

QLDC Council

29 June 2023

Report for Agenda Item | Rīpoata moto e Rāraki take [4]

Department: Planning & Development

Title | Taitara : Ratification of Commissioner’s Recommendation – Arthurs Point renotification

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to provide the report and recommendations of the Independent Hearings Commissioners on submissions and further submissions on the zoning relating to the Arthurs Point re-notification.

A resolution from Council is sought to notify the Commissioner’s recommendation as a Council decision in accordance with Clause 10 and 11 of the First Schedule of the Resource Management Act 1991.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Adopt** Independent Commissioners report and recommendations on the submissions 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. **Note** that adopting the report and recommendations on submissions as the Council’s decision means the Council also adopts the independent hearing panel’s reasons for those decisions on submissions as set out in the recommendation report.

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7 June 2023

Reviewed and Authorised by:



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Title: GM Planning & Development (Acting)
7 June 2023

Context | Horopaki

1. In January 2023 Council appointed commissioners and re-heard submissions and further submissions relating to the Arthurs Point. These were Stage 1 submissions that arose from a High Court decision (CA 1202021) requiring the Council to re-notify the submissions to enable further submissions to be heard made and the matter heard.

Gertrude's Saddlery appeal

2. The appeal related to the way Council had summarised particular submissions in Stage 1 of the PDP process. On application by APONLS (Arthurs Point Outstanding Natural Landscape Society Incorporated), the Environment Court granted an enforcement order that required QLDC to re-notify the submissions by Gertrude's Saddlery Limited and Larchmont Developments. The Environment Court agreed that Council had summarised the submissions accurately but determined that QLDC should have gone further in identifying what the relief sought in the submissions might mean.
3. The Environment Court decision was appealed by Council and Gertrude's Saddlery, and the High Court rejected those appeals. Gertrude's Saddlery then appealed to the Court of Appeal. QLDC did not appeal, but submitted in support on limited grounds.
4. **Court of Appeal decision:** The Court of Appeal has indicated that potentially the correct legal test was not applied properly, and was critical of the Environment Court. However, it has held that the point of law is not of general or public importance and therefore refused leave to appeal. No costs were awarded.
5. This meant the Environment Court decision, which granted the enforcement order, stands. That decision required Council to re-notify the rezoning submissions made to the PDP by Gertrude's Saddlery and Larchmont. This gave a new opportunity for further submissions from other parties, including APONLS.

APONLS Appeal

6. APONLS joined the general Upper Clutha Environmental Society (UCESI) Stage 1 appeal in order to seek changes to the ONL boundary, and (consequentially) the zoning of land, in and around Arthurs Point. Council opposed that, as did Gertrude's Saddlery and Larchmont. The Environment Court ruled in favour of APONLS, finding that the UCESI submission provided jurisdiction to seek the ONL changes sought.
7. Gertrude's Saddlery appealed to the High Court, supported by Council. The High Court ruled in favour of Gertrude's Saddlery and Council. APONLS then appealed to the Court of Appeal.
8. **Court of Appeal decision:** The Court of Appeal has rejected the appeal by APONLS. This decision supports the position taken by Council and means that APONLS has no standing to seeking changes to the ONL boundary, and zoning, in and around Arthurs Point. They could however take part in the re-notification process that was undertaken.

9. The two submissions [Submission number 494 Gertrude’s Saddlery Limited (Gertrude’s Saddlery); (b) Submission number 527 Larchmont Developments Limited (Larchmont Developments)] were notified for further submissions in 2022 and closed on 14 April 2022.
10. A total of 101 further submissions was received which included further submissions from APONLS and a number of Arthurs Point residents. A hearing was held in front of Independent Commissioners Jane Taylor and Ian Munro in February 2023.
11. A recommendation has now been received and the purpose of this report is to ratify it as a Council decision. The recommendation is set out in **Attachment A** [Re-hearing of submissions on Stage 1: Proposed District Plan Gertrude’s Saddlery Limited and Larchmont Developments Limited at Arthurs Point - Report and Recommendations of Hearings Commissioners], and recommends the following:
 - (a) The notified PDP LDSR zone and Rural zone boundaries, the UGB boundary, and the ONL boundary shown on Map 39 of the (notified) PDP shown across 111 and 163 Atley Road, Arthurs Point should be retained as notified without change.
 - (b) The principal reasons for this are:
 - (i) The previous PDP IHP recommendation and Council decision on this matter are not binding and were made without the benefit of the same extent and breadth of evidence and analysis as was available in this instance. In particular, Commissioners Taylor and Munro derived substantial additional benefit from having undertaken a raft-based site visit to appreciate the landform and river from that very relevant vantage point. This is a perspective that is understood not to have been available to the IHP.
 - (ii) The land forms part of a continuous and coherent ONL, related closely to and containing the adjacent Kimiākau Shotover River ONF.
 - (iii) The land is highly sensitive to the effects of development due to its visual prominence as part of a distinctive river-loop landform that is widely, even internationally, renowned and strongly associated with the identity of Arthurs Point.
 - (iv) The adverse effects arising from any of the rezoning alternatives identified by the Council, submitters, or further submitters, including effects on the values of the ONL, would be generally substantial and in all cases unacceptable.
 - (v) In addition to (iv) above, such rezoning proposals would also not be consistent with the strategic objectives of Chapter 3, as well as s.6(b) of the RMA to the extent that they are not supportable.
 - (vi) The recommended outcome will on the whole best and most appropriately implement the balance of the PDP, the POORPS 2019 and the PORPS 2021, and Part 2 of the RMA.
 - (vii) We have not made any findings as to the extent of the Kimiākau Shotover River ONF boundary and nothing in our recommendations should be seen as pre-determining or

otherwise affecting whatever decision on that matter may result from the current Landscape Schedule Plan Variation process.

