

Queenstown Lakes District Proposed District Plan

Section 32 Evaluation

Variation to Proposed District Plan

For:

Variation to Rule 43.5.2 Setbacks

(Chapter 43 Millbrook)

Report dated: July 2019

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1. EXECUTIVE SUMMARY

- 1.1. As currently written, Rule 43.5.2, in Chapter 43 Millbrook, does not meet the criteria for a restricted discretionary activity, as required by s87A(3) of the Resource Management Act 1991 (**'the Act'** or **'the RMA'**), as the matters of discretion are missing.

43.5 Rules – Standards

	Rules – Millbrook	Non-compliance status
43.5.2	Setbacks a. No building or structure shall be located closer than 6m to the Zone boundary b. No building shall be located closer than 10m from Malaghans Road or the Arrowtown Lake Hayes Road c. On Residential Activity Sites 14 and 19 buildings shall be located at least 7m from the Residential Activity Area boundary	RD

- 1.2. Other PDP chapters with similar setback controls *have been used as a baseline for this review, and the key changes that are recommended, compared against the operative provisions are as follows:*
- a) Addition of matters of discretion for Rule 43.5.2, restricting discretion to:
 - a. Effects on amenity values
 - b. Building Design
 - c. Landscape treatment
 - d. Outlook and privacy of neighbours

These mirror the matters of discretion put forward in the amended plan provisions by John Edmonds submitted as part of Hearing Stream 9 on 16 February 2017 (43.5.2(iii)).

- 1.3. This variation to Chapter 43 Millbrook will assist the Council to fulfil its statutory functions and responsibilities as required by the Resource Management Act 1991 (**'the Act'** or **'the RMA'**).

2. INTRODUCTION

- 2.1. This report fulfils the requirements of Section 32 of the Act, which requires the objective(s) of proposals to be examined for their appropriateness in achieving the purpose of the Act, and the

policies and methods of those proposals to be examined for their costs, benefits, efficiency, effectiveness and risk in achieving the objectives.

- 2.2. The purpose of this variation is to introduce to the PDP matters of discretion to assess buildings and structures within setbacks in the Millbrook Resort Zone. This variation has no associated variations to the management of buildings or structures in any other PDP chapter.
- 2.3. Section 12 Special Zones (Resort Zones – Millbrook) in the ODP was used as the basis for PDP Chapter 43 Millbrook. Under the ODP Rule 12.2.34i(a) all buildings which do not comply with Figure 1 Structure Plan – Millbrook Resort Zone are a **Discretionary Activity**. This figure shows a 100m building line setback from the Scenic Road Boundary.
- 2.4. The evaluation of the appropriateness of varying Rule 43.5.2 is based upon addressing the following broad resource management issues:
 - a) The rule does not meet the requirements to be a restricted discretionary activity
- 2.5. Addressing the issues set out above will result in a more appropriate regime of managing the effects of activities within setbacks in the Millbrook Resort Zone and is consistent with achieving the purpose of the Act.
- 2.6. Chapter 43 Millbrook applies to land notified in Stage 3 of the Proposed District Plan review and is shown on the Planning Maps attached to the Stage 3 bundle.

3. STRUCTURE OF THE REPORT

- 3.1. This report provides an analysis of the policy response proposed by the variation as required by s32 of the RMA, using the following sections:
 - a) **Consultation** undertaken, including engagement with iwi authorities on the proposal.
 - b) An overview of the applicable **Statutory Policy Context**.
 - c) A description of the **Resource Management Issues** being addressed by the proposal.
 - d) An assessment of the **scale and significance** of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.
 - e) An **Evaluation** against s32 of the RMA, including
 - Whether the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA (Section 32(1)(a)).

- Whether the provisions (policies and methods) are the most appropriate way to achieve the objectives of the proposal (Section 32(1)(b)), including:
 - (i) identifying other reasonably practicable options for achieving the objectives
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including consideration of risk of acting or not acting, and
 - (iii) summarising the reasons for deciding on the provisions.

4. CONSULTATION

4.1. The following consultation was undertaken in the development of the proposal:

A summary of this variation, outlining the changes to be made were sent to Kāi Tahu (Aukaha), as given in Section 1.2 of this report).

4.2. Aukaha confirmed that they had no issues or comments in relation to this variation as part of Stage 3 of the Proposed District Plan.

4.3. Therefore, there is no feedback to consider or incorporate into this report.

5. STATUTORY POLICY CONTEXT

5.1. The relevant requirements of the RMA, the Local Government Act 2002, and the two iwi management plans that apply in the District¹ have been given appropriate regard in the preparation of this proposal. There are no relevant National Policy Statements or National Environmental Standards.

