

QLDC Council
26 November 2015

Report for Agenda Item: 16

Department: Planning & Development

Plan Change 51 – Peninsula Bay North

Purpose

- 1 The purpose of this report is to recommend that the Council accept for processing Private Plan Change Request 51 (PC51) to re-zone an area of land at the north end of Peninsula Bay from Open Space to Low Density Residential.

Executive Summary

- 2 A private plan change request has been received from Peninsula Bay Joint Venture (PBJV) to change the operative zoning of approximately 6 ha of land at the north end of Peninsula Bay, Wanaka from Open Space to Low Density Residential.
- 3 A relatively extensive land covenant is proposed in order to restrict the nature and scale of development of the site.
- 4 The land subject to the request is undulating and part of it is within the Outstanding Natural Landscape. It comprises a mix of pasture, kanuka shrubland, and depleted tussock grasslands. Informal mountain bike tracks exist within the site but beyond the area that is proposed for re-zoning.
- 5 There are no grounds for rejecting the request or processing it as if it were a resource consent. There are no strong reasons for adopting it as a Council-led plan change.
- 6 It is recommended that the Council accept the request for processing and that the notification process commence.

Recommendation

That the Council:

- a) **Note** the contents of this report; and
- b) **Accept** private plan change request 51 (Peninsula Bay North Zone Change) for processing by the Council and proceed to notification.

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9/11/2015

Reviewed and Authorised by:



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16/11/2015

Background

- Private Plan Change 51 has been received from PBJV to re-zone approximately 6 hectares of land at the north end of Peninsula Bay, Wanaka, from Open Space to Low Density Residential, as illustrated in the following maps:

