

**QLDC Council  
24 May 2017****Report for Agenda Item 1****Department: Planning & Development****Proposed District Plan Review Timeline****Purpose**

- 1 The purpose of this report is to:
  - Provide an update on the review of the Proposed District Plan (the PDP) for Queenstown Lakes District Council (the Council).
  - Confirm the components to be reviewed in Stages 2 - 4 of the district plan review that when notified would form part of the PDP.
  - Provide an amended outline of indicative timing of Stages 2-4 processes which alters the timeline set out in the report to the 21 April 2017 Planning and Strategy Committee.
  - Provide an outline of indicative timing of decisions on the DPD.

**Executive Summary**

- 2 Stage 1 of the PDP was notified in August 2015 containing most of the text and zones for a new plan. To date 11 hearing streams addressing the key district wide chapters such as rural, residential, business, landscapes and significant natural areas have been completed, notified and heard. Since the previous District Plan Review update on 21 April 2017 the hearings and evidence on Ski Area Sub Zones has been filed and heard, and Council's evidence on mapping annotations and zones for the Upper Clutha area and Queenstown has been completed and filed for 6 week long hearings starting 15 May and 24 July 2017. Preparation of evidence on Queenstown mapping annotations and zones is underway.
- 3 Completing the review of the Proposed District Plan (PDP) is recommended to be achieved in tranches in the sequence set out below, altering the recommended indicative timeline in the report to the 21 April 2017 Planning and Strategy Committee to prioritise the release of decisions on Stage 1 of the PDP so that it has "legal effect":
  - Stage 1 decisions will be made following the receipt of recommendations from the appointed commissions and councillors in the 1<sup>st</sup> 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 proposed in the 3<sup>rd</sup> quarter of 2017 in time for hearings to be held in the 2<sup>nd</sup> 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 provisions 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 2<sup>nd</sup> quarter of 2019 for hearings in third 4th quarter of 2019.
  - Further variations to the PDP may need to follow on after this to address matters arising in resolving the special zones as well as matters in other Stage 1 - 3 hearings that were not able to be addressed in their respective hearings.
- 4 It is preferable that the Panel of commissioners and Councillors appointed to hear and make recommendations on the plan (the Panel) make a single integrated set of recommendations on all matters (including both maps and text) heard to date as part of Stage 1 of the PDP Review. Council can then make decisions that comprise a consolidated district plan.
  - 5 The PDP Review is expected to be completed early in 2020, however appeals to Council's decision could take a number of months to resolve after this, at which point the Plan can be made operative, or operative in part.
  - 6 The RMA requires that Council's must issue decisions on a plan change within 2 years of when it is notified. Under this timing scenario, the Council would have to extend the 1<sup>st</sup> Schedule time period for decisions under section 37 of the RMA.

## Recommendation

- 7 That the Planning & Strategy Committee:
  1. **Note** the contents of this report and in particular;
  2. **Amend** the proposed timeline for notification and hearings for future Stages of the Operative District Plan Review confirmed by the 21 April 2017 Planning and Strategy Committee.
  3. **Confirm** the following proposed indicative timeline for notification and hearings for future Stages of the Operative District Plan Review:
    - a. Stage 2 (including transport, open space, earthworks and Wakatipu Basin and visitor accommodation) notification in 3<sup>rd</sup> quarter 2017 and hearings in 2<sup>nd</sup> quarter 2018.
    - b. Stage 3 (including affordable and community housing, township zones, industrial zones and sites of significance to iwi) notification in 1<sup>st</sup> quarter 2019 and hearings in 3<sup>rd</sup> quarter 2019.
    - c. Stage 4 (including special zone provisions) notification in 2<sup>nd</sup> quarter 2019 and hearings in 4<sup>th</sup> quarter 2019.

4. Confirm the following proposed indicative timeline for decisions on the Proposed District Plan (including responses to submissions, consolidated plan provisions, zones and mapping annotations and reasons for decisions):
  - a. Stage 1 recommendations, 1<sup>st</sup> quarter 2018. Issue of Council Decisions on Stage 1, 1<sup>st</sup> quarter 2018;
  - b. Stage 2 recommendations, 3<sup>rd</sup> quarter 2018. Issue of Council Decisions on Stage 2, 3<sup>rd</sup> quarter 2018;
  - c. Stage 3 recommendations, 4<sup>th</sup> quarter 2019. Issue of Council Decisions on Stage 3, 4<sup>th</sup> quarter 2019;
  - d. Stage 4 recommendations, 1<sup>st</sup> quarter 2020. Issue of Council Decisions on Stage 4, 1<sup>st</sup> quarter 2020.
5. Request the Planning Policy Manager to report any extension of the 2 year time limit for issuing decisions on the Proposed District Plan to the Planning and Strategy Committee setting out the relevant statutory considerations under section 37 of the RMA.

