

**QLDC Council
17 December 2015**

Report for Agenda Item: 5

Department: Planning & Development

Appointment of Councillors to the Hearings Panels for Stage 1 of the Proposed District Plan; delegation of powers to determine the composition of each Hearings Panel; and delegation of powers to the Hearings Panel

Purpose

To appoint Councillors to hear submissions on the Proposed District Plan; to request delegation to the Chair of the Proposed District Plan Hearings Committee Panel (Hearings Panel) and the General Manager Planning and Development the ability to determine the composition of the Hearings Panel for each stream of the Proposed District Plan (Stage 1) hearings process; and delegation of powers to the Hearings Panel.

Recommendation

That Council:

1. **Note** the contents of this report; and
2. **Appoint**, in accordance with section 34A(1) and (2) of the Resource Management Act, all Councillors to sit on a Hearings Panel as Commissioners with authority to hear, deliberate and make recommendations on all submissions and further submissions received on Stage 1 of the Proposed District Plan; and
3. **Note** that the Hearings Panel will generally comprise Mr Denis Nugent as the Chair and one Councillor and one of the Commissioners selected from the approved pool with a maximum of five panel members for any Hearings Panel; and
4. **Delegate** in accordance with section 34A(1) and (2) of the Resource Management Act, to the Chair of the Hearings Panel Mr Denis Nugent, the authority to sit alone for the purposes of hearing and determining procedural matters relating to Proposed District Plan; and
5. **Delegate**, in accordance with section 34A(1) and (2) of the Resource Management Act, to the Chair of the Hearings Panel Mr Denis Nugent, and the General Manager Planning and Development, the power to determine the composition of the Hearings Panel for specific chapters and/or individual hearings of submissions on Stage 1 of the Proposed District Plan, in consultation with the Mayor and / or the Planning and Development Portfolio leader.
6. *Delegate*, in accordance with section 34A(1) and (2) of the Resource Management Act, to the Hearings Panel the authority to hear, deliberate

and make recommendations on all submissions and further submissions received on Stage 1 of the Proposed District Plan.

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Background

- 1 The District Plan review was formally (and legally) commenced by a resolution of Council in April 2014. The first stage of the Proposed District Plan was publicly notified for submissions on 26 August 2015 and comprises thirty-three chapters and 17 zones.
- 2 The submission period closed on 23 October 2015. Further submissions will be notified on 3 December 2015. The hearings to consider the submissions and further submissions are intended to be held between February and July 2016.
- 3 Council approved Commissioner Denis Nugent as the Chair of the Hearings Panel at its meeting in October 2015.
- 4 Council approved nine other Commissioners as a pool to hear and make the recommendations on submissions at its meeting on 26 November 2015.
- 5 The hearings will be programmed into different streams, with three panel members (but up to a maximum of five) sitting on each hearing stream.
6. The Hearings Panel will generally comprise Mr Denis Nugent as the Chair, one Councillor and one of the Commissioners selected from the approved pool. The hearings stream for the strategic chapters of the Proposed District Plan may require more panel members than other hearings streams.
- 7 In the November agenda item, it was noted that final confirmation and allocation of Commissioners to hearings streams will occur prior to Christmas, as the precise hearings programme is established. The November agenda item also noted that a separate process will be required to determine allocation of Councillors to District Plan hearings streams.
- 8 To enable that, all Councillors need to be formally appointed to hear and make recommendations on submissions and further submissions on the Proposed District Plan.

- 9 To provide for the efficient administration of the hearings streams, including determining the number of streams and the selection of an appropriate mix of skills on each panel, it is proposed that the Chair of the Hearings Panel, along with the General Manager Planning and Development, be delegated the authority to determine the numbers and the makeup of each panel. This will occur in consultation with the Mayor and / or the Environment Portfolio holder.
- 10 Note that multiple hearings streams could run simultaneously, in which case an alternative chair would need to be appointed by Mr Denis Nugent.
- 11 To provide for the efficient administration of the hearings streams, it is also proposed that the Chair of the Hearings Panel should be delegated authority to sit alone to hear and determine procedural matters relating to the Proposed District Plan. Procedural matters may include matters such as deciding whether to accept late submissions or further submissions, and any procedural matters that people raise relating to scope or requests for additional hearing time or adjournments. The procedural matters will not include any issues relating to the recommendations on the substance of the submissions or further submissions.
- 12 The Hearings Panel will have the power to hear, deliberate and make recommendations on submissions and further submissions on the Proposed District Plan. As the Hearings Panel will vary for each hearing stream or topic, the Hearings Panel will issue multiple recommendations in the names of those Commissioners and Councillors on each particular Hearings Panel.

Comment

Options

- 13 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

Appointment of all Councillors to hear and make recommendations on submission on the Proposed District Plan

Option 1: Appoint all Councillors

- 14 Advantages: All Councillors potentially have the opportunity to hear and make recommendations on submissions on the Proposed District Plan. This enables the efficient administration of the hearing streams, and for individual hearing streams to be constituted with a Councillor.
- 15 Disadvantages: Depending on the number of hearings streams and Councillor availability, not all Councillors will be able to hear and make recommendations on submissions on the Proposed District Plan.

Option 2: Appoint only certain Councillors

- 16 Advantages: Allows specialisation and familiarity with the hearings process, and would recognise some Councillors have undertaken the 'Making Good Decisions' training programme.

