

**QLDC Council  
15 December 2016**

**Report for Agenda Item: 3**

**Department: Planning & Development**

**Private Plan Change 51: – Ratification of Commissioner recommendation**

**Purpose**

The purpose of this report is to provide the Commissioners recommendation on Plan Change 51 – Peninsula Bay North and to seek ratification as a Council decision for notification.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Adopts** the Commissioners recommendation as a Council decision to decline Private Plan Change 51 for the reasons set out in the Commissioners report;
3. **Direct** staff to notify the decision in accordance with the First Schedule of the Resource Management Act 1991; and
4. **Note** the status of the land subject to Private Plan Change 51 was not part of Stage 1 of the District Plan Review and that Council resolved to exclude the land from the next stage of the District Plan review at its meeting on 29 September 2016.

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30/11/2016

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## Private Plan Change 51 to the Operative District Plan

- 1 **Private** Plan Change 51 (**PC 51**) is a proposal by Peninsula Bay Joint Venture Limited to rezone 6.11 hectares of land zoned Open Space – Landscape Protection, to Low Density Residential Zone under the Operative District plan.
- 2 The site is shown in Figures 1 and 2 below. It is located at the northern end of Peninsula Bay in Wanaka. As originally notified the rezoning involved 6.11 hectares of land and would enable the development of 26 residential lots. This was subsequently modified at the hearing by the applicant such that 4.37 hectares would be rezoned, with 24 residential lots being proposed within the smaller area. Closing submissions of the applicant further modified the proposal, with 21 lots on 3.5 hectares of re-zoned land were proposed.



**Figure 1. Wanaka and the general location of the application site located to the north of Peninsula Bay and to the south of the Lake Wanaka Outlet.**



**Figure 2. Illustration taken from the application documents showing the PC 51 area and surrounding Operative District Plan zones. The red area is the land subject to PC 51. The dark green area is the Open Space Landscape Protection Zone. The yellow area is the Low Density Residential Zone.**

- 3 PC 51 was notified on 9 December 2015. The submission period closed on 28 January 2016 and summaries of submissions were notified on 17 March and 22 April 2016. 205 original submissions and 2 further submissions were received on the plan change. All original submissions except one, opposed the plan change or various components of it.
- 4 Commissioners David Mead (Chair), Andrew Henderson and Mel Gazzard were appointed to hear and make recommendations on the plan change request. A hearing was held at the Lake Wanaka Centre on 8 to 10 August 2016. The hearing was then adjourned for the purpose of receiving further information from the applicant and the hearing closed on 14 September 2016.

### **Comment**

- 5 The Commissioners' recommendation is that the plan change be declined.
- 6 The reasons are summarised by the Commissioners in paragraph 105 of the report (Attachment 1) as follows:

*105. The reasons for our recommendation (in summary only as the decision records our detailed reasons) are:*

- a) *The plan change will have a negative impact on recreational values through the loss of open space zoned land. While the active recreational values that will be forgone by the plan change are not large, passive recreational opportunities will be lost. These effects are not off-set by the*

*proposed financial contribution. We can have no certainty that the money collected will be spent in a manner that will compensate for the lost opportunity.*

- b) The land to be rezoned has landscape value in its relationship with the northern extent of the Peninsula Bay residential area. The southern slopes of the land help to contain and define the urban area, imparting a strong sense of the urban development being settled into the landscape. That landscape value will be weakened, to the detriment of the wider area.*
- c) The claimed ecological benefits of the plan change are marginal at best, while the ability to re-vegetate a larger area will be lost.*

*106. Overall, we do not consider that the plan change will enable the Council to better manage the resources present, compared to the status quo. There are no advantages in terms of part 2 of the RMA and the sustainable management of natural and physical resources present, compared to the current zoning, and in our view, there are a number of disadvantages, as outlined above.*

- 7 It is recommended that Council adopt the recommendation of the Commissioners to decline PC 51. If the Commissioners recommendation is not chosen to be adopted, the application, submissions, further submissions and Council officer recommendations will need to be reheard.

### **Implications for the Proposed District Plan**

- 8 The Open Space – Landscape Protection Zone, the zone that PC51 is located in, was not included as part of Stage 1 of the Proposed District Plan.
- 9 The area was included in the Proposed District Plan Maps for information purposes only, and this matter was identified on the legend to the Planning Maps that identifies this land as operative District Plan Zoning. Despite this, the applicants, Peninsula Bay Joint Venture made a submission on Stage 1 of the Proposed District Plan to rezone the land from Open Space landscape Protection to Low Density Residential in the same form as that in the notified plan change (PC 51).
- 10 It is intended that this land would be included as part of the review of open space areas and the respective chapter and provisions would be included for notification as part of Stage 2 of the Proposed District Plan.
- 11 A report to Council on Stage 2 of the District Plan Review presented at the September 29 2016 meeting confirmed by resolution that identified geographic areas are to be excluded from the District Plan Review. The areas excluded relate to recent plan changes to the Operative District Plan.
- 12 This has resulted in two volumes of the District Plan. **Volume A** comprises the land subject to Stage 1 and Stage 2 reviewed components. **Volume B** will be the ODP as it relates to the geographic areas that have been the subject of recent plan changes and PC 51 is included as one of these.