5.2. The relevant provisions of the Otago Regional Policy Statement, both operative and proposed, have been considered in the preparation of this proposal. This proposal is required to give effect to the operative provisions of the RPS and have regard to the proposed provisions.

¹ *The Cry of the People, Te Tangi a Tauria*: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (MNRMP 2008), and *Kāi Tahu ki Otago* Natural Resource Management Plan 2005 (KTKO NRMP 2005)

Partially Operative Regional Policy Statement 2019

Reference	Detail
Issue	The social and economic wellbeing of Otago's communities depends on use and development of natural and physical resources. Loss or degradation of resources can diminish their intrinsic values and constrains opportunities for use and development now and into the future. Some of Otago's resources are nationally or regionally important for their natural values and economic potential and so warrant careful management.
Objective 1.1	Otago's resources are used sustainably to promote economic, social and cultural wellbeing for its people and communities
Policy 1.1.1	Economic Wellbeing – Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources. <i>Methods: Regional, City and District Council Relationships, Regional Plans and City and District Plans</i>
Issue	Natural and physical resources are interconnected, complex and should be managed in an integrated, sustainable, consistent and effective way because the use of one resource may adversely affect another. Inefficient and ineffective responses or unexpected adverse effects can occur when activities affecting a resource are undertaken by different resource users, governed by different legislation, or administered by different local authorities. Plans need to address diverse and conflicting interests.
Objective 1.2	Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago
Policy 1.2.1	Integrated resource management - Achieve integrated management of Otago's natural and physical resources
Issue	Unplanned urban growth and development risks exceeding the carrying capacity of existing infrastructure and services, adversely affecting community resilience. Unanticipated growth places pressure on adjoining productive land, and risks losing connectivity with adjoining urban areas. Urban development has not always had regard for the local environment or the needs of the community.
Objective 4.5	Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments
Policy 4.5.3	Urban design – Design new urban development with regard to – b) A built environment that relates well to its surrounding environment e) A sense of cohesion and recognition of community values g) Areas where people can live, work and play i) A diverse range of social and cultural opportunities <i>Methods: City and District Plans</i>
Objective 5.3	Sufficient land is managed and protected for economic production (not linked to a specific issue within the RPS)
Policy 5.3.5	Tourism and outdoor recreation – Recognise the social and economic value some forms of outdoor recreation and tourism having access to, and being located within, outstanding natural features and landscapes.

Partially Operative Regional Policy Statement 1998

Reference	Detail
Objective 5.4.1	To promote the sustainable management of Otago's land resources in order: (a) To maintain and enhance the primary productive capacity and life-supporting capacity of land resources; and (b) To meet the present and reasonably foreseeable needs of Otago's people and communities.
Objective 5.4.2	To avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource.
Objective 5.4.3	To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development.
Policy 5.5.2	To promote the retention of the primary productive capacity of Otago's existing high class soils to meet the reasonably foreseeable needs of future generations and the avoidance of uses that have the effect of removing those soils or their life-supporting capacity and to remedy or mitigate the adverse effects on the high class soils resource where avoidance is not practicable.
Policy 5.5.3	To maintain and enhance Otago's land resource through avoiding, remedying or mitigating the adverse effects of activities which have the potential to, among other adverse effects: (a) Reduce the soil's life-supporting capacity (b) Reduce healthy vegetative cover (c) Cause soil loss (d) Contaminate soils (e) Reduce soil productivity (f) Compact soils (g) Reduce soil moisture holding capacity.
Policy 5.5.4	To promote the diversification and use of Otago's land resource to achieve sustainable land use and management systems for future generations.
Policy 5.5.5	To minimise the adverse effects of land use activities on the quality and quantity of Otago's water resource through promoting and encouraging the: (a) Creation, retention and where practicable enhancement of riparian margins; and (b) Maintaining and where practicable enhancing, vegetation cover, upland bogs and wetlands to safeguard land and water values; and (c) Avoiding, remedying or mitigating the degradation of groundwater and surface water resources caused by the introduction of contaminants in the form of chemicals, nutrients and sediments resulting from land use activities.
Objective 6.4.2	To maintain and enhance the quality of Otago's water resources in order to meet the present and reasonably foreseeable needs of Otago's communities.
Issue 9.3.1	The adverse effects of urban development and settlement can impact upon the quality of the built environment and on the use of natural and physical resources. Explanation: It is important that a balance is achieved in maintaining the quality of the built environment as a place to live, while providing opportunities for economic change, growth and residential choice

