

**QLDC Council
1 March 2016**

Report for Agenda Item: 4

Department: Planning & Development

Special Housing Areas Expression of Interest: Shotover Country

Purpose

- 1 The purpose of this report is to present for the Council's consideration further updates to the draft Shotover Country SHA Deed (**Deed**) so that the Council can recommend the Shotover Country Special Housing Area proposal (**Proposal**) to the Minister for Building and Housing (**Minister**) for establishment as a Special Housing Area (**SHA**).
- 2 The update to the Deed has been necessitated by the receipt of further information in relation to hydrological aspects and flood risk and liquefaction.

3 Public Excluded

It is recommended that Attachment A to this report (Deed of Agreement) is considered with the public excluded in accordance with the Local Government Official Information and Meetings Act 1987 section 7(2)(h) on the grounds that the withholding of the information is necessary to enable any local authority holding the information to carry on, without prejudice or disadvantage, commercial activities and section 7(2)(i) on the grounds that the withholding of the information is necessary to enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

Executive Summary

- 4 At the 3 June 2015 meeting, the Council resolved to:

"3. Instruct the General Manager Planning and Development to proceed with negotiation with proponents of the following proposed Special Housing Areas, to ensure their proposals fulfil the criteria listed under points 5.2 to 5.2.9 of Council's SHA Lead Policy, including appendix B as confirmed at the Council's April 2015 meeting;

a Shotover Country

b Arthurs Point North

c Onslow Road

d Highview Terrace

4. Instruct the Chief Financial Officer, Chief Engineer and a suitably qualified independent professional to assess each of the proposed SHAs infrastructural

requirements based on evidence of capacity, agreement as to any necessary upgrades, agreement as to funding and timing, and consistency with long term planning documents. This will be at the proponent's cost.

5. *For each of the four proposed SHAs above:*

- Gain confirmation from New Zealand Transport Agency that the Proposal has no adverse effect on the State Highway network or that agreement exists between NZTA and the developer as to how any adverse effects can be resolved.*
- Gain confirmation from the Otago Regional Council that the Proposal is supported in principle, subject to any ORC approvals that have been identified as being required.*
- Gain confirmation from the Ministry of Education that the Proposal is supported in principle and is consistent with the Ministry's strategic objectives in the Wakatipu Basin.*

6. *Once the above steps are completed, a report to be brought back to Council identifying measures agreed to that meet HASHA and Lead Policy requirements on each proposed SHA so that the Council can with confidence recommend qualifying proposals to the Minister”.*

5 At the 26 November 2015 meeting, Council resolved to:

“1. Note the contents of this report and in particular the assessment outlined in the report including measures implemented to address the resolutions of the meeting of 3 June 2015;

2. Confirm that the Council agrees in principle with the contents of the Shotover Country SHA Deed (Infrastructure and Affordability) and delegate to the General Manager, Planning and Development the authority to execute the Deed on behalf of the Council, subject to any minor changes consistent with the lead policy.

3. Recommend to the Minister of Building and Housing that the land to which the Shotover Country EOI relates be established as an SHA, subject to execution of the Deed and the performance of any conditions in it.”

6 It is noted that the delegation for signing of the Deed currently lies with the General Manager, Planning and Development. As at the 26 November meeting, the Deed was conditional on the Council being satisfied that the concerns expressed by Otago Regional Council (**ORC**) could be resolved or could be otherwise addressed satisfactorily.

7 This report to Council sets out how those matters have been addressed since the meeting. It does not repeat the initial assessment relating to the Proposal. Nor does it repeat the assessment of the Proposal against all of the statutory and other criteria as set out in the earlier report. The Council might wish to remind itself of the advantages and disadvantages of the Proposal, and the

criteria to be considered, when considering whether or not to agree with the updated terms of the Deed and confirm its agreement to enter into the Deed.

- 8 ORC's preference is that the potential flood and liquefaction risk posed to development on this location be avoided. The supplementary advice provided by the developer and Tonkin + Taylor Ltd does not alter ORC's position that the proposed extension of the Shotover Country Zone will create a risk that does not currently exist and should not be allowed. This risk is compounded by the complexity and scale of the dynamic environment in which residential dwellings are proposed to be situated. ORC maintains that this risk should be avoided rather than mitigated.
- 9 As the developer is unable to resolve the matters raised by ORC the Council will need to be satisfied that the risk of approving the site as an SHA can be appropriately mitigated.
- 10 This report endorses that Council recommend the Proposal to the Minister under the Housing Accords and Special Housing Areas Act 2013 (**HASHA**), subject to execution of an updated Deed by the General Manager, Planning and Development (**Attachment A – public excluded**). This will allow Council to consider the risks associated with the construction and maintenance of the flood protection works on the margins of the Proposal site and whether or not Council is willing to accept these risks based on the works proposed by the developer to mitigate them.

