

QLDC Council
30 July 2015

Report for Agenda Item: 1

Department: Planning & Development

Proposed District Plan – Notification

Purpose

- 1 The purpose of this paper is to present the Proposed District Plan (PDP) to Council for its approval to proceed to statutory public notification.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Note** that the various substantive draft chapters have been previously endorsed by the Council through 2014 and 2015 and that this paper brings all of those chapters together for Council's final approval.
3. **Authorise** officers to make further changes to the Section 32 Evaluation reports, provisions and maps without further recourse to the Council prior to notification, where this is necessary to:
 - i. Ensure consistent numbering and formatting of the proposed District Plan text and mapping; and
 - ii. To fix identified minor errors and / or omissions.
 - iii. Ensure continuity with other proposed provisions.
4. **Approve** the Queenstown Lakes District Council Proposed District Plan 2015 (Stage 1) for notification pursuant to section 73 and clause 5 of the First Schedule of the Resource Management Act 1991.
5. **Authorise** the District Plan Manager to notify the Queenstown Lakes District Council Proposed District Plan 2015 in accordance with clause 5 of the First Schedule of the Resource Management Act 1991.
6. **Agree** that Stage 2 of the District Plan Review will not be further advanced until hearings for Stage 1 have been completed.
7. **Agree** that the High Density Residential Zone in the Gorge Road area of Queenstown will be deferred until Stage 2 of the District Plan Review.

8. **Authorise** an application to the Environment Court pursuant to Section 86D of the Resource Management Act 1991, for the following proposed rules to be given immediate legal effect:

- All the proposed rules in the Business Mixed Use Zone chapter;
- The following proposed rules in the Low Density Residential Zone:
 - Rule 6.4.9 Dwelling, Residential Unit, Residential Flat;
 - Rule 6.5.1 Building Height (for flat sites);
 - Rule 6.5.2 Building Height (for sloping sites);
 - Rule 6.5.6 Density;
 - Rule 6.5.15 Parking – Residential Flat; and
 - The definition of Residential Flat.

Prepared by:



Matthew Paetz
District Plan Manager

15/07/2015

Reviewed and Authorised by:



Marc Bretherton
General Manager Planning
and Development

15/07/2015

Background

- 2 Council formally commenced the District Plan Review via a resolution at its meeting on 17 April 2014. This resolution also defined what is excluded from the review.
- 3 The District Plan review is broken down into two stages. Stage 1 comprises the larger part of the review, being the strategic provisions and those parts of the District Plan that several years of monitoring and consent administration have identified as most in need of review.
- 4 This report recommends that further steps to advance Stage 2 towards notification be deferred until after hearings for Stage 1 have been completed. This is because of the focus required on Stage 1 and the desire to have it complete through to the issue of the commissioners' decision prior to the local body elections in 2016.
- 5 A 'Strategic Umbrella' for the PDP is provided by provisions in Part 2 Strategy. These chapters include the Strategic Direction chapter, which addresses a range

of higher-level environmental, economic, cultural and social matters in an integrated manner. Strategic Directions is complemented and reinforced by the Tangata Whenua Chapter. Given the experiences of growth and demand for places to live and work in the district, and recognising the importance of landscape values, the Urban Development and Landscape chapters provide an overarching framework for subsequent chapters in both rural and urban areas.

- 6 The structure of the PDP then splits into more specific Urban (commercial and residential zones) and Rural provisions. These provisions are followed by a number of District Wide chapters, Special Zone chapters, and maps. Attachment A details the proposed structure of the PDP.
- 7 Evaluation reports prepared under section 32 of the RMA accompany all chapters.
- 8 Once the PDP is notified (anticipated mid August 2015), the formal submission period is 40 working days. Following this submission period, a summary of decisions requested is prepared by staff and public notice is given of the availability of this summary and a period of 10 working days then applies for further submissions to be made. These processes will be completed prior to Christmas 2015.
- 9 A detailed plan for hearing streams has not yet been confirmed and will be informed by the content of submissions. In broad terms however, hearings are programmed to occur between February and mid-2016.

Comment

Options

- 10 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:
- 11 **Option 1** Approve the PDP (Stage 1) for public notification
Advantages:
- 12 Progresses the PDP, which addresses a number of fundamental shortcomings in the Operative District Plan.
- 13 Responds to statutory requirements of the Resource Management Act 1991. In particular, Section 79(1) requires local authorities to commence a review of provisions in its District Plan if the provisions have not been the subject of a review or change during the previous 10 years. Many of the provisions in the Operative District Plan have now been operative for more than 10 years. While no explicit specification exists as to timeframes for notification following commencement of a review, the requirement under section 21 to avoid unreasonable delay applies.

Disadvantages:

- 14 None
- 15 **Option 2** Not proceed to approve the PDP (Stage 1) for notification (for example to enable more consultation or analysis to occur)

Advantages:

- 16 None. A large amount of analysis has been undertaken, and non-statutory consultation has occurred on some of the major chapters. It is never possible to reach agreement with the entire community on all provisions prior to notification, and the public notification process allows for formal submissions to be made. Given the breadth of the issues addressed in Stage 1, and the number of interested parties, it is also considered unlikely that material progress would be able to be made through further pre-notification consultation or discussions such that a delay would be warranted.

