

QLDC Council  
1 March 2016

Report for Agenda Item: 2

Department: Planning & Development

Special Housing Areas Expression of Interest: Business Mixed Use Zone  
(Gorge Road): Assessment and Recommendation

**Purpose**

The purpose of this report is to recommend that the Council initiated proposal for a Special Housing Area (**SHA**) over multiple privately owned properties within the proposed Business Mixed Use Zone (Gorge Road, Queenstown) be forwarded to the Minister for Building and Housing (**Minister**) for establishment as an SHA.

**Executive Summary**

1 At its 17 December 2015 meeting, the Council resolved:

*“1. Note the assessment of the proposed SHA for the BMU zone against Council’s lead policy on SHAs and the relevant provisions of the Housing Accord and Special Housing Areas Act (HASHA) and local planning context under the Resource Management Act*

*2. Resolve to seek feedback on the proposed SHA in the BMU zone, with the following proposed criteria for qualifying developments should it be recommended to the Minister:*

- building height limit of 20 m*
- at least 30% of dwellings shall comprise gross floor areas no greater than 40 m<sup>2</sup>*

*3. Note that Council’s intent in proposing that the BMU zone become an SHA is expressly to encourage the building of affordable residential accommodation;*

*4. Note Council’s intent that its SHA lead policy would be applied to any SHA development within this zone;*

*5. Note Council’s intent that developments over 12 m in height would be forwarded to the Urban Design Panel for review, to ensure positive streetscape and living environment; and*

*6. Request a report back to the Council meeting on 18 February 2016 on any measures necessary for Councillors to, with confidence, recommend the proposal as an SHA to the Minister of Building and Housing.”*

2 This report to Council sets out how those matters have been addressed since the meeting for the BMU Zone SHA proposal only.

- 3 This report does not repeat the initial assessment relating to the proposal. But the Council may wish to remind itself of the advantages and disadvantages of the proposal when considering whether or not to recommend it to the Minister.
- 4 A SHA for the proposed BMU Zone is aligned with the Proposed District Plan (**PDP**) – enabling potential apartment development up to 20m (6 storeys). A 20m limit is considered appropriate given that most of the properties in the BMU zone are commercial or separated well from residential properties. It is noted that an assessment of the amenities of adjacent neighbours, such as sunlight, access and privacy for existing residents will take place as a second tier (Section 7(c) of Part 2 of the Resource Management Act) and third tier (PDP) criterion of the HASHA at the resource consent stage.
- 5 This report recommends that the Council forward the proposal to the Minister of Building and Housing under the HASHA for approval as an SHA.

### **Recommendation**

That Council:

1. **Note** the contents of this report and in particular; the assessment outlined in the Agenda Report, including measures implemented to address the resolutions of the meeting of 17 December 2015.
2. **Recommend** the proposed SHA for the BMU Zone to the Minister, subject to the following criteria for qualifying developments:
  - Building height limit of 20 metres; and
  - At least 30% of dwellings shall comprise of studio, 1 or 2 bedroom apartments.
3. **Note** that Council's intent in proposing that the BMU zone become an SHA is expressly to encourage the building of affordable residential accommodation;
4. **Note** Council's intent that its SHA lead policy would be applied to any SHA development within this zone; and
5. **Note** Council's intent that developments over 12m in height would be forwarded to the Urban Design Panel for review, to ensure positive streetscape and living environment.

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23/02/2016

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## Background

- 6 The Council initiated proposal for a SHA over multiple privately owned properties within the proposed Business Mixed Use Zone (Gorge Road, Queenstown) was presented to the Council at the 17 December meeting, where the Council resolved to seek feedback on the proposed SHA in the BMU Zone and a report back to the Council on any measures necessary for Councillors to, with confidence, recommend the proposal as an SHA to the Minister of Building and Housing.
- 7 A SHA for the proposed Business Mixed Use Zone (**BMU Zone**) is aligned with the PDP – which enables potential apartment development up to 20m (6 storeys) but with controls in place ensuring that amenities, such as sunlight access and privacy for existing residents, are protected. A 20m limit is considered appropriate given that most of the properties in the BMU Zone are commercial or separated well from residential properties.
- 8 281 submission points on the BMU zone of the Proposed District Plan were received, of which 93 are original submissions and 188 are further submissions. This is discussed further in Paragraphs 18 to 25 below.
- 9 The proposal will potentially bring forward the supply of apartments close to the town centre that will help meet the Housing Accord targets.

