

QLDC Council  
28 September 2017

**Report for Agenda Item: 5**

**Department: Planning & Development**

**Proposed District Plan Decision – Chapter 43 Millbrook Resort Zone**

**Purpose**

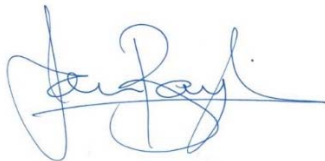
The purpose of this report is to provide the report and recommendation of independent commissioners regarding the provisions and matters raised in submissions for Chapter 43 of the Proposed District Plan and to seek ratification as a Council decision. This report seeks a resolution from Council to notify the decision on the Millbrook Resort Zone alone in accordance with the First Schedule of the Resource Management Act 1991.

**Recommendation**

That Council:

1. **Note** the contents of this report and;
2. **Adopts** the Independent Commissioners report and recommendations as a Council decision and direct staff to notify the decision in accordance with the First Schedule of the Resource Management Act 1991.

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7/09/2017

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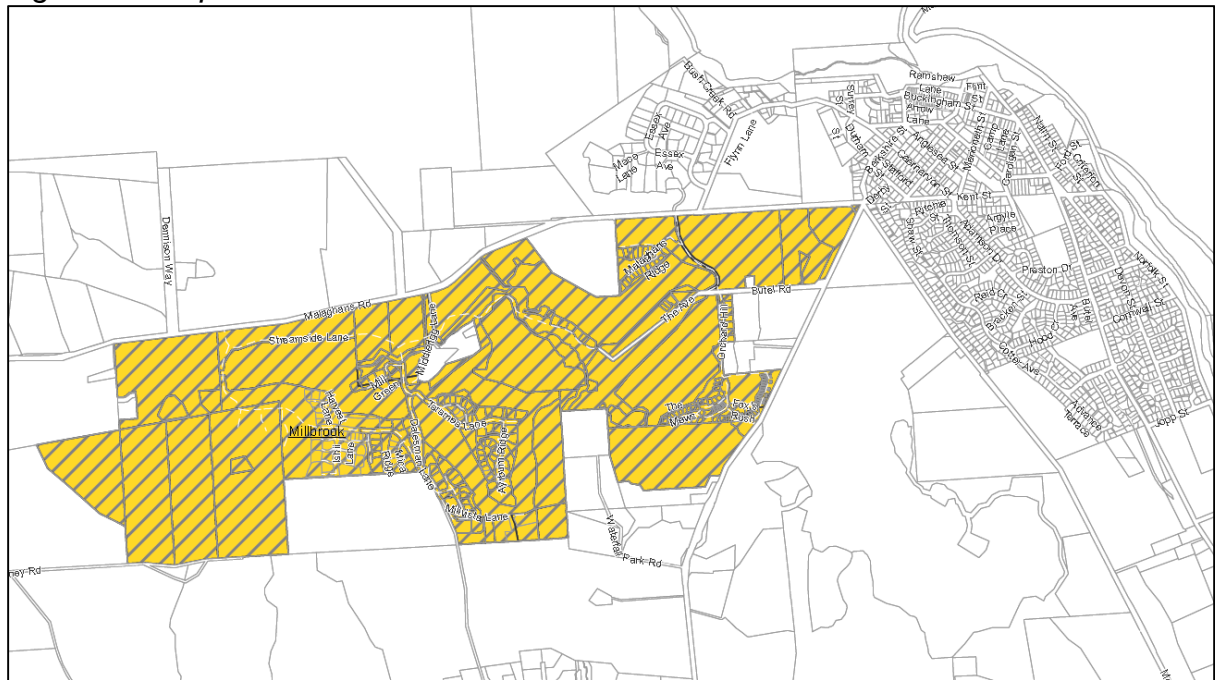
**Background**

**Proposed District Plan Chapter 43 Millbrook Resort Zone**

- 1 Chapter 43 Millbrook Resort Zone is one of three resort zones notified with Stage 1 of the Proposed District Plan (PDP) in August 2015.
- 2 The zone is located on a series of sites between Malaghans Road and Arrowtown - Lake Hayes Road and provides for a visitor resort including recreational activities (including golf), commercial activities, a helipad, residential and visitor accommodation together with support facilities and services. The zone provides for development enclaves located in landscaped grounds, design controls, and a structure plan requiring an integrated approach to development.