Disadvantages:

- 17 Would unnecessarily delay progression of the PDP. Further, it would delay the introduction of new provisions that are considered necessary to address important and pressing issues for the district, such as housing affordability and supply, which have been clearly identified and acknowledged. Note also that it would leave a gap in tree protection rules in Arrowtown, which would mean that identified heritage trees would not have protection
- 18 This report recommends Option 1 for addressing the matter.

Legal Effect

- 19 It is important to emphasise that pursuant to Section 86B(3) of the RMA, certain rules in a proposed plan have immediate legal effect upon notification. For the PDP, this relates to rules that:
- Protect areas of significant indigenous vegetation
 - Protect areas of significant habitats of indigenous fauna;
 - Protect historic heritage.
- 20 This means that upon public notification, rules in these areas will immediately apply (compared to other rules, which only have legal effect once a decision on submissions relating to the rule has been made and publicly notified, unless an application for immediate legal effect under section 86D of the RMA is made, as discussed below).
- 21 Amendments to Section 76 of the RMA by the Resource Management Amendments Act 2013 mean that general tree protection rules can no longer be applied in District Plans. Such rules that exist in Operative District Plans will be revoked on 4 September 2015. This has particular implications for Arrowtown, where rules in the Operative District Plan provide general tree protection in the

Residential Arrowtown Historic Management Zone. Given the law change, these provisions have been removed in the PDP. The PDP has however identified 'character trees' which have been included, along with rules that protect such individually identified trees.

22 The RMA provides that if a rule to protect trees that would otherwise lose their protection (by virtue of blanket rules being revoked) is notified by 4 September 2015, it will have legal effect from 4 September 2015. Therefore, notification of the PDP (Stage 1) in August will enable the proposed character tree protection rules in Arrowtown to have legal effect from 4 September.

23 The implication of this is that resource consent approval will be required by any person or party who wishes to remove or modify identified character trees in the PDP, from 4 September 2015. However, trees on private property that are currently protected by the general tree protection provisions in Arrowtown and that are not identified as character trees in the PDP will be able to be removed or modified as of right (i.e. no resource consent approval required) from 4 September 2015.

24 In summary:

- until 4 September 2015, the existing Arrowtown tree protection rules in the Operative District Plan will apply; and
- from 4 September 2015, the existing rules will no longer apply but the new Character Tree rules in the PDP will attain immediate legal effect and will apply.

25 In addition to these matters, the Environment Court may order rules to have legal effect from a date other than prescribed by the RMA. Given immediate and urgent housing pressures in the District and the well documented social/economic implications of this situation, it is considered appropriate to apply to the Court for several of the proposed rules in the Residential and Business Mixed Use chapters to have immediate legal effect, with a view to putting in place a targeted and more enabling framework to address these issues in the immediate term.

26 Most applications to the Court for rules to have immediate legal effect seek to impose a more restrictive approach so that there is not a "gold rush" of unrestricted activity before a proposed rule takes legal effect. The Council's proposed approach is therefore different in that it seeks that the rules that would have immediate legal effect are more enabling and permissive.

27 It is important to note that this would not mean that the need for resource consent under the operative plan provisions for relevant developments would be avoided, as the operative provisions would still have legal effect. It would however allow a more balanced consenting approach to be taken than simply applying the operative plan provisions alone, as would otherwise occur. This may have the effect of providing encouragement for appropriate medium density housing developments in the immediate term.

28 In considering this, the impacts of rules that may be granted legal effect have been considered. The proposed application to the Court applies to those rules where there is less significant proposed change from the status quo under the operative plan, or where potential adverse environmental effects resulting from the rules are considered likely to be generally minor in nature, taking into account receiving environments. And, in any event, as noted earlier, resource consent would still be required for such developments irrespective of the rules taking immediate legal effect.

29 As a result, it is recommended that an application be made to the Court for the following provisions to attain legal effect, from 1 November 2015 (date chosen to reflect likely Court decision making timeframes):

- All the provisions in the Business Mixed Use Zone chapter;
- The following provisions in the Low Density Residential Zone:
 - Rule 6.4.9 Dwelling, Residential Unit, Residential Flat;
 - Rule 6.5.1 Building Height (for flat sites);
 - Rule 6.5.2 Building Height (for sloping sites);
 - Rule 6.5.6 Density;
 - Rule 6.5.15 Parking – Residential Flat; and
 - The definition of Residential Flat.

30 It is not considered appropriate to apply to the Court for proposed rules with a wider reach such as those in the proposed Medium Density Zone as these are a more substantial departure from the operative provisions.

Deferral of Parts of the Review

31 The April 2014 paper and resolutions that formally commenced the District Plan Review included an expectation that Stage 2 would be progressed in 2015. No specific target dates were included.

