

Plan Change 33 – Non-Residential Activities in Residential, Rural Living and Township Zones



Section 32 Report

Notified 2 April 2008

EXECUTIVE SUMMARY

There currently exists an anomaly within Sections 7 and 8 of the Plan, in that activities such as panelbeating, spraypainting and fibreglassing, which are usually prohibited in residential areas, may be permitted (subject to site and zone standards).

This anomaly has come to the Council's attention as a result of a motor vehicle repair operation that has been undertaken in Fernhill. This situation has led the Council to consider the preparation of a plan change to correct the existing anomaly.

The analysis undertaken for this plan change also found that there is a similar loophole within the Township Zones of the District, whereby the prohibited activity rule found in other residential zones listing activities such as panelbeating, spraypainting and motor vehicle repairs as prohibited is not found within the Township Zones, and instead, Prohibited Activity Rule 9.2.3.5(i) reads:

(i) Any Activity which requires an Offensive Trade Licence under the Health Act 1956.

Given the definitions of service and industrial activities, it is found that home occupations that meet site and zone standards are excluded from the non-complying activity rule for industrial and service activities, and are therefore permitted.

The resource management issue that this plan change aims to address can be defined as:

Non-residential activities such as panel beating, motor vehicle repair or dismantling, are not anticipated within the residential areas of the District, and have the potential to cause significant adverse effects on amenity values.

The purpose of the plan change can be defined as:

To close a loophole that currently exists within the Residential, Rural Living and Township Zones that allows inappropriate activities such as panelbeating, spraypainting and fibreglassing as a permitted activity. The closing of this loophole will assist in ensuring the amenity values anticipated within the District's residential areas are maintained.

This analysis has been prepared in accordance with Section 32 of the Resource Management Act (the RMA). As such, it details the applicable provisions of relevant statutory and non-statutory documents, and assesses a range of alternative options in terms of their effectiveness, costs and benefits, and appropriateness.

This analysis reaches the conclusion that the most appropriate option is to undertake a plan change that amends prohibited activity rules 7.5.3.6(i) for the Residential Zones, and 8.2.2.5(i) for the Rural Living Zones as follows:

~~**Except as part of a Controlled or Permitted Activity:**~~ *Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956*

As this Section 32 report identifies, the effect of the activities identified can be significant even if part of a home occupation, and site and zone standards are often not appropriate to manage them. However, unlike the residential zone, the Township Zones appear to anticipate industrial activities. Therefore it would be inappropriate to prohibit them. Instead, it is found that home occupations involving activities not anticipated in a residential area should be subject to the same test as industrial and service activities. It is thus considered appropriate to add a non-complying activity to rule 9.2.3.4 as follows:

Home occupations that involve panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing.

Those activities that may already be lawfully established as part of home occupations will not however be affected and will be able to continue their use in line with Section 10 of the Resource Management Act.

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1.0 PART1: INTRODUCTION

This report has been prepared in respect of Plan Change 35: 'Non residential activities within residential areas' to fulfill the requirements of Section 32 of the Resource Management Act (RMA).

Section 32 of the Act requires that an evaluation be undertaken that examines:

- the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
- whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objective.

For the purpose of the above examination, the evaluation must take into account:

- the benefits and costs of policies, rules or other methods; and
- the risk of acting or not acting if there is insufficient information about the subject matter of the policies, rules or other methods.

In order to meet the requirements of the RMA, this report has been structured into 6 different parts.

Part 1 provides an introduction and introduces the format of the report.

Part 2 provides the framework for a Plan Change. It explains the background to the Plan Change, identifies the resource management issue that needs to be addressed, and the purpose of the Plan Change.

Part 3 provides the legislative context for the Plan Change, identifying the provisions of relevant statutory documents that are pertinent to the consideration of the Plan Change.

Part 4 identifies provisions within non-statutory documents prepared or supported by the Queenstown Lakes District Council or other agencies that are of relevance to the consideration of the Plan Change.

Part 5 identifies the consultation undertaken by the Council in its preparation of the Plan Change.

Part 6 identifies and discusses the key options available to the Council when considering alternative approaches to resolving the resource management issue.

Part 7 provides conclusions to the above analyses.

2.0 PART 2: THE CONTEXT FOR A PLAN CHANGE

2.1 BACKGROUND

The following prohibited activity rule applies in most zones that provide for residential activities:

The following shall be prohibited activities

Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing or Any Activity requiring an Offensive Trade Licence under the Health Act 1956

Section 77 of the RMA is titled 'types of activities' and defines prohibited activities as follows:

7. *If an activity is described in this Act, regulations, or a plan as a prohibited activity, no application may be made for that activity and a resource consent must not be granted for it.*

However, it has recently been brought to the Council's attention that the prohibited activity rule in the Residential and Rural Living Zones contains an exception for any controlled or permitted activity as follows (exception underlined)

Except as part of a Controlled or Permitted Activity: *Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.*

Following a review of the provisions within the Notified Plan (1995) it appears that this anomaly existed at the time the Notified Plan was first prepared. There appears to be no record as to why this occurred, and it does appear to be an anomaly, given that the Section 7.12 Reasons for Rules within the notified Plan for the residential zone stated that:

'certain activities are without exception inappropriate in residential neighbourhoods because of their potential for significant adverse impacts on local environment qualities and amenities. The effects of such activities can be very difficult to prescribe as standards, such as odour and vibration levels and lack of visual amenity. Accordingly, certain activities which are considered to result in adverse noise, odour, vibration or which are generally noxious or unpleasant have been specifically excluded from Residential Zones.'

Likewise, the anomaly found within the Township Zones also existed within the 1995 Plan. It appears that the provisions recognised the existing situation, whereby it was likely to find industrial activities located within the residential area. However, it would seem that new industrial and service activities were not seen as appropriate, leading to their being listed in the Plan as non-complying activities. It is understood that while drafting the Plan it was at one stage intended that existing industrial and service activities would be included in a schedule. This approach was later abandoned, but this situation may have contributed to the apparent inconsistency between the policies and objectives of the Township Zone and the rules. This issue has not been addressed as part of this Plan Change as it was regarded to be outside the scope.

2.2 RESOURCE MANAGEMENT ISSUE

The Residential and Rural Living Zones of the District provide primarily for residential activities. The Township Zone provides a range of uses, foremost of which is residential. As such these zones anticipate amenity values associated with residential activities. Some non-residential activities are anticipated, and are provided for by permitting 'home occupations' subject to meeting site and zones standards that restrict noise, hours and operation and nature and scale of activities.

Given the amenity values anticipated within the Residential and Rural Living Zones, activities such as panel beating, spray painting and motor vehicle repairs are not anticipated. They may in fact meet the site and zone standards relating to noise, hours of operation and nature and scale of activities, but their effects are not appropriate to the residential character of these zones. Within other zones of the District of a residential nature these activities have been prohibited. For example, within the Remarkables Park, the Town Centre, Residential Arrowtown Historic Management, Resort, Rural Visitor, Penrith Park, Bendemeer, Quail Rise, and Meadow Park zones the following prohibited rule applies, with no exclusions providing for permitted or controlled activities:

Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing or Any Activity requiring an Offensive Trade Licence under the Health Act 1956

While the need to provide for some non-residential activities within the residential areas of the District is recognised, it is important that the basic amenity values anticipated within these zones can be maintained.