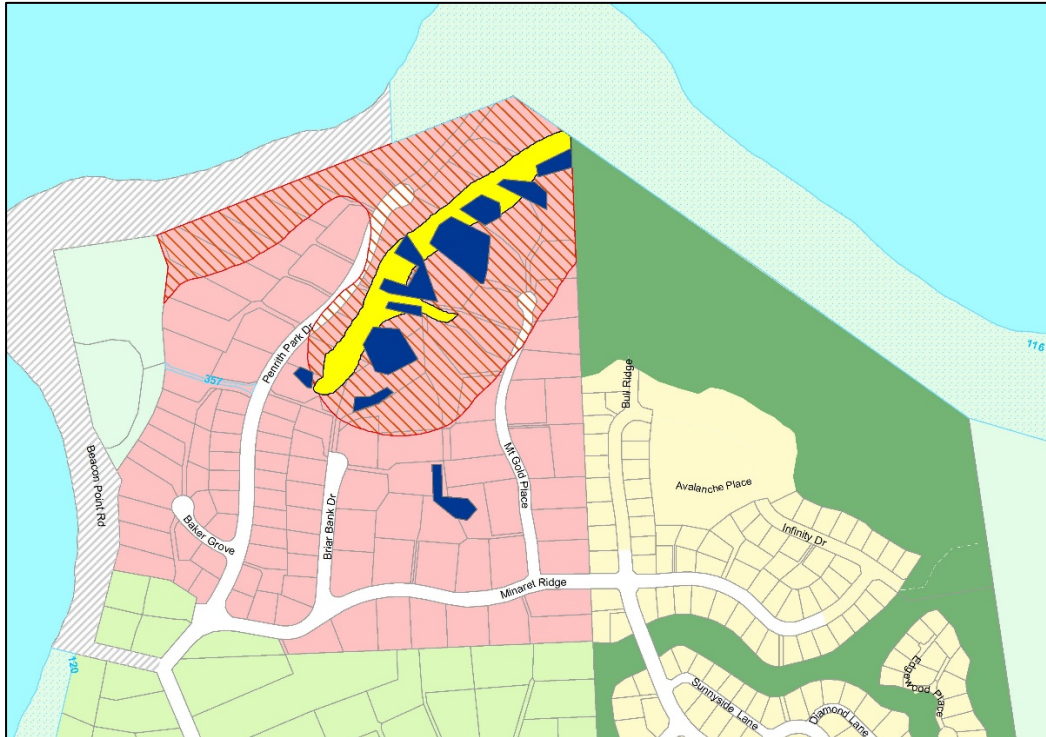


Figure 1 - Existing Operative zoning

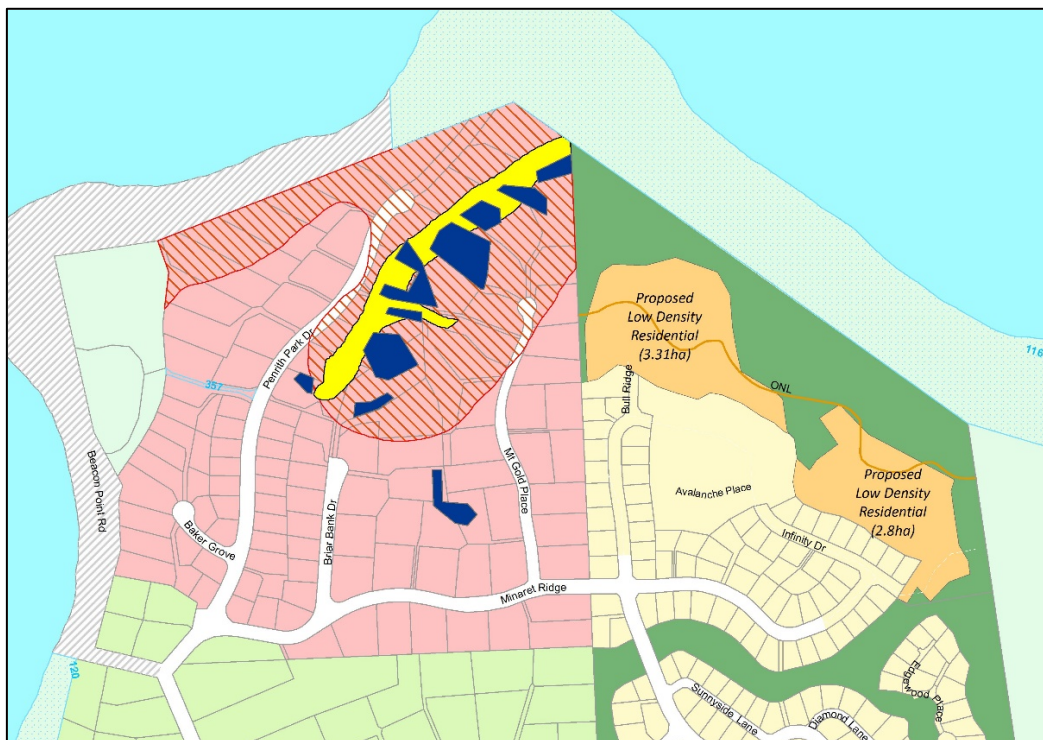


Figure 2 - Proposed amendment to the operative District Plan

8 You are referred to Appendix A of the plan change application for the Concept Scheme Plan that is intended within the rezoned area.

9 In summary, the proposed plan change:

- Requests a change to the operative District Plan. As such, nothing in this plan change can change the proposed District Plan.
- Applies the operative Low Density Residential Zone to the land.
- Proposes land covenants in order to impose additional controls on development, in preference to introducing site-specific provisions into the District Plan. These covenants:
 - Restrict development to 26 residential allotments in accordance with the concept scheme plans attached to the plan change request, with no more than 1 dwelling per lot. These allotments range in size from 1110m² to 5300m², with building platforms ranging in size from 590m² to 1100m².
 - Control the height and reflectivity of buildings in recognition of the relative sensitivity of the site.
 - Require landscaping, fencing, and the protection of identified vegetation to be undertaken in general accordance with the landscape concept plan submitted with the request and impose timeframes on planting.
 - Prevent certain exotic species from being established on private allotments or road reserve.
 - Require earthworks to be undertaken in accordance with the earthworks plan submitted with the request.

10 It is noted that:

- The Low Density Residential Zone allows subdivision and development to a much greater density but this is prevented in this area.
- The operative rules of the Low Density Residential Zone (Peninsula Bay) require that an Outline Development Plan be approved prior to any development or subdivision.

11 By way of background, a Council decision in 2008 approved Plan Change 15/ Variation 25, which rezoned this area to Open Space zoning, as part of the rezoning to enable the Peninsula Bay development. Then, in 2010, a Council decision adopted a plan change to amend the Open Space Zone boundary slightly in the vicinity of the subject site.

Options

12 Under Clause 25 of the First Schedule of the Resource Management Act (RMA), the Council must decide whether to either:

- a) Reject the plan change
- b) Process the plan change request as a resource consent
- c) Adopt the plan change, or

d) Accept the Plan Change (for processing).