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 meetings of 3 June and 26 November 2015.
2. **Agree** to an updated Shotover Country SHA Deed (Infrastructure and Affordability) that includes the developer taking responsibility for design and construction of significant flood and liquefaction mitigation works on the western and southern boundaries of the Proposal site, subject to:
 - a. The design of the flood protection works, taking into account the whole-of-life costs, being approved by the Council, which will require producer statements from suitably qualified Engineers for design and peer review; and
 - b. The Council being involved in the oversight of the construction of the flood protection works to ensure it is constructed to a suitable standard, which will require producer statement from a suitably qualified Engineer for construction review.
3. **Delegate** to the General Manager, Planning and Development the authority to execute the Deed on behalf of the Council, subject to any minor changes.

4. **Recommend** to the Minister that the land to which the Shotover Country EOI relates be established as an SHA, subject to execution of the Deed and the performance of any conditions in it.

Prepared by:



Anita Vanstone
Senior Planner

23/02/2016

Reviewed and Authorised
by:



Tony Avery
General Manager,
Planning & Development

23/02/2016

Background

- 11 The proposed Shotover Country SHA was supported in principle at the Council meeting on 26 November 2015, subject to execution of the Deed by the General Manager, Planning and Development. The Deed, as at that meeting, contained specific provision to enable further analysis of natural hazards before the SHA was recommended to the Minister. This required confirmation to be obtained from the ORC that the Proposal is supported in principle or that it could be otherwise addressed satisfactorily.
- 12 Since the 26 November 2015 meeting, Tonkin + Taylor was engaged by the Council to peer review the hydrological aspects and flood risk in relation to the Proposal (**Attachment B**). The developer has also provided further geotechnical information in regards to the liquefaction relevant to the site (**Attachment C**). These reports were provided to the ORC for comment and review.

Comment

- 13 This report endorses that the Council recommend the Proposal to the Minister under HASHA, subject to execution of the updated Deed by the General Manager, Planning and Development, which allocates responsibilities for the construction and future maintenance of the flood works that are proposed on the western and southern boundaries of the SHA.

Peer Review of Hydrological Aspects and Flood Risk

- 14 The Tonkin + Taylor peer review (**Attachment B**) concluded that:

- The information in support of the SHA application appears to include a robust consideration of the uncertainty and sensitivity of future design flows and flood levels in the delta;

- The modelling of the proposed SHA development identifies a maximum effect on flood levels in the delta to be an increase of up to 0.15m;
- The modelled minimum freeboard to the SHA building platform from projected future 1% Annual Exceedance Probability flood level is 1.24m;
- There are aspects of design not reviewed in detail that could be considered further as part of the consenting investigations and detailed design if development proceeds;
- The application does not enable careful consideration of the risk to the development from flooding of the Shotover Delta;
- The information does not address responsibility for maintenance and repair of the flood protection measures in the future, which is a valid issue; and
- The application fails to undertake an assessment of the residual flood risk in terms of the principles and outcomes identified in NZS 9401. This can be addressed as part of the resource consent application.

15 In response to these comments the developer has provided further information that addresses the points raised. This information is contained in **Attachment D**. Tonkin + Taylor have reviewed the findings and concluded (**Attachment E**):

- The effects of possible future flood levels identified appear to be limited and a detailed analysis of the effects of any works would be required as part of any future resource consent application; and
- The Proposal includes an assessment in terms of the principles and outcomes identified in NZS 9401: Managing Flood Risk. A more detailed assessment can be undertaken at the resource consent stage.

16 The issue of who would maintain (and cover the cost of maintaining) the flood works in the long term was raised with the developer. The developer has confirmed its preferred outcome is for the flood works that are proposed to be constructed on the western and southern margins of the Proposal site to be vested in, and maintained by, the Council. Given that the fill and retaining structure are an integral part of the development, which maintains the residential area above the anticipated flood levels, its longer term maintenance is a critical factor in considering the appropriateness of the engineering design. That maintenance will be needed into the future and long after the developer has completed the works.