In the Township Zone it can be argued that industrial activities are anticipated, due to the issues, objectives and policies discussing a range of uses, but it has been recognised that they need to be managed through the resource consent process (due to industrial and service activities being listed

as non-complying). In addition, the Township Zone provisions recognise existing industrial activities, and the need to control future activities.

The resource management issue that needs to be addressed can be defined as follows:

Non-residential activities such as panel beating, motor vehicle repair or dismantling, are not anticipated within the residential areas of the District, and have the potential to cause significant adverse effects on amenity values.

2.3 PURPOSE OF THE PLAN CHANGE

Given the above resource management issue, the purpose of the Plan Change can be defined as:

To close a loophole that currently exists within the Residential, Rural Living and Township Zones that allows inappropriate activities such as panelbeating, spraypainting and fibreglassing as a permitted activity. The closing of this loophole will assist in ensuring the amenity values anticipated within the District's residential areas are maintained.

2.4 SCOPE OF THE PLAN CHANGE

The scope of this Plan Change is limited to considering the anomalies currently found within Parts 7, 8 and 9 of the District Plan as they relate to the ability to undertake activities such as panel-beating, motor vehicle repairs and spraypainting within residential areas. The scope does not provide for a detailed and comprehensive review of the provisions for Residential, Rural Living or Township Zones.

3.0 PART 3: LEGISLATIVE FRAMEWORK

This section of the report identifies the relevant provisions of the Resource Management Act (the RMA). It then identifies the documents referred to in the RMA which the Council must take into account when preparing the Plan Change. These include the documents prepared by the Otago Regional Council (Regional Policy Statement), and the relevant iwi management plan (Kai Tahu Ki Otago Natural Resource Management Plan). It also identifies other legislation relevant to the consideration of the Plan Change, including the Local Government Act (LGA).

3.1 RESOURCE MANAGEMENT ACT 1991

This Plan Change has been prepared as a means of achieving the purpose of the RMA, which is expressed in **section 5** as follows:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, "sustainable management" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –*
 - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonable foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
 - (c) *Avoiding, remedying or mitigating any adverse effects of activities on the environment.*

The provision for non-residential activities within residential zones assists people in providing for their economic wellbeing. However, this needs to be balanced against the need to avoid, remedy or mitigate the adverse effects of activities on the environment.

Section 6 identifies matters of national importance. None of the matters of national importance are of relevance to the consideration of this Plan Change.

Section 7 lists “other matters” that the Council must have particular regard to. The following subsections are of particular relevance to the Plan Change:

(c) *The maintenance and enhancement of amenity values:*

(f) *Maintenance and enhancement of quality of the environment:*

Section 8 states that:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 31 of the Act identifies the functions of territorial authorities. This Plan Change relates specifically to Council’s functions under 31(a), which reads:

(a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.*

Relevant clauses of **Section 32** of the Act read:

(3) An evaluation must examine—

(a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*

(b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

(4) *For the purposes of this examination, an evaluation must take into account—*

(a) *the benefits and costs of policies, rules, or other methods; and*

(b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

(5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.*

(6) *The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.*

This analysis meets the requirements identified above, and forms the report required by clauses 32(5) and (6).

Section 72 identifies the purpose of District Plans, and reads

The purpose of the preparation, implementation and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

Section 73 provides for the preparation and change of District Plans. It states that variations and plan changes must be prepared in accordance with the First Schedule of the Act. The First Schedule sets out the required process of consultation, notification, submissions, hearings and decisions.

Section 74 is of particular relevance, and identifies the matters to be considered by local authorities when preparing a change or variation to a district plan. Listed here are the clauses that are of relevance to the consideration of this Plan Change:

- (1) *A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, its duty under section 32, and any regulations.*
- (2) *In addition to the requirements of section 75(2), when preparing or changing a district plan, a territorial authority shall have regard to—*
 - (a) *Any—*
 - (i) *Proposed regional policy statement; or*
 - (ii) *Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and*
 - (b) *Any-*
 - (i) *Management plans and strategies prepared under other Acts; and*
 - (iia) *Relevant entry in the Historic Places Register; and*
 - (..)

to the extent that their content has a bearing on resource management issues of the district; and

2(A) A territorial authority, when preparing or changing a district plan, must—

- (a) *Take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and*
- (3) *In preparing or changing any district plan, a territorial authority must not have regard to trade competition.*

Section 75 identifies the contents of District Plans. Of particular relevance, clause (3) reads:

A district plan must give effect to:

- (a) *any national policy statement*
- (b) *any New Zealand Coastal Policy Statement*
- (c) *any regional policy statement*

Clause 4 reads:

A district plan must not be inconsistent with

- (b) *a regional plan for any matter specified in section 30(1).*

3.2 REGIONAL POLICY STATEMENT FOR OTAGO (OPERATIVE IN OCTOBER 1998)

Section 60 of the RMA requires the Otago Regional Council to prepare a Regional Policy Statement. The purpose of a Regional Policy Statement is to promote the sustainable management of natural and physical resources. Otago's Regional Policy Statement does this by providing an overview of the resource management issues facing Otago, and by setting policies and methods to manage Otago's natural and physical resources. The Regional Policy Statement contains no rules.

Section 75 of the Act requires that the Plan Change gives effect to the provisions of the Regional Policy Statement. The provisions of most relevance to the consideration of this Plan Change are listed below.

Section 7: Air contains the following relevant provisions:

Policy 7.5.2

To avoid, remedy or mitigate any discharges which have adverse effects on the air resource including effects on human health, the environment, visual impacts and odour.

Anticipated Environmental Result:

7.7.5 Air Quality in urban environments is improved in respect of public health, visual appearance and odour.

Given the nature of the activities addressed by this Plan Change, they have the potential to cause adverse effects on the air quality of the residential areas within which they are located.

Section 9: Built Environment contains the following relevant provisions:

9.4 Objectives

9.4.1 To promote the sustainable management of Otago's built environment in order to:

(a) Meet the present and reasonably foreseeable needs of Otago's people and communities; and

(b) Provide for amenity values; and (...)

9.5.5 To maintain and, where practicable, enhance the quality of life for people and communities within Otago's built environment through:

(a) Promoting the identification and provision of a level of amenity which is acceptable to the community; and

(b) Avoiding, remedying or mitigating the adverse effects on community health and safety resulting from the use, development and protection of Otago's natural and physical resources; and (...)

In summary, the provisions of most relevance to consideration of this Plan Change relate to those objectives and policies that are intended to maintain and enhance the quality of life for people and communities. This is to be achieved through the identification and provision of an acceptable level of amenity, and avoiding, remedying and mitigating adverse effects on community health and safety.

3.3 PARTIALLY OPERATIVE DISTRICT PLAN (THE PLAN)

When considering the Plan Change it is important to ensure that it is not inconsistent with the settled provisions of the Plan. This Section of the report identifies those provisions that are considered

relevant to the consideration of this Plan Change, focusing on those provisions that provide for the protection of amenity values and the provision for non-residential activities within the relevant zones.

