

**Planning & Strategy Committee
31 August 2017**

Report Agenda Item 1

Department: Planning & Development

Proposed District Plan – Extension of Time for Decisions on Provisions and Submissions

Purpose

1. The purpose of this report is to:
 - a) Extend the time period specified in the RMA for giving a decision on Proposed District Plan provisions and matters raised in submissions
 - b) Consider the interests of persons directly affected by the extension
 - c) Consider the interests of the community in achieving adequate assessment of the effects of the plan
 - d) Consider the duty of Council to avoid unreasonable delay
 - e) Confirm how persons affected by the extension of time are appropriately notified.

Executive Summary

2. Stage 1 of the Proposed District Plan (PDP) was notified on 26 August 2015 containing most of the text and zones for a new plan. The RMA 1991¹ requires that decisions on provisions and matters raised in submissions must be given and notified no later than 2 years after notifying the proposed plan. To date 12 hearing streams addressing the key district wide chapters such as rural, residential, business, landscapes, significant natural areas, ski area sub-zones, and mapping of Stage 1 zones and plan annotations have been completed, and the hearings for stream 13 are underway.
3. It is expected that Panel recommendations on Stage 1 of the district plan review will be received in January or February of 2018, which will allow Council to issue decisions on Stage 1 within the first quarter of 2018. In order to avoid multiple extensions of time, and to allow for unanticipated circumstances that create unavoidable delays, an extension of time of 1 year is recommended² because of:
 - a) the interests of the community in achieving adequate assessment of the effects of the proposed plan provisions and the matters raised in submissions 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; and

¹ Schedule 1 Clause 10, RMA 1991.

² Section 37A states that a time period can be extended by no more than twice the 2 year maximum time period specified in Schedule 1 Clause 10 for the issue of decisions on provisions and submissions.

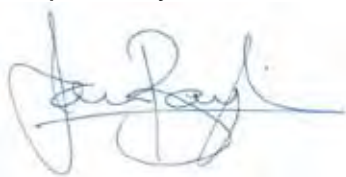
- b) the scale and complexity of the proposed plan provisions and the matters raised in submissions.
4. The above matters are considered alongside the following:
- a) the interests of persons who may be directly affected by the extension; and
 - b) the duty of the Council and all persons carrying out functions under the RMA to avoid unreasonable delays and to carry out these functions as promptly as is reasonable in the circumstances.
5. All persons and agencies that have made a submission or a further submission on the Proposed District Plan, should be notified of the extension by their preferred method of service. A public notice should be published as soon as practicable and the Proposed District Plan section of the QLDC website should provide information in the extension of time, including a copy of this report.

Recommendation

That the Planning and Strategy Committee:

1. **Note** the contents of this report.
2. **Extend**, in accordance with section 37 the RMA 1991, the 2 year time period specified in Schedule 1 clause 10 of the RMA for the Council to give a decision on provisions and matters raised in submissions to the QLDC Proposed District Plan notified on 26 August 2015;
3. **Extend** the time period for decisions from the date of this report by 1 year to 26 August 2018.
4. **Note** that all persons and agencies that have made a submission or a further submission on the Proposed District Plan will be notified of the extension by their preferred method of service, that a public notice will be published and that the Proposed District Plan section of the QLDC website will provide information in the extension of time, including a copy of this report.

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15/08/2017

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21/08/2017

Background

6. Stage 1 of the Proposed District Plan (PDP) was notified on 26 August 2015 containing most of the text and zones for a new plan. The RMA 1991³ requires that decisions on provisions and matters raised in submissions must be given and notified no later than 2 years after notifying the proposed plan. To date 12 hearing streams addressing the key district wide chapters such as rural, residential, business, landscapes, significant natural areas, ski area sub-zones, and mapping of Stage 1 zones and plan annotations have been completed.
7. Council has previously resolved to review the PDP in tranches in the sequence set out below, to prioritise the release of decisions on Stage 1 of the PDP so that the Stage 1 rules have “legal effect”:
 - Stage 1 decisions will be made following the receipt of recommendations from the appointed commissions and councillors in the 1st quarter of 2018.
 - Stage 2 comprises parts of the PDP which have some urgency in that they will contribute to having a workable PDP. They include Transport, Open Space, Earthworks, Visitor Accommodation, Signs and a Wakatipu Basin Variation. Notification is scheduled to take place in the 3rd quarter of 2017 in time for hearings to be held in the 2nd quarter of 2018.
 - Stage 3 comprises provisions timed to align with and deliver on the outcomes of the Mayoral Housing Taskforce and contain the balance of the district wide chapters which have not yet been notified. Notification of these provision is scheduled for 4th quarter of 2018 with hearings to be held in 1st quarter of 2019.
 - Stage 4 comprises site specific or development specific special zone provisions currently contained in Volume B of the PDP. Notification is scheduled for 2nd quarter of 2019 for hearings in the 4th quarter of 2019.
 - Further variations to the PDP may need to be added to the above stages to address matters arising in resolving the special zones as well as matters in other Stage 1 - 4 hearings that were not able to be addressed in their respective hearings.