- 3 The recommended chapter extends the resort zone over the neighbouring 66 hectare block referred to as the 'Dalglish Farm' and provides for 27 holes of golf and an overall residential development capacity of 450 dwellings over around 5% of the Millbrook Resort Zone.
- 4 The structure plan contains a series of overlays that address landscape amenity, height restrictions, earthworks, and the arrangement of plantings and residential sites. Its eight different activity areas include:
  - Village Activity Area
  - Golf / Open Space Activity Area
  - Residential Activity Area
  - Recreational Facilities Activity Area
  - Landscape Protection Areas
  - Resort Services Area
  - Helicopter Landing and Takeoff Activity Area.

*Figure 1: Chapter 43 Millbrook Resort Zone*



## **Comment**

### ***Early Release of Decisions***

- 5 The Council and Independent Hearings Panel (the Panel) are approaching the release of decisions on the PDP on the basis that the inter-related nature of the PDP text notified in Stage 1 and the zonings applied means that decisions of the Council should be made at one time. However, in the case of Chapter 43, the application of the Millbrook Resort Zone involves a set of matters on which the participants at the Resort Zone hearings were agreed by the end of the hearings. Also, the Millbrook Resort Zone is largely self-contained in the context of the notified Stage 1 provisions of the PDP.

- 6 The recommendation of the Panel is that the public interest will be better served by releasing recommendations and decisions on the zone provisions and the application of the zone at this stage. This will allow consenting in the Dalgleish portion of the zone to proceed with the benefit of the revised Millbrook Resort Zone provisions.

### ***Effect of these decisions***

- 7 A decision from Council to adopt the recommendations of the Panel as a decision will bring the Millbrook Resort Zone rules into legal effect. For those undertaking activities in the Millbrook Resort Zone (including the Dalgleish portion of the Resort Zone), when the PDP Millbrook Resort Zone rules have legal effect they will both benefit from and need to comply with the rules, or seek consent to breach or infringe them.
- 8 Consent will also need to be obtained under any relevant rule in the Operative District Plan (the ODP). Practically, if a decision is made on the Millbrook Resort Zone chapter in advance of other Stage 1 chapters, it will be the first chapter to sit within 'Volume A' of the District Plan. Until the rest of the Stage 1 PDP provisions are made operative, the ODP provisions will continue to apply and the Millbrook Resort Zone chapter should be applied as though it forms part of the ODP.

### ***Summary of Recommendations***

- 9 The Panel recommendation is that the provisions of Chapter 43, incorporating the Panel's recommended amendments, will best enable the council to carry out its functions under the Act in respect of the land to which the zone applies. They consequently recommend that an amended Chapter 43 be adopted and be shown on the planning maps.
- 10 They also recommend that the council initiate a variation to insert matters of discretion into Rule 43.5.2 in order to help with the assessment of proposals infringing the setbacks rule. It is important to note that the recommendations of this report do not equate to a decision to make this variation. That decision will need to be made at the relevant time along with a number of other 'fixes' to the PDP.
- 11 The reasons are set out in the "Report and Recommendations of Independent Commissioners Regarding Chapter 43 – Millbrook" (Attachment 1) and in summary address the following:
- updating and modifying the structure plan amending the layout of activity areas, modifying requirements for mounding and planting for visual screening and ecological restoration, restrictions on building locations, specific height controls, restricting the number of dwellings within activity areas, and modifying setbacks in residential areas.
  - accepting the extension of the Millbrook Resort Zone over Dalgleish Farm.
  - a range of controls on development in the Landscape Protection Area was the best approach.
  - landscaping should be required to be completed and certified by the Council prior to residential or golf course development.