17 Disadvantages: No major disadvantages. It would make it slighter harder to find a Councillor to sit on a hearings stream. Not all Councillors would have the opportunity to hear submissions on the Proposed District Plan.

18 This report recommends Option 1 for addressing the matter.

Delegation to the Chair of the Proposed District Plan Hearings Committee and the General Manager Planning and Development the power to determine the composition of the Hearings Panels

Option 1 Delegate to the Chair of the Proposed District Plan Hearings Committee and the General Manager Planning and Development the power to determine the composition of the Hearings Panels for specific chapters and/or individual hearings of submissions on Stage 1 of the Proposed District Plan including (without limitation) the power to remove a Hearings Panel member and/or substitute one Hearings Panel member for another at their discretion

19. Advantages: Council has already appointed a pool of independent Commissioners to sit on the Hearings Panel, and as part of this agenda item will appoint Councillors to also sit on the Hearings Panel. The Council can therefore be satisfied that each commissioner appointed has the necessary skills, experience and credentials but the option enables flexibility for the Chair and the General Manager Planning and Development to efficiently appoint the appropriate commissioners to sit on the Hearing Panel for each hearing stream to hear submissions relating to the Proposed District Plan. This will enable the efficient management of individual commissioners availability and changes in timetables and the best use of the individual skills and expertise of each commissioner. Consultation with the Mayor will be undertaken prior to finalising the composition of each Hearing Panel to ensure oversight by elected members.

20. Disadvantages: Council will not directly appoint individual commissioner to hear particular submissions (however all commissioners have previously been approved).

Option 2 Appoint the Panel for each Hearings stream via separate papers to Full Council as necessary.

21. Advantages: Council has oversight of which Commissioners and Councillors sit on which hearings panels for discrete parts of the Proposed District Plan. Full Council could choose which Councillors hear each part of the District Plan.

22. Disadvantages: As Full Council meets monthly, this would not be conducive to running an effective and efficient hearing process that would deliver a decision within the timeframe expected by Council. If frequent papers to Full Council are required to appoint panels or for such things as changes to Commissioner availability or changes in timetabling, this will slow down the hearings process, reduce efficiency and create some uncertainty for Councillors and Commissioners with regard to their work programming.

23 This report recommends **Option 1** for addressing the matter.

Delegation to the Hearings Panels the authority to hear, deliberate and make recommendations on all submissions and further submissions on the Proposed District Plan.

Option 1 Delegate to the Hearings Panel the authority to hear, deliberate and make *recommendations* on all submissions and further submissions on the Proposed District Plan.

24 Advantages: The Full Council will retain the power to make decisions on all individual submissions and further submissions on the Proposed District Plan.

25 Disadvantages: Upon receiving the recommendations from the Hearings Panel the Council will be required to make final decisions on all submissions. However, without hearing the evidence presented in the hearings it cannot review the recommendations of the Hearings Panel or seek to make a different decision to that contained in the recommendation without re-hearing the submissions and any evidence. To require a re-hearing of submissions and evidence will be procedurally inefficient and will not enable the Council to meet the timeframes it is working towards.

Option 2 Delegate to the Hearings Panel the authority to hear, deliberate and make *decisions* on all submissions and further submissions on the Proposed District Plan.

26 Advantages: One of the objectives of the Resource Management Act is to streamline the planning process. Delegating the authority to the Hearings Panel to make *decisions* on submissions is consistent with this objective. Members of the Hearing Panel all have the necessary skills and experience to make such decisions. Councillors that are appointed to each of the Hearings Panels will be involved in the decision making for individual submissions. However, the ultimate power of approval of the Proposed District Plan, once the submissions and any subsequent appeals are addressed will remain with the Full Council. This power cannot be delegated.

27 Disadvantages: The Full Council will not have the ability to make decisions on *individual* submissions and further submissions on the Proposed District Plan.

27 This report recommends **Option 1** for addressing this matter.

Significance and Engagement

28 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the matter relates to the appointment of Councillors and Commissioners to hear, deliberate and make recommendations on the submissions on the Proposed District Plan, which is a very significant statutory document in terms of the social, economic and environmental wellbeing of the District.

Risk

29 This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)' as documented in the Council's risk register. The risk is classed as high. This matter relates to this risk because it is considered to be of significant importance in terms of the managed growth and regulation of development for the District.

30 The recommended options considered above mitigate the risk by:

Treating the risk - putting measures in place which directly impact the risk. Appointing a Hearings Panel to efficiently hear and make recommendations on submissions on the Proposed District Plan. Delegating the authority to the Chair of the Hearings panel and the GMPD to select any of the Councillors and appointed Commissioners for the Hearings Panel for each hearing stream mitigates the risk.

Financial Implications

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

Council Policies, Strategies and Bylaws

32 There are no Council policies, strategies or bylaws relating to the appointment of Councillors to hear submissions on the Proposed District Plan, or how the composition of each Hearings Panel is determined.

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

Local Government Act 2002 Purpose Provisions

34 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 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

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

Legal Considerations and Statutory Responsibilities

- 36 The appointment of Councillors to the Hearings Panel that will hear and make recommendations on all submissions and further submissions on the Proposed District Plan is anticipated under the Resource Management Act 1991.