

**Queenstown Lakes District Proposed District Plan**

**Section 32 Evaluation**

**Variation to Proposed District Plan**

**For:**

**Variation to Chapter 2 Definitions**

**Report dated: July 2019**

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**1. EXECUTIVE SUMMARY**

1.1. 'Residential Flat' is not currently explicitly defined for the Wakatipu Basin Rural Amenity Zone (WBRAZ), which is not aligned with the approach for the two other rural zones in the District.

1.2. Rule 24.4.5 currently states that Residential flats up to 150m<sup>2</sup> are permitted in the WBRAZ:

24.4.5	The construction of buildings for a residential flat not exceeding 150m <sup>2</sup> gross floor area and attached to the residential unit.	P
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1.3. However, this is in conflict with the current definition of Residential Flat:

Residential Flat	<p>Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:</p> <ul style="list-style-type: none"> <li>a. the total floor area does not exceed; <ul style="list-style-type: none"> <li>i. 150m<sup>2</sup> in the Rural Zone<sub>2</sub> and the Rural Lifestyle Zone</li> <li>ii. 70m<sup>2</sup> in any other zone;</li> </ul> <p>not including in either case the floor area of any garage or carport;</p> </li> <li>b. contains no more than one kitchen facility;</li> <li>c. is limited to one residential flat per residential unit; and</li> <li>d. is situated on the same site and held in the same ownership as the residential unit.</li> </ul> <p>Note: A proposal that fails to meet any of the above criteria will be considered as a residential unit.</p>
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1.4. In this definition, the Wakatipu Basin Rural Amenity Zone is not explicitly listed, and therefore defaults to being 'any other zone', so that residential flats are only permitted up to 70m<sup>2</sup>.

1.5. This is in conflict with Rule 24.4.5. The rule is clear in its intention to permit residential flats up to 150m<sup>2</sup>, therefore the definition of Residential Flat needs varying, to align residential flats in the WBRAZ with the definition of residential flats in the Rural and Rural Lifestyle Zones.

1.6. The variation text to amend this conflict follows (in Section 1.2 of this report).

**Variation to Stage 1 Definition of Residential Flat Chapter 2:**

Underlined text for additions and ~~strike through~~ text for deletions.

Residential Flat	<p>Means a residential activity that comprises a self-contained flat that is ancillary to a residential unit and meets all of the following criteria:</p> <ul style="list-style-type: none"> <li>a. the total floor area does not exceed; <ul style="list-style-type: none"> <li>i. 150m<sup>2</sup> in the Rural Zone, <del>and</del> the Rural Lifestyle Zone <u>and the Wakatipu Basin Rural Amenity Zone</u>;</li> <li>ii. 70m<sup>2</sup> in any other zone;</li> </ul> <p style="margin-left: 40px;">not including in either case the floor area of any garage or carport;</p> </li> <li>b. contains no more than one kitchen facility;</li> <li>c. is limited to one residential flat per residential unit; and</li> <li>d. is situated on the same site and held in the same ownership as the residential unit.</li> </ul> <p>Note:</p> <p>A proposal that fails to meet any of the above criteria will be considered as a residential unit.</p>
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1.7. This variation to Chapter 2 Definitions will assist the Council to fulfil its statutory functions and responsibilities as required by the Resource Management Act 1991 (**'the Act'** or **'the RMA'**).

**2. INTRODUCTION**

2.1. This report fulfils the requirements of Section 32 of the Act, which requires the objective(s) of proposals to be examined for their appropriateness in achieving the purpose of the Act, and the policies and methods of those proposals to be examined for their costs, benefits, efficiency, effectiveness and risk in achieving the objectives.

2.2. The purpose of this proposal is to amend the Definition of Residential Flat so that it includes specific reference to the Wakatipu Basin Rural amenity Zone, and ensures that Residential Flats between 70-150m<sup>2</sup> are permitted, as per the intention of Rule 24.4.5.