## Comment

### Assessment process and resolutions of 17 December 2015

- 10 On 17 December 2015 the Council resolved to obtain feedback on the proposed SHA and report back to the Council meeting on any measures necessary for Councillors to, with confidence, recommend the proposal as an SHA to the Minister of Building and Housing. Measures taken to address the resolution are detailed further below.

### Consultation: Community Views and Preferences

- 11 Public feedback on the proposal is due by 26 February and will be provided to Councillors prior to the meeting, to help inform Council's decision making.

### Proposed District Plan

- 12 It is also worth re-iterating how the development rights enabled through a potential SHA compare to those potentially enabled through the District Plan Review. If the Council recommended the BMU Zone to the Minister, and the Minister conferred SHA status in April, then applications could be lodged for development proposals from that time. In processing any application for a qualifying development, Commissioners would have regard to the following matters giving weight to them (greater to lesser) in the order listed:

- a. The purpose of the HASHA legislation;

- b. Matters in Part 2 of the RMA;
- c. The Proposed District Plan (**PDP**), including the controls specified to protect amenities, such as sunlight access and privacy for existing residents;
- d. Other matters arising under sections 104 to 104F of the RMA; and
- e. The New Zealand Urban Design Protocol (2005).

13 Because the Operative District Plan (**ODP**) and the Lead Policy would have limited weight (their relevance is in the fourth tier consideration, as it is considered an “other matter” arising under sections 104 to 104F of the RMA), good quality proposals consistent with the PDP would have a strong chance of attaining approval.

14 If the SHA is not established, under the PDP, some of the proposed rules would not have any legal effect until decisions on submissions have been notified. If there are no appeals on the proposed BMU Zone provisions, then those provisions would become operative. Therefore, the earliest that the proposed BMU Zone provisions could be operative is early to mid-2017. Noting the final form of those provisions is not certain given the hearings process that must occur in 2016.

15 If the proposed BMU Zone provisions are appealed, then there will be a period of time where the proposed provisions have some legal effect but must be weighed against the operative provisions. This period could potentially extend well into 2017 or even 2018, so under this scenario there is a degree of development uncertainty that may potentially deter applications for development proposals.

16 Given the uncertainty of these processes, and the pronounced nature of the housing issues in the Wakatipu Basin, there is considered to be significant potential time saving benefit in advancing the SHA.

#### Submissions received on the Proposed District Plan

17 The PDP was notified on 26 August 2015. Submissions closed on 23 October and further submissions closed on the 18 December 2015.

18 281 submission points were received on the BMU zone of the PDP, of which 93 are original submissions and 188 are further submissions.

19 Without purporting to summarise all the submissions received the general themes include urban design matters (including more flexibility for non-residential activities), the status of industrial activities and new policies to ensure the operation and function of non-residential activities, status of buildings, various responses to visitor accommodation (some submitters want this excluded from the zone and others want it to be a Controlled Activity (as opposed to a Restricted Discretionary Activity) and various proposed changes including recession lines, heights, landscaping, outdoor storage and the inclusion of outdoor living spaces.

- 20 In terms of heights, some submitters have requested developments with greater heights on the eastern side near the cliffs and staggered to lower heights (12m) at street edge, with reduced heights on the western side nearer the existing residential developments. Several submitters support the proposed heights.
- 21 There was also some opposition regarding the non-notification of buildings between 12m and 20m in height, with some submitters requesting flexibility for these applications to be notified on a case by case basis. The Council would have discretion to notify adjacent neighbours affected by a breach of recession plane or that are impacted on by the height of the application under the HASHA and they would have the opportunity to make submissions. This would be considered as part of the decision making process, as both a second and third tier consideration. In this way, the SHA process is aligned with the PDP process and ensures that potential effects on any existing residential properties are addressed through the consent process.
- 22 One submitter requested that the zone provides for lower cost high density housing, while another requested the focus be on residential worker accommodation.
- 23 While the submissions on the PDP rules in the BMU Zone were not directly on the proposed SHA, the submissions received nonetheless provide an indication of the community direction for the future development of the BMU Zone. The submissions received are generally aligned with the SHA proposal, especially with Council's intent to apply the Lead Policy and have developments over 12m in height assessed by the Urban Design Panel.

