 The Council notified its decision on the Millbrook Resort Zone chapter on 18 October 2017. As such, a decision is not sought on the submissions on this chapter.

Comment

Commissioner Recommendations

- 14 The Hearings Commissioners have heard the submissions on the PDP, considered written and oral evidence and submissions, taken advice, questioned participants at hearings and undertaken site visits. Their recommendations are set out in detail in a series of reports covering the 14 Hearing Streams and include the following components that make up the recommended decisions:

- a. recommendations on all submission points relating to Stage 1 of the PDP (see reports in Attachment 1 for details);
 - b. reasons for accepting and rejecting individual submissions or groups of submissions (see Attachment 1 reports);
 - c. recommended changes to provisions that are of minor effect or correct minor errors (see Attachment 1 reports);
 - d. further evaluation of recommended amendments to provisions under section 32AA of the RMA (see Attachment 1 reports).
 - e. the text of the recommended plan contained in a set of chapters (see Attachment 2);
 - f. a set of planning maps setting out zones, designations, overlays and other notations (see Attachment 3);
- 15 The suite of recommendations contained in the above reports reflect the Panel's consideration of the plan and issues raised by submissions as a whole and an intention to create an integrated workable planning document.
- 16 The recommendations themselves do not constitute a decision as under the RMA a local authority must give a decision on the provisions and matters raised in submissions.
- 17 As discussed in the Options section of this report, it would be problematic for the Council to adopt some aspects of the recommendations and seek to amend others. Unlike the Panel, Councillors have not considered the full breadth of submissions, or the substantial body of evidence that has informed these recommendations. Piecemeal decision making at this point is likely to be unfair on submitters who have participated in the process in good faith. It could create decisions that are incompatible with sound resource management practise and therefore difficult or impossible to defend.
- 18 The reports and recommendations discuss a number of possible future variations and investigations to address issues highlighted in considering the submissions. The Panel can't require that Council undertake future plan changes and adopting the recommendations does not mean Council agree to these suggestions. Council will in due course make its own decision about if, when and how this work will be done.

Effect of these decisions on the PDP rules

- 19 In most circumstances, once a decision on submissions relating to rules on the PDP is made and publicly notified those rules will have legal effect. However, some exceptions include:
- a. rules that had immediate legal effect on notification because they protect or relate to water, air or soil conservation, significant indigenous vegetation fauna and habitats, historic heritage or protected trees; or

- b. the Council resolves that the rule has legal effect once the PDP becomes operative; or
 - c. the Environment Court orders a different date.
- 20 “Legal effect” means people undertaking land use activities will both benefit from and need to comply with the rules of the PDP, or seek consent to breach or infringe them. Consent will also need to be obtained under any relevant rule in the ODP until the equivalent provisions in the PDP are made operative or treated as operative.
- 21 There have been no relevant Environment Court orders or Council resolutions made on the timing that the Stage 1 PDP rules have legal effect. As such, with the exception of rules that had immediate legal effect at notification, the Stage 1 rules will have legal effect from the date that the Council’s decisions are notified.

Implementing the decisions

- 22 Provisions in the PDP can’t be treated as operative until all submissions in opposition and appeals on that particular provision have been determined. This means decisions on these recommendations will bring the Stage 1 provisions of the PDP into legal effect but where an appeal is lodged on a provision the current ODP provision will continue to apply to the evaluation of applications for resource consent or enforcement action for some time.
- 23 Most Council staff and external users of the District Plan are used to carrying out functions under the RMA, where more than one set of District Plan provisions are relevant. However, further training is being provided and guidance material is being produced to help plan users and to ensure the District Plan is administered consistently and correctly.

Options

- 24 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:
- 25 In this instance the status quo is not considered a viable option because a decision to either adopt the recommendations or require them to be reheard is required.

Option 1 - Accept the recommendation to adopt the recommendations of the Panel on the Stage 1 provisions as set out in Attachments 1 - 3 as the Council’s decision.

Advantages:

- 26 These provisions of the PDP recommended by the Panel have been through a thorough process of consultation, public notification, submissions, evaluation of costs and benefits under section 32 and consideration against the relevant legal tests set out in the RMA.