2.3. This proposal is a variation to Chapter 2 of the Proposed District Plan, through a schedule 1 process.

### 3. STRUCTURE OF THE REPORT

3.1. This report provides an analysis of the policy response proposed by the variation as required by s32 of the RMA, using the following sections:

- a) **Consultation** undertaken, including engagement with iwi authorities on the proposal.
- b) An overview of the applicable **Statutory Policy Context**.
- c) A description of the **Resource Management Issues** being addressed by the proposal.
- d) An assessment of the **scale and significance** of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.
- e) An **Evaluation** against s32 of the RMA, including
  - Whether the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA (Section 32(1)(a)).
  - Whether the provisions (policies and methods) are the most appropriate way to achieve the objectives of the proposal (Section 32(1)(b)), including:
    - (i) identifying other reasonably practicable options for achieving the objectives
    - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including consideration of risk of acting or not acting, and
    - (iii) summarising the reasons for deciding on the provisions.

### 4. CONSULTATION

4.1. The following consultation was undertaken in the development of the proposal:

An outline of the proposed changes for additional variations to the PDP as part of Stage 3 of the District Plan Review, including the variation to the definition of Residential Flat, as given in Section 1.2 of this report, was circulated to Kāi Tahu (Aukaha), on 10 July 2019.

4.2. The following advice was received by the relevant iwi authorities:

A statement was received from Aukaha on 21 July 2019 confirming that they had no issues or comments in relation to this variation as part of Stage 3 of the Proposed District Plan.

4.3. Therefore, there is no feedback to consider or incorporate into this report.

## 5. STATUTORY POLICY CONTEXT

- 5.1. The relevant requirements of the RMA, the Local Government Act 2002, and the two iwi management plans that apply in the District<sup>1</sup> have been given appropriate regard in the preparation of this proposal. There are no relevant National Policy Statements or National Environmental Standards.
- 5.2. The relevant provisions of the Otago Regional Policy Statement, both operative and proposed, have been considered in the preparation of this proposal. This proposal is required to give effect to the operative provisions of the RPS and have regard to the proposed provisions.

### Partially Operative Regional Policy Statement 2019

Reference	Detail
Issue	The social and economic wellbeing of Otago's communities depends on use and development of natural and physical resources. Loss or degradation of resources can diminish their intrinsic values and constrains opportunities for use and development now and into the future. Some of Otago's resources are nationally or regionally important for their natural values and economic potential and so warrant careful management.
<b>Objective 1.1</b>	<b>Otago's resources are used sustainably to promote economic, social and cultural wellbeing for its people and communities</b>
Policy 1.1.1	Economic Wellbeing – Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources.  <i>Methods: Regional, City and District Council Relationships, Regional Plans and City and District Plans</i>
Issue	Natural and physical resources are interconnected, complex and should be managed in an integrated, sustainable, consistent and effective way because the use of one resource may adversely affect another. Inefficient and ineffective responses or unexpected adverse effects can occur when activities affecting a resource are undertaken by different resource users, governed by different legislation, or administered by different local authorities. Plans need to address diverse and conflicting interests.
<b>Objective 1.2</b>	<b>Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago</b>
Policy 1.2.1	Integrated resource management - Achieve integrated management of Otago's natural and physical resources

<sup>1</sup> *The Cry of the People, Te Tangi a Taurira*: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (MNRMP 2008), and *Kāi Tahu ki Otago* Natural Resource Management Plan 2005 (KTKO NRMP 2005)

Issue	<p>Unplanned urban growth and development risks exceeding the carrying capacity of existing infrastructure and services, adversely affecting community resilience.</p> <p>Unanticipated growth places pressure on adjoining productive land, and risks losing connectivity with adjoining urban areas.</p> <p>Urban development has not always had regard for the local environment or the needs of the community.</p>
<b>Objective 4.5</b>	<b>Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments</b>