Timing of decisions

8. The work programme of the hearings panel for the PDP review will dictate the timing of decisions on the plan review. It is expected that recommendations on Stage 1 will be received in January or February of 2018, which will allow Council to issue decisions on Stage 1 within the first quarter of 2018.

³ Schedule 1 Clause 10, RMA 1991.

9. In order to avoid multiple extensions of time, and as a precaution to deal with unanticipated circumstances which may lead to unavoidable delays, an extension of time of 1 year is recommended⁴.

Adequate Assessment and Complexity

10. Section 37 requires consideration to be given to the interests of the community in achieving adequate assessment of the effects of the proposed plan provisions and the matters raised in submissions.
11. The scale and complexity of the proposed plan provisions and the matters raised in submissions and whether this constitutes “special circumstances” is another relevant consideration. On this point, there are good reasons to support the view that the complexity of the plan review constitutes “special circumstances”. Specifically, it is noted that:
- Stage 1 of the PDP included 33 Chapters and 48 Maps which received 845 Original Submissions and 365 Further Submissions. These submissions raised a total of approximately 17,070 submission points comprised of 7,572 Original Points and 9,498 Further Submission Points.
 - Resource management issues and decision making in this district frequently includes matters of national importance (s.6 RMA matters). A large proportion of the district is comprised of outstanding natural landscapes and features and significant natural areas.
 - High rates of economic growth in the district, New Zealand’s highest rates of population growth in % terms, protecting the key features of the district addressed above and difficulties with housing affordability, makes for a highly complex and challenging planning environment.
 - Legislative changes such as the RMA amendments and the NPS UDC has created significant additional work for the plan review since notification.

The need for timely decisions on the PDP

12. Recent changes to clause 10A of the RMA, which require local authorities to obtain leave from the Minister for the Environment to extend the 2-year time limit to issue decisions on a proposed plan, do not come into force until 18 October 2017 and do not apply to Stage 1 of the PDP as it was notified before the amendment to the RMA. However it is clear that Parliament's intention in making this change to the RMA is that plan reviews are determined in a timely manner and within 2 years if at all possible.
13. A local authority must not extend a time limit unless it has taken into consideration its duty under section 21 of the RMA to avoid unreasonable delay. Section 21 requires that persons carrying out functions and duties under the RMA “shall do so as promptly as is reasonable in the circumstances”.

⁴ Section 37A states that a time period can be extended by no more than twice the 2-year maximum time period specified in Schedule 1 Clause 10 for the issue of decisions on provisions and submissions.

Need to consider persons affected by the extension

14. A local authority must not extend a time limit under section 37 unless it has taken into account the interests of any person who may be directly affected by the extension. It is not possible to study how the persons and agencies behind all 845 submissions and 365 further submissions will be affected by this extension of time in detail. However, it is noted that a number of parties have invested substantial time and money participating in the review of the district plan and are anxious to see the plan review progress in a timely manner and for decisions on their submissions to be issued without delay. Some matters dealt with in the PDP review are largely agreed between parties participating in the hearings and in some instances, could (if they find favour with the Panel) be applied shortly after decisions are released.
15. There is also a broad cross-section of the community who could benefit from some of the new development opportunities provided by the PDP that may assist in making housing and development more affordable in the district. The plan provisions in the PDP are in some cases significantly preferable to those in the ODP in terms of offering an easier to use plan, better resource management outcomes for the environment as well as better development opportunities for communities and businesses. It is also noted that there are some aspects of the ODP that are inconsistent with what is now considered to be good plan writing and unhelpful for good resource management decision making.
16. A meeting with RMA legal and planning practitioners on 10 May 2017 provided clear feedback that there is an expectation (at least amongst practitioners within Queenstown) that the Council will issue decisions on Stage 1 of the review without delay, notwithstanding the clear advantages in delaying decisions until the vast majority of the plan review is complete.