Part 3: Sustainable Management

Part 3 of the District Plan contains the following statement with regard to enabling people to meet their needs:

Enabling People to Meet their Needs

The Plan makes provision for activities that enable people to meet their needs and aspirations while at the same time it aims to ensure the environment can sustain the needs and aspirations of future generations. The Plan provides a level of certainty to the community about what can happen in their environment and gives people the ability to influence how things occur.

This statement implies that while it is recognised that a range of activities should be provided for throughout the District, this needs to be tempered by the provision of certainty that inappropriate activities will not occur in areas providing for residential activities.

Part 4: District Wide Issues

Part 4 of the Plan provides primarily for the rural areas of the District, and as such is not relevant to the consideration of this Plan Change.

Part 7: Residential Zone.

The following identifies the relevant provisions contained within Part 7 of the Plan as they relate to the consideration of this Plan Change.

Clause 7.1.1 identifies the resource management issues for the Residential Zones, and of relevance, contains the following general statement:

Enabling people to provide for their residential needs within the District is one of the Council's functions authorised under the Act. The purpose of the Act is the sustainable management of natural and physical resources, which includes enabling people and communities to provide for their social, economic and cultural well being and for their health and safety. This can only be achieved within a framework which adequately addresses the needs of present and future generations, the life-supporting capacity of air, water, soil and ecosystems, and the adverse environmental effects of activities including the effects on the visual amenity of outstanding landscapes of the District

The first paragraph of Issue 7.1.1(iv) relates to building form and how this affects amenity values. The second and third paragraphs are more relevant to the consideration of this Plan Change, and read:

Residential areas have always contained a range of complementary non-residential activities relating to the educational, spiritual, social, recreational, and day-to-day economic needs of the residents. Many of these require a residential location because of the service they provide to residents. Some of these activities can have a significant impact in terms of traffic and on-street parking, noise or glare. It is important to ensure a compatibility between residential and non-residential activities and areas.

Home occupations are an important aspect of non-residential activity which provides residents with a source of employment with many social and economic advantages, but which can cause problems in residential areas. The range of activities and their character and scale vary considerably and it is often the traffic-generating and noise aspects of these activities which is of concern. Limitations on the extent of retailing, the scale of activities in terms of area or floorspace and the involvement of persons not living on the site are commonly adopted to mitigate these adverse effects.

This issue recognises the importance of providing for non-residential activities while recognising that these have the potential to cause adverse effects not appropriate for a residential zone.

The following objective and policies relate to residential amenity and non-residential activities, and are therefore relevant to the consideration of the Plan Change.

Objective 3: Residential Amenity

Pleasant living environments within which adverse effects are minimised while still providing the opportunity for individual and community needs.

Policies:

- 3.1 *To protect and enhance the cohesion of residential activity and the sense of community and well being obtained from residential neighbours.*
- 3.4 *To ensure hours of operation of non-residential activity do not compromise residential amenity values, social well being, residential cohesion and privacy.*
- 3.7 *To ensure noise emissions associated with non-residential activities are within limits adequate to maintain amenity values.*
- 3.8 *To encourage on-site parking in association with development in residential areas to ensure the amenity of neighbours and the functioning of streets is maintained.*

Explanation and Principal Reasons for Adoption

The purpose of policies is to achieve the consolidation of residential activity and protection of residential amenity values. Although non-residential activities are an integral part of the residential environment they have the potential to create adverse effects relating to noise, visual detracting, traffic and loss of residential neighbours. A high standard of amenity is sought for residential areas which are sensitive to adverse effects. Although it may not be possible or desirable to prohibit all non-residential activities from residential neighbourhoods, it is necessary to ensure the establishment of such activities does not adversely affect people's social well being. The effect on community cohesion, and hence well being, arises from the removal of permanent residents as much as from the visual disruption and loss of amenity caused by establishment of these activities.

The residential areas are sensitive noise environments and this is a major factor which must be taken into account when considering the impact of other activities. Noise in a residential area is likely to result from non-residential activities and as such the plan includes provisions setting noise standards for non-residential activities in the residential zones. Noise from normal residential living, including animals and social events will be controlled through the excessive noise provisions of the Act.

Objective 4 - Non-Residential Activities

Non-Residential Activities which meet community needs and do not undermine residential amenity located within residential areas.

Policies:

- 4.1 *To enable non-residential activities in residential areas, subject to compatibility with residential amenity.*
- 4.2 *To enable specific activities to be acknowledged in the rules so as to allow their continued operation and economic well being while protecting the surrounding residential environment.*

Explanation and Principal Reasons for Adoption

Non-Residential Activities are an integral part of the residential environment in that they provide a service to local residents or enable people to work at home. However, non-residential activities do have the potential to detract from residential amenity by way of noise, traffic and scale of operation.

(...)

A number of non-residential activities have developed in residential areas and currently provides either a service to the area or are not incompatible with residential amenity. These activities have

been acknowledged to provide security of the activity and protection for residential amenity. It is recognised non-residential activities have the potential to create adverse effects in respect of matters such as noise and hours of operation. A high standard of amenity will be sought for non-residential activities in residential areas.

Section 7.2 provides specifically for Queenstown Residential Areas Sunshine Bay-Fernhill, Queenstown Bay, Frankton Road, Frankton and Kelvin Peninsula. Of relevance, Policy 7 reads:

7. *To provide for non-residential activities in residential areas providing they meet residential amenity standards and do not disrupt residential cohesion.*

The relevant environmental results are listed as follows:

Environmental Results Anticipated

- (v) *The exclusion or mitigation of activities which cause adverse environmental effects, such as excessive noise, glare, odour, visual distraction, traffic and on-street parking congestion, traffic safety and other hazards.*
- (vi) *Residential coherence except in circumstances of established non-residential uses or where a local need prevails for non-residential activities ancillary to the surrounding residential environment.*

Section 7.3 of the Plan provides specifically for the Wanaka residential areas. Of particular relevance, Policy 4 reads:

4. *To ensure non-residential activities in residential areas meet residential amenity standards and do not disrupt residential cohesion and social well being.*

Section 7.4 provides specifically for the Residential Arrowtown Historic Management Zone. The objectives and policies provide a focus on retaining the historic character of this area; and the only provisions relevant to this Plan Change are found in the Environmental Results Anticipated. These relevant provisions read:

- (ii) *A reasonable standard of privacy and amenity for residents of the zone.*
- (vii) *The exclusion of activities which do not contribute to or promote the historic residential character of the zone.*

The policy provisions for the Residential Zones of the District recognise the importance of maintaining the amenity values of the residential environment, while acknowledging that some non-residential activities may be appropriate, subject to controls on noise, parking and traffic effects. This is reflected in the rules which impose restrictions on the nature and scale, hours of operation, parking and traffic generation for non-residential activities within the residential areas.

The policy provisions recognise that most non-residential activities can be controlled adequately through imposing such standards. However, there are some activities that are not appropriate to the residential context, and the objectives and policies provide a clear focus on maintaining residential amenity.

Section 8: Rural Living Zones

Section 8 provides issues, objectives and policies for the Rural Living Zones of the District. Section 8.1.1 Resource Management issues identifies the general purpose of these zones as:

Rural lifestyle and rural residential living reflects a desire by some people to live on small holdings in a rural environment while undertaking only limited farming or no farming at all. It is important to

balance the needs of rural living activities, sustainable management, amenity values and the life supporting capacity of water and soil.