### Partially Operative Regional Policy Statement 1998

Reference	Detail
Objective 5.4.1	To promote the sustainable management of Otago's land resources in order: (a) To maintain and enhance the primary productive capacity and life-supporting capacity of land resources; and (b) To meet the present and reasonably foreseeable needs of Otago's people and communities.
Objective 5.4.2	To avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource.
Objective 5.4.3	To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development.
Policy 5.5.2	To promote the retention of the primary productive capacity of Otago's existing high class soils to meet the reasonably foreseeable needs of future generations and the avoidance of uses that have the effect of removing those soils or their life-supporting capacity and to remedy or mitigate the adverse effects on the high class soils resource where avoidance is not practicable.
Policy 5.5.4	To promote the diversification and use of Otago's land resource to achieve sustainable land use and management systems for future generations.
Policy 5.5.5	To minimise the adverse effects of land use activities on the quality and quantity of Otago's water resource through promoting and encouraging the: (a) Creation, retention and where practicable enhancement of riparian margins; and (b) Maintaining and where practicable enhancing, vegetation cover, upland bogs and wetlands to safeguard land and water values; and (c) Avoiding, remedying or mitigating the degradation of groundwater and surface water resources caused by the introduction of contaminants in the form of chemicals, nutrients and sediments resulting from land use activities.
Objective 6.4.2	To maintain and enhance the quality of Otago's water resources in order to meet the present and reasonably foreseeable needs of Otago's communities.
Issue 9.3.1	<p>The adverse effects of urban development and settlement can impact upon the quality of the built environment and on the use of natural and physical resources.</p> <p>Explanation: It is important that a balance is achieved in maintaining the quality of the built environment as a place to live, while providing opportunities for economic change, growth and residential choice</p>

**Proposed Regional Policy Statement 2015**

- 5.3. Section 74(2) of the RMA requires that a district plan prepared by a territorial authority shall "have regard to" any proposed regional policy statement. The Proposed Otago Regional Policy Statement (PRPS) was notified for public submissions on 23 May 2015, and decisions on submissions were released on 1 October 2016. A number of provisions were appealed. Consent orders have been issued for most appeals and these now form the PORPS 19.
- 5.4. The following outlines the relevant PRPS where appeals remain active. Accordingly, limited weight can be provided to the Decisions Version of the PRPS.
- 5.5. There are no relevant objectives and policies from the PRPS Decision version: 1 October 2016.

**Proposed District Plan**

- 5.6. The following objectives and policies of the PDP are relevant and have been given due regard in the development of proposal:

**Strategic Direction Chapter 3**

<b>Plan Reference</b>	<b>Provision</b>
Policy 3.3.22	<b>Rural Activities</b> Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments

**Urban Development Chapter 4**

- 5.7. No objectives and policies in this Chapter were identified as relevant to this proposal.

**Tangata Whenua Chapter 5**

- 5.8. No objectives and policies in this Chapter were identified as relevant to this proposal.

**Wakatipu Basin Rural Amenity Zone Chapter 24**

<b>Plan Reference</b>	<b>Provision</b>
Objective 24.2.1	Landscape character and visual amenity values in the Wakatipu Basin Rural Amenity Zone are maintained or enhanced.
Policy 24.2.1.2	Ensure subdivision and development is designed (including accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform.
Policy 24.2.1.4	Maintain or enhance the landscape character and visual amenity values associated with the Rural Amenity Zone including the Precinct and surrounding landscape context by: <ul style="list-style-type: none"> <li>a. controlling the colour, scale, form, coverage, location (including setbacks from boundaries) and height of buildings and associated infrastructure, vegetation and landscape elements;</li> <li>b. setting development back from Escarpment, Ridgeline and River Cliff Features shown on the planning maps.</li> </ul>

**6. RESOURCE MANAGEMENT ISSUES**

6.1 'Residential Flat' is not currently explicitly defined for the Wakatipu Basin Rural Amenity Zone (WBRAZ), which is not aligned with the approach for the two other rural zones in the District.

