

**QLDC Council**  
**29 April 2021****Report for Agenda Item | Rīpoata moto e Rāraki take : 2****Department: Planning & Development****Title | Taitara Delegated Authority for Appeals to Stage 3 & 3b of the Proposed District Plan****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

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The purpose of this report is to consider updating 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 of the appeals on Stage 3 & 3b of the Queenstown Lakes District Council Proposed District Plan.

**RECOMMENDATION | NGĀ TŪTOHUNGA**

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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 Resource Management 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 3 & 3b of the Proposed District Plan and reach an agreement within the guidelines and parameters set by the Appeals Subcommittee.
4. **Amend** the Queenstown Lakes District Council Register of Delegations from Council to Officers under the Resource management Act 1991 in relation to appeals to Council's decisions on Stage 3 & 3b of the Proposed District Plan.
5. **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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12/04/2021

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12/04/2021

## CONTEXT | HOROPAKI

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- 1 Council on 18 March 2021 adopted the recommendations from the Independent Hearing Panel (the IHP) as Council's Decisions on submissions to Stage 3 & 3b of the Proposed District Plan (PDP) (decisions).
- 2 The decisions addressed chapters 18A General Industrial, 19A Three Parks Commercial, 19B Three Parks Business, 20 Settlement Zone, 39 Wāhi Tūpuna, 46 Rural Visitor Zone, Business Mixed Use and Residential Design Guidelines, Arthurs Point North and 101 Ballantyne Road re-zonings and variations to Energy and Utilities, Open Space and Recreation, Glare, Fire Fighting, Wānaka Medium Density Residential, and Frankton Road Height Control. The decisions were notified on 1 April 2021 and appeals on the Stage 3 & 3b provisions of the PDP will opened on 6 April 2021.

## ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

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### Environment Court

- 3 The management of appeals to the Environment Court is in the hands of the Court. Council staff will review the appeals and the topics they cover and then write to the Court about preferred options for sequencing and timing. It is anticipated that the following processes will take place for the resolution of appeals (but the dates for these processes will be determined by the Court):
  - a. informal negotiations can begin on appeals that are amenable to be resolved in this manner at any time;
  - b. Court assisted mediations on other appeals will begin when directed by the Court. Mediation should narrow and clarify appeals even if nothing else is achieved, so the Council will seek to mediate on the appeals wherever possible. However, agreeing to mediate does not mean agreeing to what is sought by the appeals. It is possible that some appeals will not be able to be resolved through mediation; and
  - c. Environment Court hearings will commence for any appeals that are not able to be resolved through informal negotiation and Court assisted mediation. Hearings can also involve conferencing between experts on specific matters.
- 4 The Council has legal support from within the QLDC Legal team to assist in the management of the appeals process.
- 5 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 3 & 3b 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 3 & 3b of the PDP through 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

- 6 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.”*

- 7 Currently the General Manager Planning & Development, Manager Planning Policy and the Principal Planner Planning Policy have the delegation 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 and Stage 2** of the current plan review. This authority allows these persons to reach agreements within guidelines and parameters confirmed with the Appeals Subcommittee.
- 8 It is intended to continue the process with the Appeal Subcommittee that was developed for Stage 1 and 2 appeals to keep Councillors informed of the progress of the resolution of the appeals:
- a. The Manager Planning Policy, or Principal Planner Resource Management Policy will present a report to the Appeals Subcommittee 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 changes to Council’s position in relation to those appeals and any proposals to resolve or withdraw from proceedings.
- 9 This approach enables the Appeals Subcommittee to maintain 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 be taken to this stage of the PDP process as the Environment Court in setting the timing of the mediations and hearings will look to progress the appeals as efficiently as possible. Staff entering into the mediation processes will be expected to have 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.
- 10 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.

- 11 **Option 1** Update the current delegation where delegated 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 sits with the General Manager Planning & Development, Manager Planning Policy and the Principal Planner Planning Policy for appeals to decisions on Stage 1 and 2 **to also include Stages 3 and 3b.**

*Advantages:*

- 12 Allows those officers with specific knowledge of the PDP to participate in the appeals process and in various forms of mediation for Stage 3 & 3b appeals. Allows for these officials to have authority to act on Council's behalf after first obtaining appropriate direction from the Appeals Subcommittee.
- 13 Retains an appropriate level of oversight from elected members.

*Disadvantages:*

- 14 Requires a high level of trust between elected members and staff. However, this disadvantage is mitigated by the reporting process proposed to be put in place between the officers and the Appeals Subcommittee.
- 15 **Option 2** Delegate to the Chief Executive (CE) and General Manager (GM) Planning and Development 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:*

- 16 Elected officials and more senior officials have a range of experience and a broad understanding of Council and community interests.

*Disadvantages:*

- 17 Keeping abreast of the details of a large number of fast moving plan appeals would be a very significant task for members of the Appeals Subcommittee and for the CE and GM.
- 18 Having Elected Members and the CE and GM invest the required amount of time into appeals does not appear to be justified. It is also noted that there are limits on the role of elected members in the Environment Court processes, which as they progress are extensively driven by lawyers and experts.
- 19 Current commitments and workloads would not allow these senior staff to get to grips with all the details of the appeals and to participate in Environment Court processes in an efficient manner, which carries with it greater risk.

- 20 **Option 3** Progress appeals without delegation to officials, which is to maintain the delegated authority with the Appeals Sub – committee.

*Advantages:*

- 21 Councillors on the Appeals Sub-committee would have direct input into the mediation of appeals and the environment court process. Their views can be represented by legal counsel and potentially by experts.

*Disadvantages:*

- 22 The Appeals Subcommittee would have to decide on the parameters and specifics of responses to what could be a large number of complex individual Stage 3 and 3b appeals. The timeframe of the Committee schedule does not allow for potentially fast moving appeals to be able to be dealt with in an efficient and timely manner.
- 23 Councillors would need to attend to a large volume of correspondence and be available to attend mediation meetings and possibly attend the Environment Court in order to be able to understand the appeal points and possible resolutions.
- 24 This report recommends **Option 1** for addressing the matter because it is the more robust option.

## CONSULTATION PROCESS | HĀTEPE MATAPAKI:

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### > SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 25 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.
- 26 No persons are considered to be affected by this matter.

### > MĀORI CONSULTATION | IWI RŪNANGA

- 27 The Council has not specifically consulted with iwi on this issue.

## RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

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- 28 This matter relates to the Community & Wellbeing risk category. It is associated with RISK0056 Ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a Moderate inherent risk rating.
- 29 The approval of the recommended option will support the Council by creating a robust and efficient process to deal with appeals to the PDP.

## FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

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

## **COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA**

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31 The following Council policies, strategies and bylaws were considered:

- QLDC Delegations Register

32 The recommended option is consistent with the principles set out in the named policy/policies.

33 This matter is not included in the Ten Year Plan/Annual Plan.

## **LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHA KA WAETURE**

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34 The Resource Management Act 1991, Local Government Act 2002 and Local Government Official Information and Meetings Act 1987 have been taken into account in writing this report.

## **LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA**

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35 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 district plan appeals are resolved efficiently and with appropriate oversight;
- 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 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.