#### Council's Lead Policy on Special Housing Areas

- 24 An analysis of the Lead Policy formed part of the initial assessment presented at the 17 December 2015 meeting.
- 25 In terms of visitor accommodation, comments were obtained from Tauranga City and Auckland Councils to determine how they have dealt with these matters. Both Councils have confirmed that there was low risk of their SHAs being developed for visitor accommodation purposes and therefore no controls were required.
- 26 Council can impose conditions of resource consent to prevent short term rentals or visitor accommodation. This would ensure that the proposed SHA would provide either permanent rental or owner occupied housing, although some dwellings may be used as holiday homes.
- 27 Under HASHA qualifying developments must be predominantly residential, with a commercial mixed use component being ancillary to residential development. For example, a shop or cafe might be located on the ground floor of a building with a number of apartments situated above it.
- 28 As there is a legislative requirement for proposals to be 'predominantly residential', a visitor accommodation proposal could not be accepted by Council for processing under HASHA. To provide certainty that any residential units proposed in an application are not used in the future for visitor accommodation,

conditions can be imposed at the time of consent. This will need to be controlled as part of the resource consent process.

### Queenstown Lakes Community Housing Trust

29 Section 15(4) of the HASHA provides that affordability criteria may be specified as part of the criteria for qualifying developments. The proposal will involve multiple land owners and Council will not be in a position, once the SHA is established, to require developers to enter into agreements specifying measures to provide community housing. Compared to the other SHAs proposed by landowners where the Council can secure a commitment to community housing by stakeholder deed before the SHA is recommended to the Minister, in this instance that approach is not feasible.

### **Options**

30 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:

31 Option 1: Recommend the Special Housing Area to the Minister.

Advantages:

- Helps contribute meaningfully to advancing Council's responsibilities under the Queenstown Housing Accord, and in particular to help the Council achieve the housing targets in the Accord.
- Provides the platform for the delivery of studio, 1 or 2 bedroom apartments to the housing market, noting that this type of development is currently in high demand, particularly for much needed worker accommodation.
- Assuming SHA status was conferred and a subsequent application for a qualifying development was successful, the proposed development would generate a significant number of social and economic benefits (both short term and long term).
- Address housing supply by enabling new housing to be constructed.

Disadvantages:

- Council is unable to enter into deeds with individual landowners due to the large number of properties covered.
- There is some risk the proposed SHA will enable development that does not align with the eventual shape of the PDP BMU Zone rules, as the PDP is in its very early stages of the plan change process and could change substantially following local hearings and Environment Court Appeals.

32 Option 2: Not recommend the Special Housing Area to the Minister of Housing

Advantages:

- Proposals can still be applied for subject to the normal resource consent process, subject to the Operative District Plan provisions and the usual

statutory notification provisions, hearing process and potentially Environment Court appeals.

- Does not pre-empt the conclusion of the PDP process by enabling development ahead of its conclusion.

Disadvantages:

- May result in a lengthy assessment process if proposals were to proceed under the usual statutory process of the District Plan Review Process and the RMA.
- Risk that the District's acute housing supply and affordability issues will continue to grow, with resulting social and economic impacts.
- Would forgo the short and long term social and economic benefits offered by the proposal.

33 This report recommends **Option 1**.

### ***Affordability***

34 The Lead Policy expects proposals to provide a proportion of smaller dwellings or sections to promote affordability. The proposed SHA would enable apartment living of varying sizes. It is anticipated that the change to the BMU Zone would enable the delivery of a number of smaller studio, 1 or 2 bedroom units to the housing market.