- 27 Experienced Commissioners had the benefit of considering submissions and further submissions including professional assistance from submitter representatives as well as assistance from Council officer's, technical experts and legal counsel. The Panel have arrived at their recommended decisions based on well-informed consideration.
- 28 The submissions and hearing process gave the public the opportunity to either support or oppose the proposals contained within the PDP and be heard in relation to their submissions.
- 29 Adopting the recommendations will bring the Stage 1 PDP rules into legal effect and move towards the Stage 1 chapters being made operative.

Disadvantages:

- 30 A number of options are available to address the potential disadvantages. The Council may not agree with some of the Panel's recommendations in which case it can
- initiate a variation to the Proposed District Plan, or
 - join an appeal that seeks changes consistent with Council's position.
- 31 Should the Council reach a view that aspects of the recommendations are incorrect, inappropriate, or in other ways contrary to sound resource management, Council could undertake a variation to the PDP that addresses the concern. This option will take time and resources but could be entirely controlled by the Council.
- 32 If an appeal against the requested decision is made that raises similar concerns the Council could align its position with that appeal and potentially reach a resolution through mediation. However, this option relies on appeals and will place the decision on the matter in the hands of the Court.

Option 2 - Reject the Panel's recommendations and rehear submissions on this aspect of the PDP.

Advantages:

- 33 Would allow Council to appoint new Commissioners onto the Panel to re-hear submissions on aspects of the decision it was unhappy with.

Disadvantages:

- 34 The Council has not heard the evidence presented at the hearing or read the submissions on Stage 1 of the PDP. This means that before the Council can make a decision on Stage 1 of the PDP, all submitters' submissions, Council officer recommendations and evidence will need to be re-heard at another hearing.
- 35 To change the recommendations without undertaking a further hearing would not demonstrate fairness or natural justice to those who have inputted into the process, and submitters who have participated in good faith.

- 36 Reviewing the district plan in stages makes for a complex planning framework that is difficult to administer. Option 2 is likely to increase this complexity and make the plan more difficult for users of the plan to understand and comply with.
- 37 Additional Council, applicant and submitter resources will be required to rehear the relevant aspects of the PDP.
- 38 This report recommends Option 1 for addressing the matter.

Significance and Engagement

- 39 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the matter relates to the appointment of Councillors and Commissioners to hear, deliberate and make recommendations on the submissions on the Proposed District Plan, which is a very significant statutory document in terms of the social, economic and environmental wellbeing of the District.

Risk

30. 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 risk is classed as high. This matter relates to this risk because it is considered to be of significant importance in terms of the managed growth and regulation of development for the District.
31. The recommended options considered above mitigate the risk by: Treating the risk - putting measures in place which directly impact the risk. The recommended option considered above mitigates the risk by adopting the decision of the Panel who heard all the evidence before them and made a decision based upon that evidence.

Financial Implications

- 40 There is no budget or cost implications resulting from the decision.

Council Policies, Strategies and Bylaws

- 41 The following Council policies, strategies and bylaws were considered:
- Operative District Plan
 - Proposed District Plan
- 42 The recommended option is consistent with the principles set out in the named policies.
- 43 This matter is not included in the 10-Year Plan/Annual Plan.

Local Government Act 2002 Purpose Provisions

- 44 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 making the decision in a timely fashion;
- 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

45 The persons who are affected by or interested in this matter are the submitters, visitors to and residents within the resort and the wider Arrowtown and Wakatipu Basin community. Submissions from these parties were considered by the appointed Panel.

Legal Considerations and Statutory Responsibilities

46 The process for dealing with plan changes is set out in the First Schedule of the Resource Management Act.

Attachments (All saved separately)

Attachment A: Reports and Recommendations of Independent Commissioners (including recommendations on Submissions – Streams 1-13)

Attachment B: Proposed District Plan Stage 1 Chapters (Recommendations Version)

Attachment C: Proposed District Plan Stage 1 Planning Maps (Recommendations Version)