6.1. Rule 24.4.5 currently states that Residential flats up to 150m<sup>2</sup> GFA are permitted in the WBRAZ. However, this is in conflict with the current definition of Residential Flat, which, by default, only permits Residential Flats up to 70m<sup>2</sup> in the WBRAZ, as it has not been excluded from "any other zones".

6.2. The rule is clear in its intention to permit residential flats up to 150m<sup>2</sup>, therefore the definition of Residential Flat needs varying, to align residential flats in the WBRAZ with the definition of residential flats in the Rural and Rural Lifestyle Zones.

6.3. The following key issue has been identified as the central themes associated with the proposal.

## Key Issues

**Issue 1 – Flats in the WBRAZ are permitted up to 150m<sup>2</sup> GFA by Rule 24.4.5, but the definition of residential flat excludes flats above 70m<sup>2</sup>, in all zones except the Rural Zone and Rural Lifestyle Zone. This creates a policy gap in regards to residential flats between 70-150m<sup>2</sup> in the WBRAZ.**

24.4.5	The construction of buildings for a residential flat not exceeding 150m <sup>2</sup> gross floor area and attached to the residential unit.	P
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- 6.4. The intention of Rule 24.4.5 is to permit residential flats up to 150m<sup>2</sup> in the WBRAZ. Therefore, the definition of Residential Flat is to be amended to reflect this provision, so the rule can be implemented as intended.

## 7. SCALE AND SIGNIFICANCE EVALUATION

- 7.1. The level of detailed analysis undertaken for the evaluation of the proposed objectives and provisions has been determined by an assessment of the scale and significance of the implementation of the proposed provisions. In making this assessment, regard has been had to the following, namely whether the proposed objectives and provisions:

- Result in a significant variance from the existing baseline in Proposed District Plan Chapter 2 Definitions
- Have effects on matters of national importance.
- Adversely affect those with specific interests.
- Involve effects that have been considered implicitly or explicitly by higher order documents.
- Impose increased costs or restrictions on individuals, communities or businesses.

- 7.2. The level of detail of analysis in this report is **low**. The change proposed to the Proposed District Plan Chapter are focused on the Definition of Residential Flat and limited in extent to the Wakatipu Basin.

**8. BROAD OPTIONS**

8.1. In the preparation of this proposal, the following options have been identified:

**Option 1** – Do nothing/retain the status quo

**Option 2** – a variation to the Definition of Residential Flat

**Option 3** – Delete Rule 43.5.2

8.2. The costs, benefits, efficiency and effectiveness of each of these options are presented in the following table:

	<b>Option 1 – Status Quo (Do nothing)</b>	<b>Option 2 – Variation to the Definition of Residential Flat</b>	<b>Option 3 – Delete Rule 24.4.5</b>
<b>Costs</b>	<p>Misalignment of Rule 24.4.5 (max permitted 150m<sup>2</sup> GFA in the Wakatipu Basin) and the definition for Residential Flat (max permitted 70m<sup>2</sup> GFA in the Wakatipu Basin) are conflicting.</p> <p>This will create confusion when assessing applications that include residential flats between 70-150m<sup>2</sup>, where the activity status is unclear. Rule 24.4.7 states that flats exceeding 150m<sup>2</sup> are a Restricted Discretionary Activity.</p>	<p>Financial and time costs in preparing the guideline and the additional costs of a of plan variation (Schedule 1 process).</p>	<p>Financial and time costs in preparing the guideline and the additional costs of a of plan variation (Schedule 1 process).</p> <p>Introduces possibility for the degradation of the environment in the Wakatipu Basin if the effects of residential flats are not sufficiently managed through the definition and other mechanisms in the District Plan.</p>
<b>Benefits</b>	<p>No financial or time cost associated with</p>	<p>Removes the ambiguity and confusion between</p>	<p>Removes the ambiguity between Rule 24.4.5 and</p>