35 Multi-level construction is expensive, and even with high yield and small units will not necessarily result in cheap housing, though it is expected to be affordable by comparison to the median house price in the District. However, this should be offset by the fact that for many potential residents transport costs should be minimal in this location, and compact dwellings realised in an apartment building constructed to current Building Code requirements should reduce winter heating costs (which can be significant in the District). As a result, such development offers the potential for relatively affordable housing choice when looking at household costs overall and an attractive housing option for people working in Queenstown.

36 Some councils have considered specifying affordability criteria for any qualifying development which, under HASHA, may be by reference to median house prices, median household incomes, individual income, the median multiple (median house price divided by gross annual median household income), or any other similar matter relevant to affordability in the district.

37 Another option considered by some councils is to prescribe a criterion for qualifying developments that specifies that a minimum percentage of dwellings be studio apartments of a maximum floor area ie. 40 square metres or specify a percentage of dwellings that need to be 1 or 2 bedroom units. Either of these options is considered to be a better option than specifying price points that may quickly become outdated in a swiftly moving market.

38 Discussion with professionals both at the Council and in private practice in Auckland has indicated that utilising this price point approach has proven problematic, and the Auckland experience is that the means of developers

achieving the price point is usually through a small apartment typology in any event.

39 The Lead Policy states:

*“The approach to affordability will be not to mandate the delivery of housing at specified price points, but to focus on requiring a certain proportion of qualifying developments to comprise smaller subdivision allotments or dwellings.”*

40 It is noted that at the 17 December meeting, Council Officers promoted specifying a criteria that at least 30% of dwellings shall comprise gross floor areas no greater than 40m<sup>2</sup>. Since this meeting it has been determined that this could pose difficulties for smaller scale developments. Therefore, it is considered that the criterion should state that a minimum of 30% of dwellings shall comprise of studio, 1 or 2 bedroom units. This will avoid the situation where developers may construct a development that largely comprises larger 3 bedroom apartments, which will inevitably hit the market at a much higher price, or demand much higher rentals to justify a good financial return for investors. It is also likely to result in a good mix of different sized apartments, commensurate with the aims of a mixed use zone, and thereby avoiding a “shoebox ghetto”. This is also consistent with the direction specified within the Lead Policy.

41 It is recommended that a criterion for qualifying developments be that at least 30% of dwellings shall comprise of studio, 1 or 2 bedroom units. A requirement of 30% has been selected so that on mid to large scale projects the provision of studio units is meaningful, however care has been taken not to set this requirement too high so as to potentially undermine commerciality (for example, lending for developers can potentially become more challenging where the majority of units in a proposed development are of a small size). This is also consistent with the Council's Lead Policy.

### ***Community Housing***

42 It is acknowledged that the Lead Policy contains principles relating to community housing. However, the Lead Policy is a guiding, non-statutory policy document rather than a document that mandates outcomes, and needs to be applied within the context of each particular case and within the legal parameters of HASHA.

43 Compared to SHAs proposed by landowners where the Council can secure a commitment to community housing by stakeholder deed before the SHA is recommended to the Minister, in this instance that approach is not feasible.

44 Under HASHA, it is not possible to impose a criterion for qualifying developments mandating a provision of community housing. As outlined above, it is possible to impose criteria around housing affordability, either directly (ie. Price points) or indirectly (ie. Dwelling sizes). It has been determined that the indirect approach is the most appropriate with the proposed criteria for qualifying development to be limited to 20m in height and at least 30% of dwellings shall be 1 or 2 bedrooms. These will be controlled through the resource consent process.



## ***Significance and Engagement***

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

- **Importance:** the matter is of moderate importance to the District
- **Community interest:** the matter is of some interest to the community
- **Existing policy and strategy:** Although consistent with the Queenstown Housing Accord and Council's Lead Policy of the Housing Accord, in addition to the Strategic Direction of the Proposed District Plan, the SHA is inconsistent with some of the ODP rules.

## ***Risk***

46 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 is because of economic, social, environmental and reputational risks.