13 The resolution states:

**7. Confirm the exclusion of the land covered by the following from the District Plan Review:**

- a. Plan Change 19: Frankton Flats B Zone.**
- b. Plan Change 45: Northlake Special Zone.**
- c. Plan Change 46: Ballantyne Road Industrial and Residential extension.**
- d. Plan Change 50: Queenstown Town Centre extension.**
- e. Plan Change 51: Peninsula Bay North.**
- f. Remarkables Park Zone.**
- g. Any subsequent plan changes to the Operative District Plan.**

14 The reasons for separating these land areas into a separate volume are to reduce complexity associated with plan changes that have recently been made operative (e.g. PC 45 Northlake), or to show that these areas not able to be reviewed (e.g. the Remarkables Park Zone and Frankton Flats B Zone).

15 The applicant has now had the opportunity to fully present a case to rezone this land as part of the PC51 application and it is not considered appropriate or sound resource management practice to revisit this through the Proposed District Plan hearings. An example of the complexities that could arise if the land is not excluded is that the applicant could appeal the PC 51 decision to the Environment Court, while the rezoning hearings are underway. This process would be a significant process, resource management and financial inefficiency for the Council to be party to.

16 The 29 September 2016 Council resolution agreed to exclude this land from the Proposed District Plan. It is also noted that the Open Space – Landscape Protection Zone is scheduled for Stage 2 of the District Plan Review and the land and zoning annotation has been included in the PDP maps for information purposes only, as expressed in the legend to the PDP Planning Maps. It is therefore Council officers' view that this submission is not within scope of Stage 1 of the District Plan Review.

## **Options**

17 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.

18 The first step is to identify all "reasonably practicable" options. If an option is not reasonably practicable, then it will not require consultation. One option that should always be considered is the option of doing nothing – the status quo, however in this instance the status quo is not considered a viable option because a decision to either decline or re-hear the plan change request is required.

19 Option 1 - Accept the Commissioners recommendation to decline PC 51.

*Advantages:*

20 The plan change has been through a thorough process. Experienced Commissioners had the benefit of submissions and further submissions as well as professional assistance (in the form of an officer's recommendation) and have arrived at their recommended decision based on well informed and considered consideration.

21 The submissions and hearing process gave people the opportunity to either support or oppose the proposal and be heard in relation to their submissions.

*Disadvantages:*

22 None. Council appointed the three Commissioners to hear and make recommendations on the submissions received.

23 Option 2 Reject the Commission's recommendation.

*Advantages:*

24 Would allow Council to appoint new Commissioners to re-hear submissions on any aspects of the Commissioner decision it was unhappy with.

*Disadvantages:*

25 Council have not heard the evidence presented at the hearing or read all the submissions. To change the recommendations would not demonstrate fairness or natural justice to applicant or submitters.

26 All submitters, Council officer recommendations and the applicants' case will need to be re-heard at another hearing.

27 Additional Council, applicant and submitter resources will be required to rehear the Plan Change.

28 This report recommends Option 1 for addressing the matter because the recommendation of the commissioners is considered well informed and robust.

***Significance and Engagement***

29 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it impacts on the environment and people of the district, has a degree of community interest and is not entirely consistent with the Operative District Plan.

***Risk***

30 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 moderate. This matter relates to this risk because PC51 relates to residential and recreational land supply and providing for the future needs of the community.

31 The recommended option considered above mitigates the risk by adopting the decision of the experienced Commissioners who heard all the evidence before them and made a decision based upon that evidence.

### **Financial Implications**

32 There is no budget or cost implications resulting from the decision.

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

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

- Operative District Plan
- Proposed District Plan

34 The recommended option is consistent with the principles set out in the named policies. Specifically, the decision references and has regard to the District Wide provisions of the Operative District Plan.

35 This matter is not included in the 10-Year Plan/Annual Plan

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

36 The recommended option:

37 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 making the decision on PC51 in a timely fashion;

38 Can be implemented through current funding under the 10-Year Plan and Annual Plan;

39 Is consistent with the Council's plans and policies; and

40 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 the applicants; Peninsula Bay Joint Venture Limited, submitters on PC51 and the immediate Peninsula Bay, and wider Wanaka community. Submissions were considered by the appointed Commissioners.

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

42 The process for dealing with Plan Change requests and withdrawing land is set out in the First Schedule of the Resource Management Act.

## **Attachments**

- A Commissioners' recommendation on PC 51
- B List of Submitters