The relevant resource management issue reads:

i Protecting the Amenity Values

All Rural Zones have particular amenity and environmental values, which are important to rural people. These include privacy, rural outlook, spaciousness, ease of access, clean air and, at times, quietness. However, because of the range of activities that necessarily occur in a rural area, there are levels of noise, dust, traffic generation and odour that are an integral part of rural amenity values. Provided that these effects do not constitute a genuine nuisance or a health risk, they must be accepted as anticipated components of rural amenity.

The relevant objectives and policies read:

Objective 2 – Rural Amenity

Avoiding, remedying or mitigating adverse effects of activities on rural amenity.

Policies:

2.1 *Recognise that permitted activities associated with farming in rural areas may result in effects such as smell, noise, dust and traffic generation, which will be noticeable to residents in the rural living areas.*

The relevant environmental result anticipated reads:

(i) *The achievement of a diversity of living and working environments.*

The focus of the Rural Living Zone provisions is to provide for residential activities within the semi-rural area, recognising that there needs to be a balance between the continuation of rural activities and the establishment of residential activities. There is specific mention of other non-residential activities and their potential effect on the anticipated amenity values. When referring to non-residential activities these provisions focus on activities anticipated in a rural environment, and the need to provide for these while providing a level of amenity for residential activities.

Section 9: Township Zones

The relevant Resource Management Issue reads:

iv Township Amenity

- *The establishment of a level of amenity which reflects elements of the urban and rural character of the towns*

(..)

Different activities occur within the townships and it is not unusual to find commercial or industrial activities such as transport yards, hotels and small businesses interspersed with housing. There is acceptance of non-residential activities in the townships. This appears to reflect the close economic, social and physical links between the townships and the rural areas they serve.

Section 9.1.3 then provides resource management issues specific to each township. The following identifies those that are relevant to the consideration of this Plan Change.

9.1.3.1 Hawea

- *Retention of present residential amenity and character.*

9.1.3.2 Luggate

- *Non-residential activities subject to strict amenity controls.*

- Continuance of the existing non-residential activities in the town which are important to its economic and social well being.

9.1.3.3 Albert Town

- Minimising the adverse effects of non-residential activities on residential amenity.

9.1.3.4 Makarora

*- Retention of the character and quality of the environment.
- Providing for a variety of lifestyles and land use activities.*

9.1.3.5 Glenorchy

- Retention and enhancement of the amenity of the township while providing for an increasing range of non-residential activities, in particular visitor activities, within the township and the surrounding hinterland.

9.1.3.6 Kinloch

- Retention and enhancement of the amenity and character of the township.

The issues specific to Kingston are not relevant to the consideration of the Plan Change.

The relevant objective for the Townships reads:

Objective 1

(...) Recognition of the particular character, built environment and range of uses existing in the individual townships.

The relevant policies read:

6. *To provide for a range of small scale non-residential activities in the towns subject to listed standards to ensure development consistent with the predominant residential environment.*
8. *To provide for the protection of a range of existing non-residential uses by way of scheduled sites.*

The following extract from the Explanation and Principal Reasons for Adoption reads:

The maintenance of the amenity values and character of the townships is important to the well being of the residents.

The relevant Environmental Results Anticipated read:

- (ii) *A range of non-residential activities satisfying residential amenity requirements.*
- (iii) *Townships comprising a mixture of residential, business and community activities.*

The provisions for the Townships are similar to those for the other residential areas of the District, in that they recognise the need for some non-residential activities, but also recognise the need to balance this with the need to maintain the amenity values anticipated for the residential setting. However, it appears that these provisions focus more on the provision of a mix of activities rather than the maintenance of a residential amenity; and while the objectives and policies are generic for all townships, the issues provide for each individual township. This makes it unclear as to whether different townships have different levels of non-residential activity and whether this should be recognised.

3.4 KAI TAHU KI OTAGO RESOURCE MANAGEMENT PLAN

Section 74(2)(A) of the RMA requires that when preparing or changing the Plan, the Council must:

- (a) *take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district, and*

The Kai Tahu Ki Otago Resource Management Plan (2005) (NRMP) is the principal planning document for Kai Tahu ki Otago (Kai Tahu Ki Otago is used to describe the four Papatipu Runanga and associated whanau and ropu of the Otago Region).

Chapter 5 of the NRMP identifies issues, objectives and policies for the Otago Region as a whole. Chapter 10 identifies issues, objectives and policies for the Clutha Mata-au catchment, in which the Queenstown Lakes District is located.

These issues, objectives and policies relate principally to wai maori, cultural landscapes, air, mahika kai and biodiversity. Thus, they do not provide specific direction with respect to the amenity values of the residential environment.

3.5 LOCAL GOVERNMENT ACT 2002

This section of the report identifies the relevant sections of the Local Government Act 2002 (LGA). It then identifies the relevant provisions of the Queenstown Lakes District Council's Long Term Community Plan, which has been prepared under the LGA.

Sections 76-82 of the LGA relate to decision making. Section 76 identifies that every decision made by a local authority must be made in accordance with Sections 77-82 of the LGA, as applicable.

Section 77 is entitled 'requirements in relation to decisions' and reads:

- (1) *A local authority must, in the course of the decision-making process*
- (a) *seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*
 - (b) *assess those options by considering*
 - (i) *the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and*
 - (ii) *the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and*
 - (iii) *the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and*
 - (iv) *any other matters that, in the opinion of the local authority, are relevant; and*
 - (c) *if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.*
- (2) *This section is subject to section 79.*

Section 78 is entitled community views in relation to decisions, and reads:

- 1) *A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.*
- (2) *That consideration must be given at*
- a) *the stage at which the problems and objectives related to the matter are defined;*
 - b) *the stage at which the options that may be reasonably practicable options of achieving an objective are identified;*
 - c) *the stage at which reasonably practicable options are assessed and proposals developed*
 - d) *the stage at which proposals of the kind described in paragraph (c) are adopted*

Section 79 of the LGA is entitled 'Compliance with procedures in relation to decisions'. It identifies that it is the responsibility of the local authority to make, in its discretion, judgments on how to achieve compliance with Sections 77 and 78 of the LGA. These judgments are to be based largely on the significance of the matters affected by the decision, and determine the extent to which different options are to be identified and assessed, the extent and detail of information to be considered, and the written record to be kept. The judgment is also based on the nature of the decision, and the extent to which the circumstances in which the decision is made allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons. Clause 3 of section 79 states that the nature and circumstances of the decision include the requirements of other Acts (in particular, the Resource Management Act).

Section 80 of the LGA is entitled 'Identification of inconsistent decisions', and requires that the local authority identify where any decision is significantly inconsistent with a policy or plan of the local authority.

Section 81 of the LGA is entitled 'Contributions to decision making processes by Maori'. Of relevance, this requires that the local authority establish and maintain processes for involvement of Maori in decision making processes.