Proposed Regional Policy Statement 2015

- 5.3. Section 74(2) of the RMA requires that a district plan prepared by a territorial authority shall "have regard to" any proposed regional policy statement. The Proposed Otago Regional Policy Statement (PRPS) was notified for public submissions on 23 May 2015, and decisions on submissions were released on 1 October 2016. A number of provisions were appealed. Consent orders have been issued for most appeals and these now form the PORPS 19.
- 5.4. The following outlines the relevant PRPS where appeals remain active. Accordingly, limited weight can be provided to the Decisions Version of the PRPS.
- 5.5. There are no relevant objectives and policies from the PRPS Decision version: 1 October 2016.

Proposed District Plan

- 5.6. The following objectives and policies of the PDP are relevant and have been given due regard in the development of proposal:

Strategic Direction Chapter 3

Reference	Detail
Objective 3.2.1	The development of a prosperous, resilient and equitable economy in the District.
Policy 3.2.1.1	The significant socioeconomic benefits of well-designed and appropriately located visitor industry facilities and services are realised across the District.
Policy 3.2.1.8	Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.
Objective 3.2.2	Urban growth is managed in a strategic and integrated manner.

Policy 3.2.2.1	Urban development occurs in a logical manner so as to: a. Promote a compact, well designed and integrated urban form c. Achieve a built environment that provides desirable, healthy and safe places to live, work and play g. Contain a high quality network of open spaces and community facilities
Objective 3.3.1	Make provision for the visitor industry to maintain and enhance attractions, facilities and services within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone.

5.7. The Strategic Directions seek to enable development while protecting the valued natural and physical resources of the District. This variation to Chapter 43 Millbrook is required to give effect to these obligations.

Urban Development Chapter 4

Reference	Detail
Objective 4.2.2A	Urban development within Urban Growth Boundaries that maintains and enhances the environment and rural amenity and protects Outstanding Natural Landscapes and Outstanding Natural Features, and areas supporting significant indigenous flora and fauna.
Policy 4.2.2.1	Integrate urban development with the capacity of existing or planned infrastructure so that the capacity of that infrastructure is not exceeded and reverse sensitivity effects on regionally significant infrastructure are minimised.
Policy 4.2.2.5	Require larger scale development to be comprehensively designed with an integrated and sustainable approach to infrastructure, buildings, street, trail and open space design.

5.8. The Urban Development objectives and policies encourage consolidation of urban growth within the urban growth boundaries and existing settlements.

Tangata Whenua Chapter 5

Objective or provision	Detail
Issue	Increasing land use intensification, especially increasing dairying and subdivision.
No objectives and policies in this Chapter were identified as relevant to this proposal.	

6. RESOURCE MANAGEMENT ISSUES

Key Issue: Rule 43.5.2, in Chapter 43 Millbrook, does not meet the criteria for a restricted discretionary activity, as required by s87A(3) of the Act, as the matters of discretion are missing.

Summary

- 6.1. Rule 43.5.2 cannot be implemented as intended as currently written. It would default to a discretionary activity, under s87B(1)(a) of the Act. This would mean that any resource consent application for activities would be treated as a discretionary activity and would be processed as so, which increase the range of matters it is assessed against, and decrease certainty of outcome for the applicant.
- 6.2. This proposal suggests four matters of discretion for activities that would infringe the setbacks of 6m from the zone boundary, 10m from Malaghans or Arrowtown Lake Hayes Rd, and 7m from the Residential Activity Area boundary on Residential Activity Sites 14 and 19 (as depicted on the Millbrook Resort Zone Structure Plan) stated in Rule 43.5.2, so that it can be implemented as per its intention, and aligns with how setbacks are treated in other zones in the District.

7. SCALE AND SIGNIFICANCE EVALUATION

- 7.1. The level of detailed analysis undertaken for the evaluation of the proposed objectives and provisions has been determined by an assessment of the scale and significance of the implementation of the proposed provisions. In making this assessment, regard has been had to the following, namely whether the proposed objectives and provisions:

- Result in a significant variance from the existing baseline in Proposed District Plan Section 12 – Special Zones (Resort Zones).
- Have effects on matters of national importance.
- Adversely affect those with specific interests.
- Involve effects that have been considered implicitly or explicitly by higher order documents.
- Impose increased costs or restrictions on individuals, communities or businesses.

