

QLDC Council  
5 April 2016

Report for Agenda Item: 2

**Department: Planning & Development**

Delegation of powers to hear submissions, and make recommendations and 'decisions on submissions' on the designations included in the Proposed District Plan.

**Purpose**

The purpose of this report is to request the Council to:

- a. delegate to four identified District Plan hearing commissioners the power to sit and hear submissions and make recommendations under s171 of the Resource Management Act (RMA) on all designations of requiring authorities other than the Council; and
- b. delegate to four identified District Plan hearing commissioners the power to sit and hear submissions and make decisions under s168A(4) of the RMA on all designations for which the Council is the requiring authority.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Delegate** to Commissioners Mr Denis Nugent, Ms Jane Taylor, Mr Paul Rogers and Mr David McMahon the power to sit to hear all submissions and further submissions on designations included in the Proposed District Plan and to:
  - a. make recommendations to the requiring authority under s171 of the RMA on all designations by requiring authorities *other than* the Council; and
  - b. make decisions under s168A(4) of the RMA on all designations where the Council is the requiring authority.
3. **Agree** that Denis Nugent as chair of the Proposed District Plan Hearings Panel should allocate the specific designation hearings to the appointed commissioner(s).

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## Background

- 1 The District Plan review was formally (and legally) commenced by a resolution of Council in April 2014. The first stage of the Proposed District Plan (PDP) was publicly notified for submissions on 26 August 2015 and comprises 33 chapters and 17 zones.
- 2 The submission period closed on 23 October 2015. A summary of those submissions was notified on 2 December 2015 and the period for lodging further submissions ended on 16 December 2015.
- 3 At its meeting in October 2015, Council approved Commissioner Denis Nugent as the Chair of the Hearings Panel. At its meeting in November 2015 Council approved nine other Commissioners as a pool to hear and make the decisions on submissions. In December 2015, Councillors were also appointed as District Plan Review hearing commissioners.
4. Together the Chair, independent commissioners and Council commissioners were delegated authority as a hearing panel to hear all submissions and further submissions on the Proposed District Plan and to make recommendations to the Council on the matters raised in submissions.
5. In addition to hearing submissions on the plan 'text' and 'map' changes, as part of the PDP process, a number of the designations from the Operative District Plan are being "rolled-over" into the PDP.
6. These fall into two different types of designations – Council designations and designations from other requiring authorities.
7. Designations can be sought by 'requiring authorities', who include local authorities, network utility operators and Ministers of the Crown. A designation identifies an area of land for a certain activity, e.g. 'highway purposes', and once designated, no resource consent is required, only an 'Outline Plan'. People undertaking activities in a designated area also require the permission of the requiring authority before doing anything, e.g. constructing a building where a railway line is intended.

## Comment

8. The PDP hearings panel have only been delegated by Council the power to hear and make *recommendations* on submissions back to Full Council. This delegation is not adequate for notices of requirement, because the recommendation needs to go back to the *requiring authority*, rather than Council. The proposed resolution addresses this problem by clarifying the recommendations for designations goes back to the requiring authority, not Full Council.
9. In the case of Council designations, a *decision* back to Council is required (rather than a recommendation). This is because the Council should not be making decisions on its own designations as it could be viewed as a conflict of interest.
10. Ordinarily, when a notice of requirement for a new designation is received *from Council* (as a requiring authority) the Resource Consent Commissioner Appointment Committee (RCCAC) appoints an independent commissioner(s) to

hear submissions on the notice of requirement and to make a decision on the notice of requirement under s.168A(4) of the RMA.

