

QLDC Council  
28 January 2021

Report for Agenda Item | Rīpoata moto e Rāraki take : 3

Department: Planning & Development

Title | Taitara Delegated Authority for Appeals to Variations to Chapter 30 Energy & Utilities (Stage 3) of the Proposed District Plan

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

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The purpose of this report is to update delegations for the purpose of the resolution of the appeals on the variations to Chapter 30 – Energy & Utilities as part of Stage 3 of the Queenstown Lakes District Council Proposed District Plan.

RECOMMENDATION | NGĀ TŪTOHUNGA

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That Council:

1. **Note** the contents of this report;
2. **Note** that the Planning and Strategy Appeals Subcommittee has the delegated power to approve the resolution of Environment Court appeals and mediations under the Resource Management Act 1991.
3. **Delegate** to the General Manager Planning and Development, Manager Planning Policy, and Principal Planner Resource Management Policy (acting severally) the authority delegated under section 34(1) of the Resource Management Act 1991 to represent and participate on behalf of Queenstown Lakes District Council in mediation and/or alternative dispute resolution for appeals to the Council's decisions on variations to Chapter 30 Energy & Utilities as part of Stage 3 of the Proposed District Plan and reach an agreement within the guidelines and parameters set by the Appeals Subcommittee.
4. **Amend** the Queenstown Lakes District Council Register of Delegations from Council to Officers under the Resource management Act 1991 in relation to appeals to Council's decisions on variations to Chapter 30 Energy & Utilities as part of Stage 3 of the Proposed District Plan.
5. **Note** that once a decision on the district plan is appealed to the Environment Court, the ultimate decision on the outcome of that appeal will be directed by the Court and is not for the Council to decide.

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21/12/2020

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23/12/2020

## CONTEXT | HOROPAKI

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- 1 At its meeting on 8 October 2020, the Council adopted recommendations from the Independent Hearing Panel as its Decisions on submissions to variations to Chapter 30 Energy & Utilities as part of Stage 3 of the Proposed District Plan (PDP) (decisions).
- 2 Appeals on the variation to chapter 30 of the PDP closed on 4 December 2020 and Section 274 parties were due by 11 January 2021. Two appeals have been filed, from Queenstown Airport Corporation and Wayfare Group Ltd, which contain approximately eight separate appeal points.
- 3 This report is seeking delegation only for the decisions on the variations to Chapter 30 Energy & Utilities as part of Stage 3. Recommendations on the remainder of Stage 3 are due to Council to be adopted as decisions at the end of March 2021. A subsequent report will deal with the delegations for the rest of Stage 3.

## ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

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### Environment Court

- 4 The management of the appeals is in the hands of the Environment Court. Council staff are currently reviewing the appeals and the topics they cover and at the time of writing are yet to write to the Court about preferred options for sequencing and timing. It is anticipated that the following processes will take place for the resolution of appeals (but the dates for these processes will be determined by the Court):
  - a. informal negotiations can begin on appeals that are amenable to be resolved in this manner at any time;
  - b. Court assisted mediations on other appeals will begin when directed by the Court. The Council will seek to mediate on the appeals wherever possible as the Court generally expects this to happen. However, it is possible that some appeals will not be able to be resolved through mediation; and
  - c. Environment Court hearings will commence for any appeals that are not able to be resolved through informal negotiation and Court assisted mediation. Hearings can also involve conferencing between experts on specific matters.
- 5 The Council has legal support from within the QLDC Legal team to assist in the management of the appeals process.
- 6 While the management of the appeals is in the hands of the Court, this does not alter the convention that final decisions on the District Plan are made by Full Council. In other words, once the Environment Court appeals are resolved, Chapter 30 as part of Stage 3 of the PDP will go back to Full Council to be formally approved and made operative.
- 7 Also, if any significant changes are recommended to Chapter 30 as part of Stage 3 of the PDP through the appeals process that go outside of the scope of what was notified and submitted on, then those changes will be presented to the Full Council to approve in the form of a variation.

## Comment

- 8 The Appeals Subcommittee has the following power delegated to it from Full Council under section 31 of the RMA:

*“The Appeals Subcommittee will approve the resolution of Environment Court appeals and mediations under the Resource Management Act 1991, including resolving or withdrawing any proceedings and providing guidelines and settlement parameters to officers responsible for participating in mediations.”*