- prohibited activity status was unnecessary for mining, panel beating, spray painting, motor vehicle repair and forestry and non-complying activity was preferred.
- the 8m height limit in R13 is appropriate
- the density in R17 and R13 should be capped at 7 and 10 units respectively.

12 The Panel rejected all of the submissions in opposition to the Millbrook Resort Zone and its extension and accepted or accepted in part all of the submissions supporting it. The Panel made no recommendations on submissions opposing the extension of the Millbrook Resort Zone over the Dalgleish Farm area unless other land was also rezoned as part of the Millbrook Resort Zone or as a Rural Lifestyle Zone on the basis that they have been transferred for hearing under the Hearing Stream dealing with mapping issues in the Wakatipu Basin.

13 The Panel noted that proposed Rule 43.5.1, which addresses infringements of the setbacks requirement, does not specify assessment matters, which is contrary to the RMA. The Panel recommends that due to the lack of scope to address this matter, that the Council should initiate a variation to insert matters of discretion into Rule 43.5.2.

## Options

14 Option 1 - Accept the Commission's recommendation to adopt the recommendations of the Panel on Chapter 43 as set out in Attachment 2 and Attachment 3 as a decision.

### *Advantages:*

15 This component of the PDP has been through a thorough process of consultation, public notification, submissions, evaluation of costs and benefits under section 32 and consideration against the relevant legal tests set out in the RMA.

16 Experienced Commissioners had the benefit of submissions and further submissions including professional assistance from submitter representatives as well as assistance from council officer's, technical experts and legal counsel. The Panel have arrived at their recommended decision based on well-informed consideration.

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

18 Adopting the recommendations will bring the rules of the proposed Millbrook Resort Zone into legal effect and move the zone towards being made operative

### *Disadvantages:*

19 None. Council appointed the Panel to hear and make recommendations on the notified provisions and matters raised by the submissions received.

- 20 Should the Council reach a view that aspects of the recommendations are incorrect, inappropriate, or in other ways contrary to sound resource management, Council could undertake a variation to the PDP.
- 21 If an appeal against this decision is made that raises similar concerns the Council could align its position with that appeal.
- 22 As the Council made a corporate submission to the PDP which addresses the Millbrook Resort Zone it could (in theory) appeal the decision in its corporate capacity however this is likely to be problematic as the Council will also be the respondent to such an appeal.
- 23 Option 2 - Reject the Panel's recommendation and rehear submissions on this aspect of the PDP.

*Advantages:*

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

*Disadvantages:*

- 25 Council have not heard the evidence presented at the hearing or read the submissions. All submitters' submissions, Council officer recommendations and the evidence will need to be re-heard at another hearing.
- 26 To change the recommendations without undertaking the hearing process again would not demonstrate fairness or natural justice to those who have inputted into the process, and submitters entered the process in good faith.
- 27 Additional Council, applicant and submitter resources will be required to rehear this aspect of the PDP.
- 28 This report recommends **Option 1** for addressing the matter.

***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 class//d as moderate.
- 31 The recommended option considered above mitigates the risk by adopting the decision of the panel 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.

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

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

36 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 making the decision in a timely fashion;
- 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**

37 The persons who are affected by or interested in this matter are the submitters visitors to and residents within the resort and the wider Arrowtown and Wakatipu Basin community. Submissions from these parties were considered by the appointed Panel.

## **Legal Considerations and Statutory Responsibilities**

38 The process for dealing with plan changes is set out in the First Schedule of the Resource Management Act.

## **Attachments [Presented separately]**

- A. Report and Recommendations of Independent Commissioners Regarding Chapter 43 – Millbrook Resort Zone.
- B. Recommended Chapter 43, including Structure Plan and Planning Map 26.
- C. List of submitters, and whether the submissions are accepted, accepted in part or rejected
- D. List of submissions and related further submissions transferred to Wakatipu Basin Mapping Hearing Stream
- E. Proposed District Plan Map 26 - Speargrass Flat, Millbrook