13 These options are considered in turn below.

Assessment of the options

a) Reject the Plan Change Request

14 A plan change request *may* be rejected on certain grounds, as specified in Clause 23(6) and Clause 25 of the First Schedule. In this case:

- This request is not considered to be frivolous or vexatious. It does not lack seriousness or set out to annoy others.
- The 'substance' of the request has not been dealt with by the Council or the Environment Court in the last two years, noting that the substance of this plan change has not been considered by Council or the Environment Court since 2008.
- The change is not contrary to sound resource management practice. The Courts have confirmed that 'sound resource management practice' is tied to the purpose and principles of the Act and should be based on a high level assessment of the merits. At a high level, the plan change is not considered to be contrary to sound resource management.
- The change would not make the District Plan inconsistent with Part 5 of the Act (relating to National Environmental Standards and other policies and plans).
- The Operative District Plan has been fully operative since 2007.
- Clause 23(6) clarifies that if the requestor declines to provide information sought by the Council, the plan change request can be rejected. The requestor has provided all the further information sought, to the satisfaction of the Council.

15 It is therefore considered *inappropriate* to reject the plan change request.

b) Process the plan change request as a resource consent

16 Under this scenario the plan change request is converted to a resource consent application and is processed by the Council as such. This would mean:

- The requestor bears all the costs associated with a resource consent.
- The Council has no influence over what is publicly notified, whereas if it accepts a plan change it is common for the applicant to agree to some modifications to the application prior to notification as a result of a consultation with the council at this stage.
- The resource consent does not have effect until it is beyond challenge.

17 In this instance, processing the consent as if it were a resource consent is not an option as, pursuant to Rule 20.2.2.6 of the operative District Plan, residential units (amongst other activities) are prohibited. As such, Part 6 of the RMA would

not allow a resource consent application to be approved for the proposed development.

18 It is therefore considered *inappropriate* to process the plan change request as if it were a resource consent application.

c) Adopt the Plan Change Request

19 Under this scenario the plan change becomes a Council plan change and is processed as such. This would mean:

- The Council has full control over the content and extent of the plan change and bears the costs of managing and processing the plan change.
- The plan change would have legal effect from the time it is notified.

20 The Council's current Long Term Plan (June 2015) anticipates private plan changes but, given the recent notification of stage 1 of the Proposed District Plan, it does not anticipate or provide funding for any Council-led plan changes.

21 While not contrary to the Council's strategic direction, the plan change does not specifically or significantly contribute to any particular goals of either the Long Term Plan or the Proposed District Plan. In this respect, it is noted that the Proposed District Plan shows the site as being within the proposed Urban Growth Boundary, zones it open space and continues to apply an Outstanding Natural Landscape classification to it. As such, adopting the plan change as a Council-led plan change would not necessarily align with the intentions of the Proposed District Plan.

22 It is therefore considered *inappropriate* to adopt and process the plan change request as a Council Plan Change.

d) Accept the Plan Change Request for processing

23 Under this scenario the private plan change is publicly notified in the form prepared by the requestor, subject to any modifications that are agreed to between the requestor and the Council, and the Council processes the plan change request in accordance with the First Schedule. This means:

- The Council takes a neutral position on the proposal at the time of notification; neither supporting nor opposing the proposal. The Council can however lodge a submission that will be considered by commissioners.
- The requestor determines the nature of the plan change that is notified but it can be modified prior to notification with the consent of the requestor. In saying this, it is noted that, through consultation between the Council and the Requestor, various minor modifications have been made to the Plan Change since it was lodged.
- The plan change does not have any effect until the decision is operative.
- The requestor bears the cost of the plan change process (except for costs incurred by the Council in relation to any Environment Court proceedings).

24 It is considered *appropriate* to accept the plan change request for the following reasons:

- There is sufficient information to notify the plan change. I.e. A person could read the plan change and understand what is proposed and determine any potential effects.
- The Council will have the opportunity to obtain further advice and information through the submission process and the planner's report.
- The Council is able to make a submission on the merits of the plan change, if this is considered necessary.
- The Council does not bear the costs of processing the plan change, except those costs that it might incur as a result of having to defend its decision in the Environment Court, should it be appealed.
- The plan change would have no weight until operative, removing the risk of resource consent decisions pre-empting the outcome.
- Re-zoning this land is not a Council priority to the extent that it would wish to adopt it as its own, given its priority focus on the Proposed District Plan.

25 This report recommends **Option (d)** above in order to address the matter.

Significance of Decision

26 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because:

- Its impact on the community and environment is able to be considered and the effects avoided or mitigated through the RMA process.
- While there is likely to be public interest in the matter, the RMA process can adequately accommodate this.
- Inconsistencies between the plan change and the Proposed District Plan (as outlined above) can be dealt with effectively through the respective processes and better aligned, noting that the requestor has also made a submission to the Proposed District Plan seeking such alignment.
- It will not adversely affect Council's capacity to carry out, or the cost to the Council in carrying out, any activity identified in the Long-Term Council Community Plan as the cost of processing the plan change will be borne by the Requestor.