Section 82 of the LGA is entitled 'Principles of consultation', and requires that any consultation undertaken by the local authority is in accordance with the following principles:

- (c) *that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:*
- (d) *that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:*
- (e) *that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:*
- (f) *that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions.*

3.6 QUEENSTOWN LAKES DISTRICT COUNCIL- LONG TERM COUNCIL COMMUNITY PLAN

The Long Term Council Community Plan (CCP) for the Queenstown Lakes District has been prepared under the LGA. It identifies key community outcomes for the District. The following excerpt from the CCP identifies how those outcomes were established:

Over a period of two years, beginning in 2001, the Council went to its individual communities to hold a series of 2020 workshops. The communities looked ahead to the future and made decisions about the desired look and feel of their environments in 20 years time.

The community outcomes that arose out of this process are included on page 12 of Volume 1 of the CCP. Those of relevance to this Plan Change read:

- *A safe and healthy community that is strong, diverse and inclusive for people of all age groups and incomes.*
- *A strong and diverse economy;*
- *High quality urban environments respectful of the character of individual communities.*

3.7 HEALTH ACT 1956

Environmental noise in New Zealand is controlled under the RMA and the Health Act 1956. The Health Act contains nuisance provisions, in particular, ss.29-34 dealing with nuisances including:

'Where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that ... is likely to be injurious to health'.

Under the Health Act, nuisances such as noise are the responsibility of local authorities. This provides a potential alternative mandate and enforcement mechanism for the control of noise. Enforcement can extend to prosecution through the district court.

However, most territorial authorities, including the QLDC, have adopted the RMA as the main method for controlling environmental noise. This is achieved through the inclusion of noise standards within each section of the Plan. The noise levels permitted within each zone differ depending on anticipated uses and effects for each type of environment. For example, noise limits within the residential zones are more restrictive than in town centre or industrial zones.

The Health Act also sets out requirements for consent from local authorities for the establishment and implementation of offensive trades (section 54). Offensive trades are listed in schedule 3 of the Act. As outlined above, the District Plan prohibits in a number of zones any activity which requires an Offensive Trade license under the Health Act 1956.

The Health Act requires identify the following activities as offensive trades:

Blood or offal treating, bone boiling or crushing, refuse collection and disposal, nightsoil collection and disposal, collection and storage of used bottles for sale, dag crushing, fellmongering, fish cleaning, fish curing, flax pulping, septic tank desludging and disposal of sludge, slaughtering of animals for any purpose other than human consumption, flock manufacturing, or teasing of textile materials for any purpose, storage, drying, or preserving of bones, hides, hoofs, or skins, tallow melting, wood pulping, tanning, wool scouring.

4.0 PART 4: RELEVANT NON-STATUTORY DOCUMENTS

This part of the report identifies the provisions of non-statutory documents that are of relevance to the consideration of the Plan Change.

4.1 TOMORROW'S QUEENSTOWN (JULY 2002)

Tomorrow's Queenstown identifies a vision and prioritised issues for Queenstown and its surrounds that will be achieved through:

- *Building a strong diverse and inclusive community for people of all ages and income levels*
- *Creating high quality urban environments where safe healthy community life can flourish*
- *Growing the strength and diversity of our economy*

The strategic goals and principles that relate to the urban environment focus on built form rather than activity mix and therefore are not of relevance to the consideration of this Plan Change.

Strategic Goal 13 is titled 'growing the strength of our economy'. This discusses the need to diversify the economy so that it is less reliant on the visitor industry. The relevant principles are:

2. *The continued diversification of the economy should be encouraged. Potential opportunities include the film industry, education, arts and culture and information technology.*
3. *In order to support the growth and diversification of the local economy, more business land will be needed in the future.*

4.2 WANAKA 2020 (May 2002)

The report provides a summary of the key points provided by discussion groups who attended the Wanaka 2020 workshop. The following points are relevance to the Plan Change:

Home Based Business

- *A significant number exist ie they are important to the local economy*
- *Information sharing and a support network could assist in resolving common problems and increasing the business opportunities available.*

It is noted however that these statements are unlikely to relate to the provision for 'industrial' activities locating within the residential zones.

It is noted that recommendations were provided on the future provision for industrial land.

4.3 SOCIAL WELLBEING POLICY

The social wellbeing policy was adopted in October 2006, and provides an action plan to guide the district towards improving the social wellbeing of the community.

Section 1.1 of the Strategy identifies social wellbeing as:

'Social Wellbeing refers to those aspects of life that we care about as a society and which contribute to our individual happiness, quality of life, and welfare. Social Wellbeing is relevant to all of the community outcomes that have been identified in the Queenstown Lakes District Council's Council Community Plan (CCP), but is particularly applicable to the outcome of achieving a safe and healthy community that is strong, diverse and inclusive for people of all age groups and incomes.'

Issue 1 is titled 'A challenging employment environment'. This identifies that there is a relatively narrow range of industry types in the Queenstown Lakes District in comparison to the national average and this has created a challenging employment environment.

It is identified that in 2005 the major industries in the district were hospitality (accommodation, cafes and restaurants) (30 percent of total employment); retail trade (15 percent); property and business services (12 percent) and construction (9 percent). Some of these industries (particularly hospitality and retail trade) can offer erratic work hours and low rates of pay and, as a result, there is little incentive for people to work in the industries on a long term basis.

This is relevant to the consideration of the Plan Change, given that in considering the provisions for non-residential activities within the residential zones care must be taken to ensure that employment options are not being restricted.

5.0 PART 5: CONSULTATION PROCESS

Given the minor nature of this Plan Change consultation prior to notification has been limited. All reports associated with the Plan Change have been available from the QLDC website. A letter was sent to key organisations informing them to the potential Plan Change.

6.0 PART 6: CONSIDERATION OF KEY OPTIONS FOR THE PLAN CHANGE

This part of the report provides an assessment of the general options available to the Council when considering the appropriateness of the Plan Change. The assessment meets the requirements of both Section 32 of the RMA and Section 77 of the LGA.

The relevant requirements of Section 32 of the Act read:

(3) *An evaluation must examine –*

- (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
- (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

(4) *For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account –*

- (a) *the benefits and costs of policies, rules, or other methods; and*
- (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

Relevantly, Section 77 of the LGA reads:

- (1) *A local authority must, in the course of the decision-making process*
 - (a) *seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*
 - (b) *assess those options by considering*
 - (i) *the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and*
 - (ii) *the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and*
 - (iii) *the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and*
 - (iv) *any other matters that, in the opinion of the local authority, are relevant; and*
 - (c) *if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.*
- (2) *This section is subject to section 79.*

The following provides an assessment of each of the broad options available to the Council. Each option is assessed in terms of its effectiveness in achieving the objective for the Plan Change and the settled objectives and policies of the Plan, its costs and benefits, and appropriateness.

OPTION 1: STATUS QUO – RESIDENTIAL AND RURAL LIVING ZONES

Explanation

Under the status quo no plan change would be undertaken and instead the existing provisions would apply for the Residential and Rural Living Zones.

Within the Residential Zones, relevant policy provisions refer to the need to balance the ability to provide for non-residential activities with the need to maintain residential amenity values. This is reflected clearly in Objective 3: Residential Amenity, which reads:

Objective 3: Residential Amenity

Pleasant living environments within which adverse effects are minimised while still providing the opportunity for individual and community needs.