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24/05/2017

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25/05/2017

## Background

- 8 The Council's approach to the review of the ODP has changed over time. The review commenced in April 2014 and the PDP was notified in August 2015 as a staged review in order to allow progress to be made on areas most urgently requiring attention and delivering most immediate benefit contained in **Stage 1**.
- 9 In October 2015 Council resolved to withdraw provisions relating to visitor accommodation and visitor accommodation sub-zones within residential zones due to concerns with the proliferation of visitor accommodation and its potential impacts on available housing supply.
- 10 Hearings commenced on Stage 1 in March 2016 with the hearing of chapters addressing Introduction and Tangata Whenua, Strategic Direction, Urban Development and Landscape.
- 11 Rural Zones Indigenous Vegetation and Wilding Exotic Trees, Historic Heritage and Protected Trees, and Subdivision were heard between May and August 2016 followed by Energy, Utilities, Noise, and Temporary Activities in September 2016.
- 12 Residential and Designations Hearings were heard in October and November 2016 followed by Business zones in November and December.
- 13 In the mean-time a number of changes were made to the ODP which on the face of it would have to be re-notified (and potentially re-litigated) in order to incorporate them in the new plan. On 29 September 2016 Council instead agreed to separate the new plan by geographic area into two volumes, containing:
  - **Volume A**, the geographic areas that have been notified in either Stages 1 or 2 of the PDP, and District Wide chapters to cover these areas, including PDP definitions; and
  - **Volume B**, the ODP as it relates to geographic areas that are excluded from the partial review, and are therefore not being notified in either Stages 1 or 2 of the PDP, and the operative district wide chapters to cover these areas, including ODP definitions. Volume B includes Frankton Flats B, Northlake Special and Remarkables Park Zones, Ballantyne Road extension, Queenstown Town Centre extension, and Peninsula Bay North. Volume B will also include the Mount Cardrona Special Zone, which the Council has accepted a private plan change to vary the land uses within this zone.
  - The PDP Introduction and Strategy chapters which are applicable across both volumes.
- 14 On 29 September 2016 Council also approved the commencement of **Stage 2** of the PDP review including township zones, rural visitor zone, special zones, Arrowtown South, Shotover Country and industrial zones, as well as the visitor accommodation, transport, hazardous substances, open space and recreation, affordable and community housing chapters and building restriction areas.
- 15 The 21 April 2017 the Planning and Strategy Committee requested that legal advice be sought and a report be brought to the next Planning & Strategy

Committee meeting on 8 June 2017 on the options for the release of decisions from the Proposed District Plan.

## **Comment**

### **Recent Progress on the PDP Review**

16 Hearings on Resort zones were held in February 2017, Natural Hazards and Definitions were held in March and Ski Area Sub Zones were held in May.

### **Upcoming Hearings**

- Council's initial evidence and submitters evidence on the Ski Area Sub Zones has been completed and filed for a Hearing beginning in May 2017.
- Evidence on mapping annotations and zones for the Wanaka ward and the Upper Clutha area of the district has been completed and filed for hearings in May and June 2017.
- At the time of writing preparation of Council's evidence on mapping annotations and zones for the Wakatipu Ward and the Queenstown area is nearing completion.

### **Steps to Completion of the PDP Review**

17 Completing the review of the Proposed District Plan (PDP) is recommended to be achieved in tranches in the sequence set out below. This timing amends the recommended indicative timeline in the report to the 21 April 2017 Planning and Strategy Committee. It prioritises the release of decisions on Stage 1 of the PDP so that it has "legal effect", which means that applications for resource consent will be considered against both the PDP and the Operative District Plan (ODP). It also reflects the continued need to prioritise completion of the most frequently used parts of the PDP mapping and text.