27 The level of significance determines the level of compliance necessary with the decision making requirements in sections 76-78 of the Local Government Act 2002. A higher level of compliance must be achieved for a significant decision.

Risk

28 This matter does not have significant risk. Assuming the Council adopts the recommendation to *accept* the plan change request for processing, the risk is classed as low. Accepting the plan change request for processing does not predetermine any outcome, as the Resource Management Act process needs to be followed.

Financial Implications

29 There are no operational and capital expenditure requirements or other budget or cost implications resulting from the decision recommended in this report.

Council Policies, Strategies and Bylaws

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

- Queenstown Lakes District Plan
- Queenstown Lakes Proposed District Plan (2015)
- Wanaka 2020 (2002) and Wanaka Structure Plan (2007)
- Dwelling Capacity Model (2015)
- Growth Management Strategy (2007)
- Long Term Council Community Plan (2015-2025)
- A catalogue of policies, strategies and bylaws is available here: <J:\KEEP\Policies Strategies Bylaws>List of Policies Strategies Bylaws.xlsx>
- Refer to online documents here: <http://www.qldc.govt.nz/policies>

31 Other than some inconsistency between the plan change and the Proposed District Plan as outlined above, the recommended option is generally consistent with the principles set out in the above policies.

32 This matter is included in the 10-Year Plan/Annual Plan to the extent there is a small contingency for the processing of private plan changes and there is not anticipated to be any costs to Council at least in the 2015-16 period

Local Government Act 2002 Purpose Provisions

33 The recommended option:

- Can be implemented through current funding under the 10-Year Plan and Annual Plan; and
- Fulfils the need for good-quality performance of regulatory functions
- Is consistent with the Council's plans and policies in that it is enabling a private party to pursue their interests through an established RMA process.

Consultation: Community Views and Preferences

- 34 Those affected by or interested in this matter are statutory bodies such as the Ministries for the Environment and Conservation and ORC; residents and ratepayers of the Queenstown Lakes district community (particularly those in the Wanaka community generally); iwi; and those individuals and groups who could potentially be directly affected by the zone change.
- 35 The requestor of a private plan change is responsible for undertaking consultation prior to lodging the request with the Council. Part 4 and Attachment 'GA' of the plan change application outlines the consultation that has been undertaken to date, which includes communication with iwi; contact with the Upper Clutha Environmental Society; and sending letters and information to approximately 40 properties in the immediate vicinity of the area. Four responses were received from these property owners, including queries regarding ongoing access to the reserve and clarification of the proposal; and expressing support for the planned retention of vegetation and layout of the building platforms.
- 36 The Council has not, itself, undertaken any consultation in relation to this plan change request but, rather, will rely on the formal consultation process as stipulated by the RMA.
- 37 Should the recommendation be adopted by Council, the formal consultation provisions of the RMA will ensure that parties will have the opportunity to comment on the application and speak to their submission at a public hearing.

Legal Considerations and Statutory Responsibilities

- 38 The processes set out in the First Schedule of the RMA must be complied with in the processing of this plan change. It has not been necessary to obtain any legal advice on any matter thus far.

Attachments

Proposed Plan Change 51 entitled "Peninsula Bay Joint Venture private plan change application - Peninsula Bay North Zone Change November 2015".

- Letters dated 5 November 2015 and 10 November 2015
- Annexure A (Replacement S32 report) (pp 1-45)
 - Appendix A: Scheme Plan (pp 46-47)
 - Appendix B: Variation 15 Structure Plan (pp 48-49)
 - Appendix C: Landscape Plan (pp 50-51)
 - Appendix D: Certificate of Title (pp 52-54)
 - Appendix E: Vivian and Espie Landscape Assessment (pp 55-109)
 - Appendix F: Mitchell Partnerships Ltd Terrestrial Ecology Assessment (pp 110-142 including Appendices 1-3)
 - Appendix G: Draft Land Covenant (pp 143-185, including various appendices, annexures, maps, sale and purchase agreement, terms of sale, plans, land covenants and building covenants)
 - Appendix H: Davis Consulting Group Preliminary Site Investigation (pp 186-233, including appendices A-E)

- Appendix I: Paterson Pitts Group Infrastructure Design Report (pp 234-298, including appendices A-D and Annexure C: Additional pages to Appendix I (Cross Sections pp 299-303)
- Appendix J: Otago Regional Council Operative Regional Policy Statement; Objectives and Policies (pp 304-320)