11. Normally, outside of the District Plan review process, in the case of notices of requirement *by requiring authorities other than the Council*, an independent commissioner is appointed by the RCCAC to hear submissions and make a recommendation to the requiring authority under section 171 of the Resource Management Act (RMA).
12. Submissions have been received on the designations that have been rolled over into the PDP. These submissions must be heard as part of the PDP hearing process. However, given that each designation raises discreet issues, it is possible to hear the submissions on each designation at the same time as the hearing panel is hearing submissions on the plan text.
13. It is recommended that the following specific commissioners from the pool previously approved by Council are the most appropriate hearing commissioners to hear submissions on designations:
  - a) Mr Denis Nugent
  - b) Ms Jane Taylor
  - c) Mr Paul Rogers
  - d) Mr David McMahon
14. For the reasons in paragraphs 8 and 9 above, it is appropriate to delegate to specific PDP hearing commissioners the power to sit alone to hear submissions on the notices of requirement and:
  - a) make *decisions* on submissions on the Council's designations; and
  - b) make *recommendations* on submissions on all other requiring authorities designations.
15. This will enable the designation hearings to be held at the same time as the plan 'text' hearings and will ensure that the PDP hearing process is efficient.
16. To provide for the efficient administration of the designation hearings including allocating the appropriate commissioner to each designation hearing based on their skills, experience and availability on each panel, it is proposed that the Chair of the Hearings Panel should be delegated authority to allocate one of the four nominated hearing commissioners to each designation hearing.

### ***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. Option 1: Amend the existing delegations to the *hearings panel* so they can hear and make decisions or recommendations on designations:

19. Advantages:

- Hearings of submissions on designations will be consistent with the process for hearing of all other submissions.
- Enables the designations to be heard concurrently with other chapters of the PDP, thus speeding up the hearing timetable.

#### 20. Disadvantages:

- The hearings panel is generally made up of three members which is not necessary for notices of requirement.
- The hearing process will be inefficient as it will not be possible to hear the submissions on designations concurrently, and designations would not be heard until after the hearings on the PDP text are complete. This in turn will delay hearings of submissions requesting map changes or re-zoning.
- Designations are similar to resource consent applications and require detailed assessment of technical matters that should be undertaken by commissioners with the appropriate skills and experience.
- It is more appropriate that Councillors are not involved in making decisions on the Council's own designations.
- This approach is inconsistent with all other notices of requirement that Council receives.

21. Option 2: Delegate to the four specified independent commissioners the power to hear submissions and make decisions on Council designations and recommendations on other requiring authorities' designations.

#### 22. Advantages:

- Avoids the potential conflict of interest with Council hearing submissions and making decisions on its own designations.
- The Proposed District Plan hearing process will be more efficient as the designations can be heard concurrently with other hearing streams.
- Commissioners with the appropriate expertise and knowledge can be appointed to hear submissions on technical matters that will likely arise in relation to specific designations.
- Other commissioners already allocated to the plan text hearing streams will be available to hear submissions on the plan text.
- More cost effective to enable independent commissioners to sit alone to hear submissions on designations.

#### 23. Disadvantages:

- None.

24. This report recommends **Option 2** for addressing the matter.

### ***Significance and Engagement***

25. This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the matter relates to the appointment of Commissioners to hear, deliberate and make decisions on the submissions on Designations included in the Proposed District Plan, which is a very significant statutory document in terms of the social, economic and environmental well-being of the district.

### ***Risk***

26. 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 it is considered to be of significant importance in terms of the managed growth and regulation of development in the District.

27. The recommended option considered above mitigates the risk by:

Treating the risk - putting measures in place which directly impact the risk. Appointing qualified and experienced expert commissioners to efficiently hear and make decisions on submissions on designations included in the PDP.

### **Financial Implications**

28. The payment of Commissioners to sit on hearings for the Proposed District Plan has been budgeted for in the Annual Plan under the category of District Plan Review.

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

29. There are no Council policies, strategies or bylaws relating to the appointment of Councillors to hear submissions on the Proposed District Plan.

30. This matter is included in the 10-Year Plan/Annual Plan as part of the District Plan commitment.

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

31. 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 by ensuring that the PDP review process is efficient and produces good resource management outcomes.
- 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**

32. The persons who are affected by or interested in this matter are parties who have submitted on the Proposed District Plan and joined this legal process.

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

33. The appointment of Commissioners to hear and make decisions on all submissions and further submissions on designations in the Proposed District Plan is anticipated under the Resource Management Act 1991.