17 If the Council is to accept vesting of the works and the longer term maintenance responsibilities it should be involved in the design and oversee the construction of the works to ensure that it meets best practice engineering and construction standards, particularly with a view to frontloading as much as possible the whole-of-life costs. The developer is agreeable to working with the Council on engineering design to ensure a robust, low maintenance asset. It is considered that this should be addressed by way of an update to the Deed, to be confirmed by the Council prior to execution.

18 Tonkin + Taylor has noted that comprehensive risk treatment and strategies could be developed from the information provided as part of the application together with other information in relation to catchment and hydrological risks. This will be assessed in detail at the resource consent stage.

Geotechnical Liquefaction Assessment Report

19 In terms of liquefaction susceptibility of the Proposal, RDAgritech Ltd has concluded parts of the site have nil to very low liquefaction susceptibility, while other parts of the site may incur settlement as a result of a larger seismic event (**Attachment C**). RDAgritech Ltd has concluded the earthworks planned and the existing 3m cover of soils would be expected to help mitigate any settlement incurred. However, more detailed analysis and some additional investigation is required, which would be covered as part of the next stage of investigation and the resource consenting process. This will include conditions that require the earthworks to be supervised by a suitably qualified engineer.

20 If the Proposal progresses, there is an opportunity for the Council at the consenting stage to ensure appropriate standards are met and monitored throughout construction.

Otago Regional Council

21 The response received from ORC is included in **Attachment F**. Correspondence and discussions with the ORC indicate that it will never be in a position to provide support for the Proposal in its current form.

22 ORC has expressed concerns relating to potential flood and liquefaction risk applying to the Proposal site. Similar concerns were raised through ORC's involvement in Plan Change 41 for the Shotover Country Special Zone.

23 ORC technical staff have reviewed the additional information and have concluded that these reports do not alter the ORC's position that the extension of the Shotover Country Zone will create a risk that does not currently exist, and that the risk is compounded by the complexity and scale of the dynamic environment in which residential dwellings are proposed to be situated. ORC maintains that due to these factors, this is a risk that should be avoided rather than mitigated.

24 In terms of liquefaction, ORC acknowledge the report in **Attachment C** indicates liquefaction is possibly manageable, and this would be during detailed design at a building consent stage and further addressed in the resource consent application. ORC has indicated that any proposed mitigation of liquefaction risk does not resolve the concerns that have been previously raised.

25 While the ORC response highlights important considerations for decision making, it is considered that this response should not prevent recommendation of this Proposal to the Minister. The recommendation and assessment of an SHA application is an ongoing process in which there remains considerable opportunity for further analysis by the Minister, ORC and Council; and for ORC to be involved in the decision making process.

- 26 In recommending the Proposal to the Minister the Council has to be satisfied that risks can be appropriately and adequately mitigated, ensuring that the long term financial risks to the Council are minimised. The information that Council has received from the developer and Tonkin + Taylor demonstrates that these risks can be mitigated.
- 27 Therefore, it is recommended that the Proposal be recommended to the Minister, and that the matters outlined in ORC correspondence may be addressed by any of the following procedures:
- a. Noting the potential hazard risk and provision of ORC's correspondence to the Minister when the SHA is recommended by the Council;
 - b. Providing an opportunity for the Minister to request further information prior to designating the site as an SHA;
 - c. Following designation of the site as an SHA, holding joint pre-application meetings between the Council, ORC and the developer prior to a resource consent application being accepted; and
 - d. Hearing evidence from the relevant experts at the resource consent hearing.
- 28 In addition, it is significant that ORC may be notified of a resource consent application in accordance with Section 29 of HASHA. Shotover Country has indicated its support for formal notification to ORC in accordance with Section 29 of HASHA, should this be considered necessary by Council.
- 29 The above procedures are considered to enable sufficient opportunity for further detailed assessment of flood hazards and mitigation options for the Proposal.

Deed of Agreement

- 30 A Deed has been developed for consideration by Council to outline conditions on which this Proposal will be recommended to the Minister. The Deed has been updated to include provisions relating to the construction and maintenance of the flood protection works on the boundaries of the Proposal site and the supervision of the area of fill by a suitably qualified engineer (**Attachment A – public excluded**). The Deed is structured such that it would be executed prior to recommendation of the Proposal to the Minister. The matter has been returned to the Council because the changes are more than minor and so outside the limited delegation given to the General Manager, Planning and Development at the 26 November 2015 meeting. It is anticipated that the agreed copy of the Deed will be available prior to the meeting.