Decisions need to be carefully integrated or entirely discrete

17. It is preferable that the Panel make a single integrated set of recommendations on all matters (including both maps and text) heard to date for Stage 1 of the PDP Review. Council can then issue its decisions on these recommendations together with a consolidated 'decisions version' of the PDP.
18. An important consideration in this regard is the potential for early decisions on parts of Stage 1 of the PDP to be appealed to higher courts and be considered independently and divorced from interrelated parts of the plan should some decisions on parts of Stage 1 be released in advance of others. For this reason, any early decisions on parts of Stage 1 should be limited to matters that can come into effect or be dealt with by the Court discretely from other parts of the proposed plan which at earlier stages in the plan development process.
19. Several participants in the PDP review have asked for Council to issue early decisions on certain matters that involve discrete areas of land. The Hearings Panel can consider these requests and could potentially issue early recommendations on discrete matters, provided the matter does not link to issues and proposed plan provisions that are not yet heard and finalised, and provided the work required doesn't disrupt the wider work programme. The Council could then issue earlier decisions on these confined matters. However, it is greatly

preferable that any such decisions don't involve large numbers of submitters and have a limited risk of triggering complex appeals.

Options

20. This report identifies and assesses reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
21. In this instance the only reasonably practicable option is to extend the timeframe to a greater or lesser extent than 1 year because the Council cannot release decisions on Stage 1 of the district plan review within 2 years. The RMA puts a cap on time extensions under section 37 of no more than twice the 2 year time limit.
22. As stated above, it is intended to release decisions on the Stage 1 provisions and matters raised in submissions within the 1st quarter of 2018, however in order to avoid multiple extensions of time, and as a precaution to deal with unanticipated delays, a 1 year extension is recommended.

Significance and Engagement

23. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because the matter relates to operational aspects of the district plan review programme although the district plan is a significant statutory document in terms of the social, economic and environmental wellbeing of the District.
24. All persons and agencies that have made a submission or a further submission on the PDP will be notified of the extension by their preferred method of service, that a public notice will be published and that the Proposed District Plan section of the QLDC website will provide information in the extension of time, including a copy of this report

Risk

25. 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 moderate. This matter relates to this risk because it relates to operational aspects of the district plan review but relates to the managed growth and regulation of development for the District.
26. The recommended options considered above mitigate the risk by treating the risk – putting measures in place which directly impact the risk by Council resolving to extend the timeframe for decisions on Stage 1 of the district plan review by 1 year in accordance with the Council's delegations and the requirements of the RMA.

Financial Implications

27. The recommended option will not have financial implications for the PDP review programme, which has already been budgeted for.

Council Policies, Strategies and Bylaws

28. There are no Council policies, strategies or bylaws relating to this matter because it is primarily associated with process.

Local Government Act 2002 Purpose Provisions

29. The recommended option:

- a) More careful consideration of the Stage 1 PDP provisions and the matters raised in submissions 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;
- b) Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- c) Is consistent with the Council's plans and policies; and
- d) 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

30. The persons who are affected by or interested in this matter are parties who have submitted on the Proposed District Plan. Where decisions on Stage 1 of the PDP effects or will interest additional parties there will be future opportunities for submitters to appeal to the Environment Court before they become operative or the dominant plan affecting land use and activities in the district.

31. A facilitated meeting with local legal and planning practitioners was held on 10 May to discuss the timing of the PDP programme including decisions on Stage 1 provisions and submissions. The recommended option accords with the majority of the feedback from practitioners.

Legal Considerations and Statutory Responsibilities

32. Development of the PDP has occurred in accordance with the requirements of the RMA. Particular clauses of relevance include Sections 21, 37 and Schedule 1.

33. The recommendations accord with the provisions of the RMA. In particular sections 37 and 37A allow a local authority to extend the time limit on Clause 10 of Schedule 1 for issuing decisions on provisions and matters raised in submissions.