Likewise, provisions for the Rural Living Zones reflect the need to maintain amenity values associated with the rural living environment. This is reflected in Objective 2, which reads:

Objective 2 – Rural Amenity

Avoiding, remedying or mitigating adverse effects of activities on rural amenity.

Both the Residential and Rural Living Zones contain the following prohibited activity rule:

- (i) **Except as part of a Controlled or Permitted Activity: Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.**

(Listed as Rule 7.5.3.6(i) in the Residential Zone and 8.2.2.5(i) in the Rural Living Zone.)

While this rule prohibits those types of activities that can cause significant adverse effects, it provides an exclusion from that activity status where such activities are 'part of' a controlled or permitted activity.

The permitted activity rule within both Section 7 and Section 8 reads:

*Any Activity which complies with all the relevant **Site and Zone Standards** and is not listed as a **Controlled, Discretionary, Non-Complying or Prohibited Activity**, shall be a **Permitted Activity**.*

Therefore, any activity that is not listed, or that meets the site and zone standards, is a permitted activity. For example, home occupations may be permitted. It is noted that while buildings for non-residential activities are a controlled activity the activities themselves are permitted (if not listed elsewhere).

Home occupations are a permitted activity within both zones, and are defined as:

Means the use of a site for an occupation, business, trade or profession in addition to the use of that site for a residential activity and which is undertaken by person(s) living permanently on the site, but excludes homestay.

The prohibited activity rule does not state that those activities listed are exempt where the activity itself is a permitted or controlled activity, but instead states that they are exempt where they are part of a controlled or permitted activity.

This means that, subject to meeting site and zone standards, activities such as panelbeating, spraypainting or fibreglassing are exempt from the prohibited activity rule where they are undertaken as part of a home occupation; i.e. the person resides on the site and undertakes these activities within their garage or workshop.

It is noted that the reference to 'controlled activity' in Rules 7.5.3.6 and 8.2.2.5 is considered superfluous as none of the activities listed in rule 7.5.3.6 could form part of any of the controlled activities in the Residential Zone. The controlled activities relate to new buildings for non-residential activities, garages, retail sales, or visitor accommodation.

Effectiveness

The exclusion from the prohibited activity rule does not apply to the Arrowtown Historic Management Zone, the Remarkables Park Zone, Resort zones, Rural Visitor Zones, Penrith Park Zone, or Bendemeer Special Zone. It is therefore suggested that the exclusion within the Residential and Rural Living Zones is likely to be an anomaly, given that these zones have similar characteristics to those listed in that they provide primarily for residential activities.

The site and zone standards within the Residential and Rural Living Zones control the effects from different activities such as noise, nature and scale of activities, hours of operation and glare. However, the nature of the activities listed in the prohibited activity rule is such that even if they do meet the site and zone standards their effects are not anticipated within the Residential and Rural Living Zones of the District and are likely to be inappropriate.

Compliance with the site and zone standards may be difficult to monitor. For example, proving non compliance with noise limits requires extensive noise monitoring. The type of noise emitted may in fact meet the noise standards, but be inappropriate for a residential area.

It is considered that while the status quo is effective in achieving the objectives for providing for a range of activities within the residential zones, it is not effective in ensuring the maintenance of residential amenity.

Costs and Benefits

Costs

It has been found that residential amenity is adversely affected because activities that are usually listed as prohibited within residential areas are permitted.

Benefits

Non-residential activities can locate within the Residential and Rural Living Zones, this may assist some people in providing for their economic wellbeing.

Appropriateness

This option fails to achieve a balance between the provision for non-residential activities and the maintenance of amenity values; it is therefore considered inappropriate.

OPTION 2: STATUS QUO- TOWNSHIP ZONES

Explanation

This option involves retaining the existing provisions for the Township Zones. The following provides an explanation of the existing provisions.

Section 9.1 of the Plan provides issues statements for the Township Zones and contains the following statements:

mix of activities: the townships often comprise a mixture of residential, commercial, industrial, recreational, community and other uses without particular areas being set aside for each activity;

Different activities occur within the townships and it is not unusual to find commercial or industrial activities such as transport yards, hotels and small businesses interspersed with housing. There is acceptance of nonresidential activities in the townships. This appears to reflect the close economic, social and physical links between the townships and the rural areas they serve.

These statements are built on and reflected in the Objectives and Policies. Those of particular relevance read:

Objective 9.1.4 applies to all of the townships, and reads:

Recognition and consolidation of the townships. Recognition of the low density open space residential amenity of the townships. Recognition of the particular character, built environment and range of uses existing in the individual townships.

Policies 9.1.4(6) and (8) read:

- 6 *To provide for a range of small scale non-residential activities in the towns subject to listed standards to ensure development consistent with the predominant residential environment.*
- 8 *To provide for the protection of a range of existing non-residential uses by way of scheduled sites.*

It is noted that while Objective 9.1.4 recognises the residential amenity associated with the townships, there is a clear recognition of the need to provide for non-residential activities, particularly those already in existence.

Unlike other zones that provide for residential activities, the Township Zone rules only prohibit those activities that require an Offensive Trade License under the Health Act 1956 (aside from the planting of certain tree species). The activities listed as prohibited in other Sections of the Plan (such as panelbeating and spraypainting) are managed by way of the following non-complying activity rule for industrial and service activities:

iv Industrial and Service Activities, except on Lot 1 DP 11752 Hawea Township

The definitions of industrial and service activities are as follows:

Industrial Activity: *Means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, or associated storage of goods*

Service Activity: *Means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods.*

Given that the definitions of industrial and service activities relate to those activities that are the primary use of a site, they do not include home occupations, which by definition are undertaken on a site primarily used for residential activities. Consequently, those activities that fall outside the definition of industrial or service activity, and which meet the site and zone standards, are a permitted activity. This means that activities such as panelbeating can be located within the Township Zones as a permitted activity, if undertaken as part of a home occupation.

Consequently, the Township Zone provisions contain a similar anomaly as the Residential and Rural Living Zones.

Effectiveness

Home occupations are a permitted activity (subject to site and zone standards); therefore any activities such as panelbeating, spraypainting, or fibreglassing undertaken by a person residing on the site can also be considered a permitted activity.

The issues, objectives and policies recognise that the Townships provide for a range of different activities, and makes mention of the fact that in some cases industrial activities may be located alongside residential. The policies promote the provision of non-residential activities within the Townships subject to standards to ensure amenity values are maintained.

The non-complying activity status of industrial and service activities indicates that such activities are not anticipated within the Township Zones. This implies that the issues statements may be referring to existing industrial activities rather than new ones. It is noted that the issue statements specific for each Township differ slightly, however, most focus on the maintenance of amenity values associated with residential activities.

The situation whereby industrial and service activities are non-complying but are anticipated by the issues, objectives and policies appears to be an anomaly. Likewise, the ability to undertake an activity such as panelbeating as a permitted activity appears to be an anomaly, given the potential adverse effects.

Costs and Benefits

Costs

There is an anomaly within the Plan, in that the issues, objectives and policies anticipate the location of industrial and service activities within the Township Zones, and yet they are non-complying activities. The Policy provisions for the Township Zones may be outdated and may reflect the character and activities found in the Townships when the District Plan was first drafted; and it is likely that the Townships now reflect a more residential character than what was previously found.