- 9 Currently the General Manager Planning & Development, Manager Planning Policy and the Principal Planner Planning Policy have delegated authority to represent and participate on behalf of Queenstown Lakes District Council in mediation and/or alternative dispute resolution for appeals to the Council’s decisions on Stage 1 and Stage 2 of the current district plan review. They also have authority to reach an agreement within the guidelines and parameters set by the Appeals Subcommittee.
- 10 It is intended to continue the process with the Appeal Subcommittee that was developed for Stage 1 and 2 appeals. The following process keeps Councillors informed of the progress of the resolution of the appeals:
- a. The Manager Planning Policy, or Principal Planner Resource Management Policy will present a report to meetings of the Appeals Subcommittee summarising the appeals and their scope and seeking guidelines and parameters to be set for the resolution of such appeals;
  - b. The Appeals Subcommittee will meet roughly once every three weeks or more or less frequently as required, subject to the timing of other Council meetings and commitments;
  - c. The Appeals Subcommittee will be provided with an update at each meeting on all current appeals to the PDP, including details of any changes to Council’s position in relation to those appeals and any proposals to resolve or withdraw from proceedings.
- 11 This approach enables the Appeals Subcommittee to maintain oversight of the appeals on the PDP and their progress, through the mediation rounds and subsequent Environment Court hearings where a hearing is necessary. It is important that a flexible and responsive approach be taken to this stage of the PDP processing as it is the Environment Court that will be setting the timing of the mediations and hearings. Staff entering into the mediation processes will be expected to have the authority to be able to consider and commit to a mediated settlement. Providing regular reporting to the Appeals Subcommittee and discussing possible appeal parameters will enable that to occur.
- 12 Under the Local Government Official Information and Meetings Act 1987 section 7(2)(g) and (i) discussions and correspondence relating to the above can be considered outside of public meetings and kept confidential in order to maintain legal professional privilege and to enable the Council to conduct any necessary negotiations with the other parties. It should also be noted that while standing orders provide for a public forum at the start

of each meeting, in the case of PDP appeals, no such public forum shall be held because the matters relate to negotiations with other parties in respect of the resolution of the appeals.

- 13 Option 1 Update the current delegations to grant delegated authority to determine Council's position and to act on Council's behalf in the mediation and alternative dispute resolution of appeals to Council's decisions on the PDP to the General Manager Planning & Development, Manager Planning Policy and the Principal Planner Planning Policy for appeals to decisions on Stage 1.

*Advantages:*

14 Allows officers with specific knowledge of the PDP to participate in the appeals process and in various forms of mediation. Allows for these officials to have authority to act on Council's behalf after first obtaining appropriate direction from the Appeals Subcommittee.

15 Retains an appropriate level of oversight from elected members.

*Disadvantages:*

16 Requires a high level of trust between elected members and staff. However, this disadvantage is mitigated by the reporting process proposed to be put in place between the officers and the Appeals Subcommittee.

- 17 Option 2 Delegate to first and second tier managers and elected officials only, the authority to determine Council's position and to act on Council's behalf in the mediation and hearing of these appeals.

*Advantages:*

18 Elected officials and more senior officials have a range of experience and a broad understanding of Council and community interests.

*Disadvantages:*

19 Keeping abreast of the details of the district plan appeals would be a very significant task for members of the Appeals Subcommittee and for first and second tier managers.

20 This investment of time does not appear to be justified given the limits on the role of elected members in the Environment Court processes, which as they progress, are extensively driven by lawyers and experts.

21 Current commitments and workloads would not allow these senior staff to get to grips with all the details of a large number of potentially fast moving appeals and to participate in Environment Court processes in an efficient manner.

- 22 Option 3 Maintain the Status quo

*Advantages:*

23 None

*Disadvantages:*

24 The Appeals Subcommittee would have to decide on the parameters and specifics of all the individual appeal points. The timeframe of the committee schedule does not allow for the large number of potentially fast moving appeals to be able to be dealt with in an efficient and timely manner.

25 The Environment Court appeal processes is a highly legalistic and high stakes forum. The Court requires Council as the respondent to assist the Court by providing timely responses and advice from experienced and objective RMA practitioners and specialist experts in all aspects of the process.

26 This report recommends **Option 1** for addressing the matter because it is the more robust option.

**CONSULTATION PROCESS | HĀTEPE MATAPAKI:****> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA**

27 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it is a decision relating to the administration of Council affairs.

28 No persons are considered to be affected by this matter.

**> MĀORI CONSULTATION | IWI RŪNANGA**

29 The Council has not specifically consulted with iwi on this issue.

**RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA**

30 This matter relates to the Community & Wellbeing risk category. It is associated with RISK0056 Ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a Moderate inherent risk rating.

31 The approval of the recommended option will support the Council by creating a robust and efficient process to deal with appeals to the PDP.

**FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA**

32 There are no financial implications as a result of this proposal.

**COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA**

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

- QLDC Delegations Register

34 The recommended option is consistent with the principles set out in the named policy/policies.

35 This matter is included in the Ten Year Plan/Annual Plan.

#### **LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHA KA WAETURE**

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36 The Resource Management Act 1991, Local Government Act 2002 and Local Government Official Information and Meetings Act 1987 have been taken into account in writing this report.

#### **LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA**

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37 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 Ten 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.