47 It should be noted that a key element of this risk is meeting the current and future development needs of the community. While there is an element of environmental protection to this risk, the risk relates more to the economic and social consequences of not meeting development needs, which includes housing provision. The matter therefore can be considered to mitigate the risk of not meeting these needs. The subsequent resource consent assessment process under HASHA also provides the opportunity for further mitigation of risk.

## **Financial Implications**

48 There are no direct financial implications resulting from the decision. In terms of impact on infrastructure, development contributions will be charged as developments progress. Unlike some greenfield development scenarios, existing infrastructure is available.

## **Council Policies, Strategies and Bylaws**

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

- Council's Lead Policy on the Housing Accord and Special Housing Areas: guides Council's assessment of SHAs
- Operative District Plan: relevant as it is the document that regulates housing development and urban growth management
- Proposed District Plan: relevant as it is the document that regulates housing development and urban growth management
- Housing Our People in our Environment (**HOPE**) Strategy: relevant as it seeks to address the housing affordability issue in the District
- Economic Development Strategy: a key action is to "investigate all options for improving housing affordability in the District"
- 2014/2015 Annual Plan: A number of Community Outcomes are relevant, as they relate to the economy, and the natural and built environment

50 The recommended option is consistent with the principles set out in the named policies. In particular, SHAs help deliver on the HOPE Strategy and the Economic Development Strategy.

### **Local Government Act 2002 Purpose Provisions**

51 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 generally consistent with the Council's plans and policies, noting however some inconsistency with the Operative District Plan; 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**

52 The persons who are affected by or interested in this matter are the landowners of the SHA sites and the neighbours adjoining the proposed SHA sites, and more generally the surrounding community. It is considered that there is also likely to be some wider community interest in the proposal in Queenstown, given the notable lack of apartment housing options.

53 The Council has provided for a community feedback process on the Proposal, consistent with what was done when other SHAs were considered. The process calls for feedback to Councillors and closes on 26 February 2016. Feedback will be collated and provided to Councillors and made public prior to the Council meeting on 1 March 2016.

### **Legal Considerations and Statutory Responsibilities**

54 HASHA is the relevant statute. Its purpose is:

*“...is to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts, listed in Schedule 1, identified as having housing supply and affordability issues.*

55 The Housing Accords and Special Housing Areas Act 2013 (HASHA) does not specify criteria on what matters local authorities should consider when deciding whether to make a recommendation or not to the Minister on potential SHAs. In particular, it does not indicate whether it is appropriate to consider ‘planning issues’, such as District Plan provisions.

56 Council’s legal advice is that planning considerations are relevant matters for Council to consider when deciding whether to recommend a potential SHA to the Minister. However, while these considerations are relevant, Council’s decision making should remain focussed on how to best achieve the targets in the Housing Accord. While the weight to be afforded to any consideration – including

planning context – is at the Council's discretion, HASHA considerations are generally considered to carry more weight.

57 HASHA does not set any statutory responsibilities in terms of consultation on the establishment of SHAs. However it is important to note that should SHAs be established, then the consent authority may request the written approval of adjoining land owners under Section 29 of HASHA if they are deemed to be affected and may undertake a Limited Notification process.

58 Section 14 of the Local Government Act is relevant to Council's decision making on this matter. In particular, subsections (c) and (h):

*(c) when making a decision, a local authority should take account of—*

*(i) the diversity of the community, and the community's interests, within its district or region; and*

*(ii) the interests of future as well as current communities; and*

*(iii) the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):*

*(h) in taking a sustainable development approach, a local authority should take into account—*

*(i) the social, economic, and cultural interests of people and communities; and*

*(ii) the need to maintain and enhance the quality of the environment; and*

*(iii) the reasonably foreseeable needs of future generations*

59 These statutory provisions take a strong intergenerational approach to decision making, and also place significant emphasis on social, economic and community factors, as well as environmental ones. In this light, the SHA can be viewed as a favourable initiative given the well documented housing affordability issues in the District and the adverse social and economic issues that result from the shortage in housing supply.