The policy provisions recognise the importance of maintaining amenity values; home occupations are permitted that could adversely affect these amenity values because of their potential adverse effects. Similar to other residential zones, these effects are such that they are difficult to control by way of site and zone standards.

Benefits

Home occupation activities that meet the site and zone standards are permitted. This appears to be consistent with the issues, objectives and policies for the Township Zones, in that they recognise the range of activities undertaken within the Townships, subject to meeting site and zone standards.

Appropriateness

While the existing Township Zone provisions recognise and provide for a range of different activities, they also recognise the importance of maintaining amenity values, and appear to recognise and provide for existing industrial type activities rather than new activities. The existing permitted status of home occupations is likely to be an anomaly; retaining this anomaly is not considered appropriate.

OPTION 3: BYLAW

Explanation

Under this option, the activities deemed inappropriate within the Residential, Rural Living and Township Zones of the District would be managed through the implementation of a bylaw.

This option would involve the drafting of a bylaw for the purposes of controlling home occupations or other small scale non-residential activities that have the potential to cause nuisance, or affect public health and safety.

A bylaw is a rule or regulation made by a local authority which affects the public, which orders something to be done, or in some cases, something not to be done. Local Councils are given the power to make bylaws by a number of statutes, for example, the Local Government Act, the Transport Act and the Resource Management Act. A territorial authority may make bylaws for its district for one or more of the following purposes:

- (a) Protecting the public from nuisance*
- (b) Protecting, promoting and maintaining public health and safety*
- (c) Minimising the potential for offensive behaviour in public places*

Section 155 of the LGA requires that before deciding to adopt a bylaw, the Council must determine that whether making a bylaw under the LGA is appropriate. Determination would include, for example, whether the issue is already covered under existing legislation.

Effectiveness

While a bylaw could be used to control the effects of activities such as panelbeating etc, the anomaly would remain within the District Plan. This would likely cause confusion in terms of determining when the bylaw actually applies.

Costs and Benefits

Costs

Preparing a bylaw and completing the Special Consultative Procedure required by the LGA would be costly and take significant time.

In order to avoid confusion a plan change may still be required to remove the existing provisions in the Plan.

The bylaw would be unnecessary for the majority of residential zones, given that it is only the Residential, Rural Living and Township Zones in which inappropriate home occupations are an issue.

Benefits

Activities with the potential to cause adverse effects on the amenity values of residential areas would be managed.

Appropriateness

Given that the Plan already contains provisions managing activities and their effects it is considered more appropriate to continue to manage these activities within the District Plan. Therefore, it is not appropriate to prepare a bylaw.

OPTION 4: 'FIX-UP' PLAN CHANGE TO AMEND DEFINITIONS

Under this option a plan change would be undertaken to amend the definition of 'home occupation' to exclude inappropriate activities (i.e. those activities listed within the prohibited activity rule). Currently, the definition of home occupation reads:

Means the use of a site for an occupation, business, trade or profession in addition to the use of that site for a residential activity and which is undertaken by person(s) living permanently on the site, but excludes homestay.

The plan change would amend the definition so that it clearly excluded inappropriate activities (as listed within the prohibited activity rule). For instance, the definition could be amended to read:

Home Occupation Means: the use of a site for an occupation, business, trade or profession in addition to the use of that site for a residential activity and which is undertaken by person(s) living permanently on the site, but excludes homestay and panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.

Effectiveness

Because this plan change would change a definition it would apply to the whole District. Given that the current anomaly is only found within the Residential, Rural Living and Township Zones such a change would not be efficient and may have unforeseen consequences.

The prohibited activity rule within Residential and Rural Living Zones would remain unchanged. Therefore, it is important to determine whether there are other permitted or controlled activities that could, as part of them, provide for the listed activities.

There is no definition of non-residential activities, and they are not listed as controlled, discretionary or non-complying. Any non-residential activity that is not specifically listed within the Plan is permitted. The amendment to the definition of home occupations would be ineffective in controlling inappropriate activities (as listed in the prohibited activity rule) if they are part of a permitted non-residential activity.

Costs and Benefits

Costs

The plan change would affect the whole District and would necessitate detailed consideration of potential effects associated with changing the definition of home occupation on every zone.

There may be other non-residential activities that are permitted within the Residential, Rural Living and Township Zones, of which the listed activities could form a part. In such a case the residential amenity could be degraded as a result of inappropriate activities.

Benefits

The drafting of the plan change would be fairly straight forward, given that it only requires the amendment of one definition. In addition, this approach is consistent with that taken in other district plans within New Zealand.

The change would make it clear that while home occupations and other non-residential activities are appropriate there are certain types of activities that are not anticipated within the residential areas, and which therefore can not be included within the definition of home occupation.

Appropriateness

This plan change would affect the entire District, and may not be effective in achieving the purpose of the Plan Change. The anomaly currently found within the Plan applies to only three zones, it is therefore considered appropriate that changes are made to the Plan that affect only those zones.

OPTION 5: PLAN CHANGE TO AMEND THE SITE AND ZONE STANDARDS

Explanation

Under this option the site and zone standards as they relate to noise, nature and scale of activities and hours of operation within the Residential, Rural Living and Township Zones would be amended with the aim of avoiding the adverse effects caused by activities listed within the prohibited activity rules.

Effectiveness

The site and zone standards currently in place restrict the scale of activities and the noise emitted so that effects are managed. However, it has been found that activities that cause inappropriate effects due to their nature may still be deemed inappropriate for the residential environment, even where they meet the site and zone standards.

By changing the site and zone standards this option could be effective in managing the effects so that they are more appropriate to the residential setting. However, these standards would apply to all activities, potentially restricting some that are appropriate to the residential setting.

The use of site and zone standards is reactive in that it is difficult to determine whether an activity will meet them (particularly in terms of noise) until the activity is being undertaken and has been monitored. Prior to a determination of whether the activity complies with the standards, the residential amenity could be degraded.

Relating to the above point, while the standards control effects, they may create uncertainty in that a future landowner can not easily determine whether certain activities are allowed.

Even with amendments to the site and zone standards some activities may still be able to proceed that are not appropriate for the residential environment.

Costs and Benefits

Costs

There may be difficulties in monitoring to determine whether activities comply with the site and zone standards. For instance, it may be difficult to determine how many persons are employed on site, and noise monitoring would be required over an extended period of time to determine whether the activity complies with noise standards.

Amending the standards would affect other activities that may be anticipated within the residential areas, potentially reducing their ability to operate.

If activities were unable to comply with the site and zone standards they would become a discretionary or non-complying activity; thus they could still be undertaken subject to conditions on consent. Because of the nature of the activities they may still create adverse effects on the residential environment.

This approach is inconsistent with that taken elsewhere for residential areas and lacks certainty as to what activities are appropriate within a residential environment.

The effects of some activities may not be effectively managed by standards, raising the possibility that certain activities that would be permitted would cause significant adverse effects.

Benefits

Activities would be managed based on their effects rather than the type of activity.

If activities were unable to comply with the site and zone standards they would become a discretionary or non-complying activity; thus they could still be undertaken subject to conditions on consent.