Analysis and Advice | Tatāritaka me kā Tohutohu

12. The Hearings Commissioners have heard the submission and further submissions, considered written and oral evidence and submissions, taken advice from experts, questioned participants, and undertaken site visits from various public viewpoints including the Shotover River. The recommendation does not constitute a decision under the RMA. A local authority must make a decision on the provisions and matters raised in the submissions.
13. As discussed in the Options section of this report, for the Council to adopt some aspects of the recommendations and seek to amend others carries a high risk of creating procedural unfairness. Unlike the Panel, Councillors have not considered the full breadth of submissions, or tested the body of evidence that has informed this recommendation. Therefore, it is appropriate that they adopt the recommendations of the Commissioners as a council decision.
14. Once the decision is notified the provisions would have legal effect.
15. 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.
16. **Option 1** - Accept the Hearing Panel's Recommendation.

Advantages:

- The submissions and further submissions has been through a thorough process under Schedule 1 of the RMA. Commissioners were qualified decisions makers with the benefit of reviewing submissions and further submissions, hearing expert evidence from submitters, and Council staff in the form of an officer's recommendation. It is considered the Commissioners have reached a robust recommendation.
- The submissions and hearing process gave people the opportunity to either support or oppose the submissions and be heard in relation to their submissions.

Disadvantages:

- None – Council appointed the Commissioners to hear and make recommendations on the submissions received.
17. **Option 2** – Reject the Hearing Panel's recommendations either in full or in part and re-hear submissions on this aspect of the PDP.

Advantages:

- Would allow Council to appoint new Commissioners onto the Panel to re-hear submissions on aspects of the decision it was unhappy with. It would allow Council to clearly signal concerns with the decisions or the process of deciding submissions without being drawn into the merits of the decisions or submissions.

Disadvantages

- In accordance with Clause 10 (4)(a) of the First Schedule of the Resource Management Act 1991, the Council has to give its decision and publicly notify the decision no later than two years after notification, being 31 October 2021. As a result of the Environment Court and High Court appeals the Council is well in excess of this timeframe. Further delays should be avoided.
 - Because the Council has not heard the evidence presented at the hearing or read the submissions on this topic, a new hearing would be required. This will impose significant additional costs and time delays on all parties.
 - A re-hearing would be required because changing the recommendations without undertaking a further hearing would not demonstrate procedural fairness or natural justice to those who have inputted into the process, and submitters who have participated in good faith.
 - Additional Council, applicant and submitter resources will be required to re-hear the relevant aspects of the PDP which may not be the most efficient remedy, given that parties unhappy with the decisions or process can appeal to the Environment Court on a de novo basis once the recommendation has been ratified and notified by the Council.
18. This report recommends **Option 1** for addressing this matter because the submissions and further submissions has been through a thorough process under Schedule 1 of the RMA. Commissioners were qualified decisions makers with the benefit of reviewing submissions and further submissions, hearing expert evidence from submitters, and Council staff in the form of an officer's recommendation. It is considered the Commissioners have reached a robust recommendation.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

19. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because the matter relates to decisions on submissions on the Proposed District Plan, which is a very significant statutory document in terms of the social, economic and environmental wellbeing of the Queenstown Lakes District. However, it only affects a discrete area of the district.

20. The community has had the opportunity to further submit on the original submissions through the process and further submissions were received. A public hearing has been held. The Commissioners considered these submissions and hearing appearances within their recommendations.
21. The views of persons considered to be affected by this matter have been taken into account in developing the recommended decision and they also have the potential to seek recourse through an appeal to the Environment Court.

Māori Consultation | Iwi Rūnaka

22. Consultation with Iwi authorities required pursuant to Schedule 1, clause 4A of the RMA, was undertaken as part of the Proposed Plan process, whereby sets of draft provisions were provided to iwi representatives for consideration and comment. The iwi authorities did not request any changes to the draft provisions and did not provide specific comment.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

23. 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.
24. The recommended option 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 Hearing Panel who heard all the evidence before them and made a decision based upon that evidence.

Financial Implications | Kā Riteka ā-Pūtea

25. There are no additional financial implications beyond what is within existing approved budgets.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

26. The following Council policies, strategies and bylaws were considered:
 - Proposed District Plan
27. This matter is broadly included in the Ten Year Plan/Annual Plan under the District Plan operating expenditure.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

28. No specific legal advice has been sought. The process has been undertaken under the requirements (Schedule 1) of the Resource Management Act 1991.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

29. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The recommended option will assist in the provision of planning for community outcomes.

30. The recommended option:

- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not significantly alter 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 | Kā Tāpirihaka

A	Re-hearing of submissions on Stage 1: Proposed District Plan Gertrude's Saddlery Limited and Larchmont Developments Limited at Arthurs Point Report and Recommendations of Hearings Commissioners
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