### **Decisions on Stage 1**

18 Stage 1 decisions will be made following the receipt of recommendations from the appointed commissions and councillors that make up the Hearings Panel in the 1<sup>st</sup> quarter of 2018. It is likely that a substantial number of appeals against the Stage 1 decisions will be received which will take a number of months to resolve. Submitters have 30 working days from the Council's notice of decision to lodge appeals to the Environment Court.

19 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.

20 Recent feedback from local planning and legal practitioners has made it clear that people participating in the PDP process have understood that Council would issue decisions on Stage 1 of the PDP as soon as possible and before starting work on Stage 2 of the review. There are a number of clear advantages in

continuing the rollout and hearing of the remainder of the PDP before issuing decisions on Stage 1 (and commencing what could be a high pressure and high stakes programme of work to defend these decisions). However, this would be a major change of approach which could be challenged for being “unreasonable” in light of how Council previously described its intended approach to its plan review.

- 21 As the Council has not heard the evidence on the PDP review (with the exception of the Councillor representatives on the Panel) the Council, for reasons of fairness and due process, is likely to be advised to accept and to not amend the Panel's recommendations.

## **2 Year Time Limit for Decisions on the PDP**

- 22 The RMA requires that Council's must issue decisions on a plan change within 2 years of when it is notified. Under the timing scenario outlined in this report, the Council would have to extend the 1<sup>st</sup> Schedule time period for decisions under section 37 of the RMA.

- 23 The RMA requires that the Council must issue decisions on a plan or plan change within 2 years of notification, which for Stage 1 of the PDP falls in August of 2017. Although most discrete plan changes and partial plan reviews achieve this time limit, it is rare for a review of a whole plan to meet this timeline. The Council can extend the time period for issuing decisions on the PDP beyond 2 years under section 37 but must take into account:

- the interests of any person who may be directly affected by the extension or waiver; and
- the interests of the community in achieving adequate assessment of the effects of a plan; and
- the duty of the Council under section 21 of the LGA to avoid unreasonable delays; and
- any special circumstances that apply (including the scale or complexity of the matter).

- 24 The Council would need to notify all submitters on the Plan of the extension of time if this occurs.

- 25 This report recommends that the extension of time for issuing decisions on the Proposed District Plan be reported to the next Planning and Strategy Committee in a report setting out the relevant statutory considerations.

## **Earlier Decisions**

- 26 Local planning and legal practitioners participating in the plan review have asked that the programme for issuing decisions be made quicker by engaging additional consultant resources. More and more of the plan review work is being carried out by consultants and if there is an opportunity to achieve time savings this it will be taken up. However, this is a highly contested plan review involving provisions which often have a complex history. The need to address this complex history, along with ensuring the coherence of the Council's overall case and the usability of the plan, means that even where work can be done by consultants,

progressing the work relies on the finite capacity of the small in-house policy team to input into the work.

- 27 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 doesn't link to issues and plan provisions that are not yet finalised, and provided the work required doesn't disrupt the wider work programme. Provided they don't involve large numbers of submitters and have a limited risk of triggering complex appeals the Council could then issue earlier decisions on these confined matters.

## Stage 2

- 28 Stage 2 comprises parts of the PDP which have some urgency in that they will contribute to having a PDP that is workable in most instances and areas. They include Transport, Open Space, Earthworks, Visitor Accommodation, Signs and a Wakatipu Basin Variation. Notification is proposed in the 3<sup>rd</sup> quarter of 2017 in time for hearings to be held in the 2<sup>nd</sup> quarter of 2018. Due to the urgency of Stage 2, it is considered appropriate to aim to have decisions released in the 3<sup>rd</sup> quarter of 2018.

Stage 2	Topic or chapter(s)	Staggered Notification	Potential Hearing	Potential Decision
	Open Space and Recreation (chapter and mapping)	3 <sup>rd</sup> quarter 2017	2 <sup>nd</sup> quarter 2018	3 <sup>rd</sup> quarter 2018
	Transport			
	Earthworks			
	Possible Wakatipu Basin Variation (chapters and mapping)			
	Signs			
	Visitor Accommodation and registered Holiday Homes (including residential chapters and mapping withdrawn in October 2015)			

## Stage 3

- 32 Stage 3 comprises provisions timed to align with and deliver on the outcomes of the Mayoral Housing Affordability Taskforce and contain the balance of the district wide chapters which have not yet been notified. Notification of these provisions is scheduled for 4<sup>th</sup> quarter of 2018 with hearings to be held in 1<sup>st</sup> quarter of 2019.