	developing the guidelines and any associated schedule 1 process.	Rule 24.4.5 and the definition of Residential Flat, thereby providing more certainty to the resource consent process.	the definition of Residential Flat  Less time involved in processing a deletion, as no drafting requirement.
<b>Efficiency and Effectiveness</b>	Time delays in processing of applications are likely to result from the ambiguity. A gap in the policy has resulted due to residential flats not being permitted above 70m <sup>2</sup> as per its definition, and this cannot be addressed through retaining the status quo.	Greater clarity for the processing planner is likely to expedite the resource consent process.  Rule 24.4.5 has the potential to be more effective in permitting the type of residential flats intended for the zone when it can be properly implemented.	Greater clarity for the processing planner is likely to expedite the resource consent process.
<b>Ranking</b>	<b>3</b>	<b>1 (PREFERRED)</b>	<b>2</b>

## 9. EVALUATION OF PROPOSED OBJECTIVES

9.1. Section 32(1)(a) requires an examination of the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the Act. This variation does not propose any new objectives or changes to existing objectives. In this case, an examination of the extent to which the purpose of the proposal is the most appropriate way to achieve the purpose of the Act is required (s32(6)).

9.2. There are no new objectives or changes to objectives proposed as part of this variation.

## 10. EVALUATION OF THE PROPOSED PROVISIONS

10.1. The proposed provisions are set out in Section 1.2 of this report.

10.2. Section 32(1)(b) of the Act requires an assessment of whether the proposed provisions (policies and methods) are the most appropriate way to achieve the objective or purpose of the proposal.

This assessment must:

- identify other reasonably practicable options for achieving the objectives

- assess the efficiency and effectiveness of the provisions in achieving the objectives, including consideration of the benefits and costs anticipated from the implementation of the provisions, and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- summarise the reasons for deciding on the provisions

**Reasonably practicable options**

10.3. The following table identifies other reasonably practicable options for achieving the purpose of the variation:

Option	Achieves objective?
1. Status quo	The status quo would not ensure that “Landscape and character values in the Wakatipu Basin Rural Amenity Zone are maintained or enhanced” (Objective 24.2.1), as Rule 24.4.5 cannot be implemented as intended.
2. Variation to the Definition of Residential Flat	The variation, as drafted, would clearly permit Residential Flats up to 150m <sup>2</sup> , and allow Rule 24.4.5 to give effect to Policies 24.2.1.2 and Policy 24.2.1.4 and therefore Objective 24.2.1, as stated above.
3. Delete Rule 24.4.5	Deleting Rule 24.2.1.2 would not assist in achieving Policies 24.2.1.2 and 24.2.1.4, as it would remove one of the rules intended to directly implement them, and the definition of residential flat would need to be solely relied on to achieve the intended resource management of residential flats in the Wakatipu Basin Rural Amenity Zone. The policy gap in the definition of Residential Flat has already been discussed, and this option does not directly address this.

Having considered these options, Option 2 is the preferred option because it achieves the purpose of the variation.

10.4. Section 32(c) of the RMA requires an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. It is considered that the information about the definition of Residential Flat, the proposed variation, and Rule 24.4.5 is certain and sufficient, and there is no need to assess the risk of acting or not acting.

**Reasons for deciding on the provisions**

10.5. The proposed provisions – being the change of the definition of Residential Flat are considered the most appropriate because:

- a) They are efficient and effective at achieving the purpose of the variation.
- b) The provisions are in accordance with Objective 24.2.1, Policy 24.2.1.2 and Policy 24.2.1.4 of the Proposed District Plan.
- c) They are in accordance with the functions of territorial authorities in s31 of the RMA and the sustainable management purpose of Part 2 of the RMA.
- d) The proposed provisions implement Objectives 1.1, 1.2 and 4.5 of the partially operative Otago PRS.
- e) Regard has been had to the Proposed Otago RPS and account has been taken of the two relevant iwi management plans, which are not considered to have significant bearing on this proposal.