32 Following discussion with elected members it is proposed that further steps to advance Stage 2 to notification be formally deferred until the conclusion of hearings on Stage 1. This is for two reasons. First, the anticipated workload associated with Stage 1 right through until the conclusion of hearings is likely to be both substantial and complex. Given the strategic importance of Stage 1, it is considered that this should be the area of focus through this period. The second reason is that local body elections are to be held in October 2016. It is thus proposed that Stage 2 be deferred until after the election in order for the incoming Council to 'own' the policy direction for the balance of the District Plan.

33 The land currently zoned High Density Residential in the Gorge Road area of Queenstown was intended to be included in Stage 1. Initial non-statutory consultation was undertaken in 2015. An outcome of this exercise was

acknowledgement that additional technical engineering work would be of benefit in fully understanding the known hazards in this area and developing a suitably balanced policy and regulatory response. For this reason, this area will be deferred until Stage 2 of the District Plan Review.

Significance and Engagement

34 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the PDP impacts on a large number of residents and ratepayers and residents, some of whom may be specifically affected by the proposed provisions.

Risk

35 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 the District Plan, along with the 10 Year Plan and Asset Management Plans, is central to the current and future development needs of the community.

36 The recommended option considered above mitigates the risk by providing the necessary regulatory framework to provide for these needs.

Financial Implications

37 Costs associated with the recommended decisions are accounted for in operational budgets.

Council Policies, Strategies and Bylaws

38 A number of Council policies, strategies and bylaws have been considered in development of the PDP, including:

- 'Tomorrow's Queenstown' Community Plan 2002 and Wanaka 2020
- Wanaka Structure Plan 2007
- A Growth Management Strategy for the Queenstown Lakes District 2007
- Urban Design Strategy 2009
- Draft Transport Strategy 2015
- Economic Development Strategy 2015
- 10 Year Plan 2015
- Operative District Plan

39 These policies and strategies are of varying age, currency and continued relevance, which in itself demonstrates the need for a single document drawing

the key elements together and providing statutory weight to them. This matter is included in the 10-Year Plan/Annual Plan

Local Government Act 2002 Purpose Provisions

40 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

41 The persons who are affected by or interested in this matter are residents and ratepayers of the District, iwi, the Otago Regional Council and other statutory bodies.

42 The Council has consulted on draft versions of a number of chapters, including: Strategic Directions, Tangata Whenua, Rural / Landscape, Residential, Significant Indigenous Vegetation, Historic Heritage.

43 In addition, statutory consultation has been undertaken with iwi / statutory bodies.

44 A wide range of views were expressed during consultation. These diverse views have been taken into account when further developing provisions. These views are important. Additionally, it is noted that Council has a duty under both the Local Government and Resource Management Acts to consider the wellbeing of people and communities into the future (i.e. Council's decision making has a strong intergenerational component).

45 Public notification of the PDP provides people with the opportunity to make submissions, to be heard at hearings, and ultimately, if not satisfied with decisions, to appeal to the Environment Court.

Legal Considerations and Statutory Responsibilities

46 Development of the PDP has occurred in accordance with the requirements of the RMA. Particular clauses of relevance include Sections 5-11, 31 and 32 and Schedule 1.

47 The Local Government Act has also informed the review.

48 Notification of the PDP is stipulated by and will follow the procedures of the RMA.

Attachments

- A Structure of the Proposed District Plan (attached)
- B Proposed District Plan Provisions (circulated separately)
- C Proposed District Plan Section 32 Evaluation Reports (circulated separately)

Part One - Introduction

Introduction

Definitions

Part Two - Strategy

Strategic Direction

Urban Development

Tangata Whenua

Landscapes

Part Three - Urban Environment

Low Density Residential

Medium Density Residential

High Density Residential

Large Lot Residential

Arrowtown Residential Historic Management Zone

Queenstown Town Centre

Wanaka Town Centre

Arrowtown Town Centre

Local Shopping Centre Zone

Business Mixed Use

Airport Mixed Use

Townships*

Industrial*

Part Four - Rural Environment

Rural General

Rural Residential/Lifestyle

Gibbston Character Zone

Part Five - District Wide Matters

Signs**

Earthworks**

Historic Heritage

Subdivision

Natural Hazards

Transport*

Energy & Utilities

Hazardous Substances*

Protected Trees

Indigenous
Vegetation

Wilding Exotic Trees

Temporary Activities &
Relocatable Buildings

Noise

Designations

Open Spaces
Recreation*

Part Six - Special Zones

Jacks Point

Waterfall Park

Millbrook

Frankton Flats (A)*

Frankton Flats (B)*

Rural Visitor*

Penrith Park*

Bendemeer*

Remarkables Park*

Quail Rise*

Meadow Park*

Mt Cardrona Station*

Ballantyne Road*

Three Parks*

Kingston Village*

Shotover Country*

Hydro Generation*

Arrowtown South*

Henley Downs**

Northlake**

Frankton Flats Mixed Use**

Part Seven - Maps

* Addressed in Stage 2

** Reserved for Plan Change Applications under the current Operative District Plan