- 33 There is an extended delay between Stages 2 and 3 to allow for preparation of the Stage 3 provisions and for what is anticipated to be extensive work required to respond to the likely appeals against Council's decisions on Stage 1 of the PDP, which will include analysis of appeals, management of consultants and experts, participating in mediation and caucusing, liaison with Councillors and appellants and preparing and presenting evidence.

Stage 3	Topic or chapter(s)	Notification	Potential Hearing	Potential Decisions
	Affordable and Community Housing	1 <sup>st</sup> quarter 2019	3 <sup>rd</sup> quarter 2019	4 <sup>th</sup> quarter 2019
	Mapping sites of significance to iwi			
	Township Zones (chapters and mapping)			
	Residential development design guidelines			
	Gorge Road High Density Residential, Business Zones and Natural Hazards			
	Industrial A and B Zones (chapters and mapping)			
	Ferry Hill and Glenorchy building restriction areas			

#### Stage 4

- 35 Stage 4 comprises site specific or development specific special zone provisions currently contained in Volume B of the PDP. Notification is scheduled for 2<sup>nd</sup> quarter of 2019 for hearings in third 4<sup>th</sup> quarter of 2019 with decisions in the following quarter.

Stage 4	Topic or chapter(s)	Notification	Potential Hearing	Potential Decisions
	Rural Visitor Zones – Cecil Peak, Walter Peak, Cardrona, Blanket Bay, Arthurs Point, Arcadia Station, Windermere	2 <sup>nd</sup> quarter 2019	4 <sup>th</sup> quarter 2019	1 <sup>st</sup> quarter 2020
	Penrith Park Zone			



	Bendemeer Zone			
	Hydro Generation Zone including Financial Contributions			
	Quail Rise Zone			
	Meadow Park Zone			
	Frankton Flats Zone			
	Ballantyne Road Mixed Use Zone			
	Three Parks Zone			
	Kingston Village Zone			
	Shotover Country Zone			
	Arrowtown South Zone			

38 It is important to note that the Stage 2-4 provisions are those where there is some certainty at this stage that these issues should be reviewed. It is possible that other matters may arise that require review, or a variation. It should also be noted that this report does not predetermine that any substantive changes to the provisions in the ODP will follow the review of the above provisions. It is possible that the review could identify that only minor changes to marry the provisions with the PDP are needed, however notifying them will open them up to submissions potentially seeking substantial changes.

39 There is also the option for the Council to not undertake a full review of some zones if there is no need or benefit to do so following the outcomes of the initial review and monitoring of these zones. These zones would remain in Volume B, the Operative District Plan.

40 Recently resolved plan changes to the Operative District Plan (the ODP) should continue to be kept in Volume B of the PDP and excluded from the District Plan Review. There continues to be a need to discourage private plan changes to manage the coherence of the PDP and ensure it is effective and easy to use.

## Options

41 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:

42 Option 1 Notify Stage 2 of the PDP in 2018 in a single change to the district plan and delay decisions on Stage 1 until all remaining stages are reviewed.

#### Advantages:

- 43 Avoids confusion and complexity that could arise from different parts of the district plan being at different stages of the review process (under development, notified, submissions heard, decisions released, decisions appealed, provisions beyond challenge, provisions made operative).
- 44 Allows the Panel to make a consolidated set of decisions on the provisions having heard all the relevant matters (including considering whether their earlier recommendations on text need to be revisited in the light of matters arising in later stages of the review.
- 45 Avoids litigating parts of the plan in the Courts while there is still uncertainty about the likely content of the balance of the plan.
- 46 Allows (sometimes crucial) minor changes to be made to ensure the plan works in the way the recommendations intend.
- 47 Limits the extent to which staff will be involved in appeals at the same time as work streams reviewing, preparing, consulting, analysing submissions, preparing evidence and attending hearings.