Options

- 31 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:

32 Option 1: Agree with the updated terms of the Deed and confirm the authority of the General Manager, Planning and Development to execute the Deed on behalf of the Council in its updated form.

Advantages:

- Clarifies responsibilities for and involvement in the design, construction, vesting and long-term maintenance of the proposed flood protection works on the western and southern margins of the Proposal site.
- Provides greater certainty over conditions for recommendation of the SHA to the Minister via the Deed.

Disadvantages:

- Defers further assessment and mitigation of natural hazard risks identified by ORC.

Option 2: Not agree with the updated terms of the Deed.

Advantages:

- Avoids development of land identified as being subject to potential natural hazard risks.
- Consistent with the advice received from ORC.

Disadvantages:

- Given the Council's support in principle for the Proposal, not agreeing with the updated terms of the Deed would mean that the Council would not be in a position to recommend to the Minister that the SHA be established. That would risk that the District's acute housing supply and affordability issues will continue to grow, with resulting social and economic impacts.
- The Council would forgo the opportunity of providing new residential lots in an area that is adjacent to an existing urban area of the Wakatipu Basin, in a location with convenient access to services and amenities desired by the community.

33 This report recommends **Option 1**.

34 If **Option 2** is adopted:

- a. Further negotiation between the developer, Council and ORC will be required to satisfactorily resolve ORC's concerns; or
- b. The Council will not be able to recommend the Proposal to the Minister for establishment as an SHA.

Significance and Engagement

35 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 in some instances inconsistent with District Plan rules (both operative and proposed).

Risk

- 36 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.
- 37 It should be noted that a key element of this risk is meeting the current and future needs of the community and the potential risks of locating a residential area within an area prone to flooding. 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

- 38 The developer will be responsible for infrastructure connections and the provisions of appropriate infrastructure to support the development. One exception is a potential cost sharing arrangement between Shotover Country and the Council relating to the provision of new water supply infrastructure. This cost sharing arrangement is endorsed by Council's Chief Financial Officer and Chief Engineer. A cost sharing approach may be acceptable where the new water supply infrastructure is able to serve a wider public benefit beyond the SHA development.
- 39 The developer's preferred outcome is that at least part of the flood protection works (especially the retaining structure) to be created along the western and southern margins of the SHA is vested with Council. The developer is agreeable to working with the Council on engineering design and implementation to ensure a robust, low maintenance asset. The Council's Chief Engineer has agreed to this in principle subject to an update of the Deed that minimises the risks to the Council in both the short and long term. The Council needs to aware that there may be cost implications for maintaining this asset in the short and long term, as yet unknown but minimised by the steps proposed.

Council Policies, Strategies and Bylaws

- 40 The following Council policies, strategies and bylaws were considered and addressed in the initial assessments of the Proposal:
- Lead Policy, which provides guidelines for the Council's assessment of SHAs;

- Operative District Plan, which regulates housing development and urban growth management.
- Proposed District Plan, which regulates housing development and urban growth management.
- Housing Our People in our Environment Strategy (**HOPE**), which is relevant as it seeks to address the housing affordability issue in the District.
- Economic Development Strategy, a key action of which is to “investigate all options for improving housing affordability in the District”.
- 2014/2015 Annual Plan, within which a number of Community Outcomes are relevant, as they relate to the economy, and the natural and built environment

Local Government Act 2002 Purpose Provisions

41 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
- 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

42 The persons who are affected by or interested in this matter are neighbours adjoining the Proposal site, 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.

43 The Council undertook an initial expression of interest in late 2014, and on 24 April 2015 the Council called for community feedback on the proposed SHAs. There was limited feedback received on the Proposal during this period. The prospect of the significant flood protection works was explained by the developer in the EOI made available for the public to provide feedback.

Attachments

- A Draft Deed of Agreement – Shotover Country (*public excluded*)
- B Peer review the hydrological aspects and flood risk in relation to the proposal by Tonkin + Taylor
- C Geotechnical Liquefaction Assessment Report by David Hamilton & Associates
- D Further information – Shotover Country SHA Managing Flood Risk NZ Standard by David Hamilton & Associates dated 2 Feb 2016
- E Peer review the hydrological aspects and flood risk – further Information in relation to the proposal by Tonkin + Taylor
- F Agency Response (ORC)