Appropriateness

While this would provide an effects based approach to the management of activities, it lacks certainty, affects a wider range of activities, and is inconsistent with the approach taken in other sections of the Plan. For these reasons it is not considered the most appropriate option.

OPTION 6: PLAN CHANGE TO AMEND THE PROHIBITED ACTIVITY RULE FOR RESIDENTIAL AND RURAL LIVING ZONES

Explanation

This option focuses on correcting the existing anomaly found within the Residential and Rural Living Zones, and as such proposes to amend the prohibited activity rules 7.5.3.6(i) Residential Zones and 8.2.2.5(i) Rural Living Zones by deleting the exception that applies to controlled and permitted activities as follows:

*The following shall be **Prohibited Activities**:*

- (i) ~~Except as part of a Controlled or Permitted Activity:~~ *Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.*

Effectiveness

This amendment changes only two rules within the Plan, removing an anomaly and making the provisions for the Residential and Rural Living Zones consistent with other residential areas of the District.

The effect of this amendment is that permitted or controlled activities such as home occupations that incorporate any of the activities listed in the above rule are no longer a permitted activity within the Residential and Rural Living Zones. Instead, they are prohibited. Note that other home occupations such as offices or furniture building would continue to be permitted, subject to meeting the site and zone standards.

The amendment would be effective in achieving the objectives and policies of the Plan by still enabling appropriate non-residential activities to locate within residential areas, while restricting those that are not appropriate. The list of prohibited activities is specific, and details only those activities that are in no circumstances considered appropriate for a residential environment.

It is noted that while the rule currently exempts both controlled and permitted activities, there are no controlled activities to which the controlled activity exemption would apply, given that the controlled activities are visitor accommodation, retail sales, buildings for non-residential purposes and garages. It is unlikely that one of the activities listed within the prohibited activity rule could be deemed 'part of' one of those activities.

Costs and Benefits

Costs

The activities listed within the prohibited rule could no longer be undertaken within the Residential and Rural Living Zones of the District; thus potentially restricting some non-residential activities that meet site and zone standards, and potentially affecting people's ability to meet their economic needs.

Section 10 of the Act provides for existing uses. The relevant clauses of Section 10 read:

- Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if—*
- (a) Either—*
 - (i) The use was lawfully established before the rule became operative or the proposed plan was notified; and*
 - (ii) The effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified:*
 - (b) Or—*
 - (i) The use was lawfully established by way of a designation; and*
 - (ii) The effects of the use are the same or similar in character, intensity, and scale to those which existed before the designation was removed.*

Therefore, unless the nature and scale of those activities changes, this plan change will only affect new activities; therefore activities could continue that have significant adverse effects on the residential environment.

The prohibited activity rule does not provide for any flexibility and is a significant change from the permitted activity status currently in place for home occupation and other non-residential activities.

Benefits

Those activities that are not anticipated within the Residential and Rural Living Zones would be prohibited. Therefore the amenity values of these zones would not be adversely affected by such activities.

The provisions would be easy to implement and would avoid the need to undertake detailed monitoring to determine whether non-compliance has occurred.

The amendments provide certainty as to what activities are not appropriate within the Residential and Rural Living Zones.

The amendments are consistent with the provisions for other residential areas within the District.

Appropriateness

While this amendment does restrict some non-residential activities from locating within the Residential and Rural Living Zones, such a change is considered appropriate to ensure that amenity values are maintained. This option is consistent with the view that activities listed within the prohibited activity rule are not in any circumstances appropriate for a residential area.

OPTION 7: AMEND RULES FOR TOWNSHIP ZONES

Explanation

Under this option, the Township Zone provisions would be amended in order to correct the existing anomaly whereby home occupations inappropriate within a residential area can be undertaken as a permitted activity.

Effectiveness

While the Township Zone provisions recognise and provide for non-residential activities, they also recognise the importance of maintaining amenity values associated with a residential environment.

The fact that the issue statements recognise the mix of activities that may be found in the Townships yet impose a non-complying activity rule on industrial and service activities implies that existing non-residential activities are to be recognised and provided for, but that new activities are not appropriate.

Given the nature of the Townships as primarily residential environments, new activities that have the potential to cause significant adverse effects on residential amenity are not appropriate.

This Plan Change has been brought about by an awareness of the fact that home occupations that involve activities usually prohibited have significant adverse effects that are not easily managed by the site and zone standards. It is evident that these effects are apparent regardless of whether they are the primary activity on the site (and thus an industrial or service activity) or part of a home occupation. It is therefore considered that the status quo of these activities being permitted is not effective.

Costs and Benefits

Costs

Some people may be disadvantaged in that they may not be able to undertake a business under the auspices of a home occupation, or they will face extra costs in applying for a consent to do so. This could affect their ability to provide for their economic wellbeing.

Benefits

The proposed amendment will ensure that home occupations in the Township Zone that involve activities associated with significant adverse effects will be subject to the same test as those activities undertaken as a stand-alone operation. This should lessen the risk of these activities affecting the health and social wellbeing of residents.

Appropriateness

The ability to undertake activities such as panelbeating, fibreglassing and spraypainting as permitted activities when associated with a home occupation is considered to be an anomaly, given that it results from a loophole in the definitions of home occupation and industrial and service activities.

It is not considered reasonable to prohibit activities in the Township Zone such as panelbeating, spraypainting, or fibreglassing, either as stand-alone activities or as part of home occupations, as they potentially fall within the types of activities described in the issues, objectives and policies as being characteristic of the townships. It is concluded that the most appropriate course of action in the Township Zones is to add the following non-complying activity:

Home occupations that involve panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or fish or meat processing.

The above amendment to the Plan will ensure that home occupations that involve activities with potentially significant adverse effects will be subject to the same test as those activities as a stand-alone operation. This is considered to be an appropriate approach.

7.0 CONCLUSIONS

There currently exist anomalies within Sections 7, 8 and 9 of the Plan, in that activities such as panelbeating, spraypainting and fibreglassing, which are usually prohibited in residential areas, may be permitted (subject to site and zone standards). In the case of Section 9, these activities are non-complying unless as part of a home occupation. Given that these provisions enable activities that have the potential to cause significant adverse effects on the residential environment, the current provisions are not effective in achieving the purpose of the RMA as reflected in the settled objectives and policies of the Plan. It is proposed that a plan change is necessary in order to correct these anomalies.

Having considered a range of options, it is found that the most appropriate options are to amend the prohibited activity rules 7.5.3.6(i) and 8.2.2.5(i) within the Residential and Rural Living Zones so that they no longer exclude permitted and controlled activities, and to add an additional provision to 9.2.3.4 making home occupations that involve certain activities non-complying.

APPENDIX 1: PROPOSED AMENDMENTS TO THE PARTIALLY OPERATIVE DISTRICT PLAN

Amend Rule 7.5.3.6(i) to read (strikethrough denotes text to be deleted)

~~**Except as part of a Controlled or Permitted Activity:** Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.~~

Amend Rule 8.2.2.5(i) to read (strikethrough denotes text to be deleted):

~~**Except as part of a Controlled or Permitted Activity:** Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing, or any activity requiring an Offensive Trade Licence under the Health Act 1956.~~

Add to Rule 9.2.3.4 **Non-Complying Activities**

(vii) Home occupations that involve panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building, fish or meat processing.