#### Disadvantages:

- 48 The review programme could lose momentum with this approach and it could create an impression of the review being stalled and delayed unnecessarily. A number of key participants in the PDP review (including commissioners and witnesses) are in demand and may take on long term commitments in the mean-time that exclude from the Queenstown Lakes PDP review.
- 49 The extent and pace of growth and change in the Queenstown Lakes district makes the need to keep the principle document for managing use, development and protection of natural and physical resources in the district current and fit for purpose a matter of great importance.
- 50 Securing large amounts of resources for larger combined efforts of plan preparation and review, notification, analysis, evidence preparation and hearings on all remaining topics simultaneously is highly challenging and will at times need to rely on substantial use of consultants which will result in higher public costs.
- 51 Substantial parts of the Proposed Otago Regional Policy Statement (the PRPS) are likely to become operative while Stages 2-4 are completed. Under section 75 of the RMA, the district plan would have to 'give effect to' these provisions (rather than just "have regard to" them, which applies at present). In practice this means that objectives and policies in the PRPS requiring outcomes or activities to be avoided or enabled would have to be followed through in the PDP with a like-for-like approach. The issue with this is that evidence on the provisions of the PDP that have been heard to date, as well as the deliberations and recommendations of the Panel, can't have

anticipated these requirements in the PRPS and may have to be reconsidered in the light of any changes.

- 52 Option 2 Release decisions Stage 1 of the PDP and notify remaining parts of the PDP in 3 clear stages between 2017 and 2019 with a programme that allows for appeals on Stage 1.

Advantages:

- 53 Will allow Councillors, staff and stakeholders involved in preparing discrete parts of the plan to focus on a smaller number of new provisions at one time. The same goes for the notification and submission process and any associated consultation.
- 54 Dividing the workload for Stages 2 - 4 of the PDP across discrete stages should allow for a greater proportion of the work to prepare and review provisions to be completed in-house which will result in lower public costs and could also improve knowledge retention and consistency.
- 55 Regarding public perceptions, this approach will potentially provide greater visibility to the public and participants in the plan review of the work underway.
- 56 The Environment Court should be able to manage any major issues with aligning appeals on any decisions on the PDP with the appeals on the PRPS.

Disadvantages:

- 57 Different parts of the PDP being at different stages in the review process will create a certain amount of uncertainty and complexity in deciding and applying the PDP.
- 58 The public may perceive that instead of progressing in 2 clearly separate stages as originally intended, the PDP is now progressing incrementally and slower than originally anticipated.
- 59 This report recommends Option 2 for progressing the completion of the PDP review because it allows the review to proceed on a more progressive basis that is likely to be more manageable for participants and will bring key parts of the plan into effect a lot earlier.
- 60 Some of the above issues are as much about how decisions and appeals are managed as they are about timing. Clearly, a lot of people participating in the PDP understood that Council would issue decisions on Stage 1 of the PDP as soon as practicable and before starting work on Stage 2. There is substantial agreement over some parts of the plan between participants and any delays to getting out decisions on the plan would be frustrating for some. Getting the opportunities for more intensive residential development provided by the notified plan 'into play' could assist with some of the district's key resource management challenges.

## **Significance and Engagement**

- 61 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.
- 62 Consultation during the preparation of the next stages of the PDP review will be undertaken in accordance with clause 3 of Schedule 1 of the RMA and section 82 of the Local Government Act 2002 where appropriate.

## **Risk**

- 63 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.

The recommended options considered above mitigate the risk by treating the risk – putting measures in place which directly impact the risk. Council resolving to confirm the components of Stage 2 of the PDP.

## **Financial Implications**

- 64 The recommended option provides certainty and will assist with spreading the costs of the District Plan Review over time and should increase the efficiency of the PDP review programme, which has already been budgeted for.

## **Council Policies, Strategies and Bylaws**

- 65 There are no Council policies, strategies or bylaws relating to this matter because it is primarily associated with process.
- 98 This matter is included in the 10-Year Plan/Annual Plan as part of the District Plan commitment.

## **Local Government Act 2002 Purpose Provisions**

- 66 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**

67 The persons who are affected by or interested in this matter are the persons who are affected by or interested in this matter are parties who have submitted on the Proposed District Plan or a Plan Change. Where Stage 2 of the PDP effects or will interest additional parties there will be future opportunities for consultation and/or for them to submit on proposals before decisions are made and they come into legal effect.

### **Legal Considerations and Statutory Responsibilities**

68 Development of the PDP has occurred in accordance with the requirements of the RMA. Particular clauses of relevance include Sections 5-11, 31 and 32 and Schedule 1. The recommendations accord with the provisions of the RMA. In particular section 73(3) that allows a district plan to be prepared in territorial sections.