7.2 The level of detail of analysis in this report is **low**. The Proposed District Plan Chapter 43 Millbrook has been used as a basis for the revised provisions, with the only change proposed being adding the matters of discretion to Rule 43.5.2 Setbacks. The objectives and policies have been revised to provide greater clarity regarding the desired environmental outcomes. Although articulated in a more comprehensive manner, these outcomes align with those generally anticipated by the proposed Chapter 43 Millbrook. The proposed changes to Rule 43.5.2 improves its operability.

8. BROAD OPTIONS

8.1. In the preparation of this proposal, the following options have been identified:

Option 1 – Do nothing/retain the status quo

Option 2 – A variation to include appropriate matters of discretion

Option 3 – Change the associated activity status to Discretionary

Option 4 – Delete the Rule

8.2. The following table has a summary of an analysis of the options.

	Option 1: Retain the rule in its current form (status quo)	Option 2: Add appropriate matters of discretion to the rule	Option 3: Change the associated activity status to Discretionary	Option 4: Delete the rule
Costs	Administering the plan with a known gap in policy would not achieve efficiency in the planning process or the management of resources	Financial and time costs in preparing the variation and the additional costs of a of plan change schedule 1 process.	- Decreased certainty for applicants - No specific guidance for assessing the potential and actual effects of the activity - Financial and time costs in preparing the variation and the additional costs of a of plan change schedule 1 process and consenting process for a Discretionary Activity	Building within setbacks could result in negative environmental effects including degrading amenity within the Millbrook Resort Zone
Benefits	The full extent of any anticipated environmental effects could be fully captured and addressed through the consenting process, as it defaults to a full discretionary activity	- Any anticipated environmental effects are likely to be captured and addressed through the consenting process. - Increased certainty for applicants of what applications for activities with setbacks will be assessed against	The full extent of any anticipated environmental effects could be fully captured and addressed through the consenting process.	Quicker building consent process if a resource consent is not required for activities infringing setbacks
Efficiency & Effectiveness	Inconsistent approach to assessing applications for activities within setbacks	- Adding matters of discretion is efficient as it will add clarity to the consenting process with aligning rule - Enables the appropriate assessment of anticipated environmental effects	- Likely to reduce efficiency with a longer consenting process - Does not create alignment with other chapters in the Proposed District Plan	Puts onerous back on structure plan, which may not be interpreted correctly or consistently
Ranking	3	1 (PREFERRED)	2	4

8.3. The format and structure of the operative chapter has not been continued, and rather the chapter structure developed for the PDP has been used. This results in a departure from the ODP, as most notably the tables for activities have been re-ordered. Maintaining consistency with the PDP chapter structure is considered important to ensure that the PDP is implemented as a cohesive whole. Accordingly, the drafting style conventions that have been established in Stages 1 and 2 of the District Plan Review have been applied to this proposal.

8.4. An analysis of alternatives has been undertaken, including consideration of :

- 1. Status quo/no change**
- 2. Revising the rule to include matters of discretion**
- 3. Deleting Rule 43.5.2**

8.5. In summary the proposal will result in variance from the existing baseline, however in most instances the current approach to managing the effects of building within setbacks is recommended to remain.

9. EVALUATION OF PROPOSED OBJECTIVES

9.1. Section 32(1)(a) requires an examination of the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the Act. This variation does not propose any new objectives or changes to existing objectives. In this case, an examination of the extent to which the purpose of the proposal is the most appropriate way to achieve the purpose of the Act is required (s32(6)).

9.2. This variation does not proposed any new objectives or any changes to objectives.

9.3. The relevant existing objective is:

Objective 43.2.1 – Visitor, residential and recreation facilities are developed in an integrated manner with particular regard for landscape, heritage, ecological, and water quality values.

RISK OF NOT ACTING

Section 32(c) of the RMA requires an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. Section 32(c) of the RMA requires an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. It is considered that the information about adding matters of discretion is certain and sufficient, and there is no need to assess the risk of acting or not acting.

10. EVALUATION OF THE PROPOSED PROVISIONS

10.1. There are new policies or changes to policies proposed as part of this variation.

10.2. The proposed provisions are underlined as follows:

43.5 Rules – Standards

	Rules – Millbrook	Non-compliance status
43.5.2	Setbacks a. No building or structure shall be located closer than 6m to the Zone boundary b. No building shall be located closer than 10m from Malaghans Road or the Arrowtown Lake Hayes Road c. On Residential Activity Sites 14 and 19 buildings shall be located at least 7m from the Residential Activity Area boundary	RD <u>Council's discretion is restricted to:</u> i. <u>Effects on amenity values</u> ii. <u>Building Design</u> iii. <u>Landscape treatment</u> iv. <u>Outlook and privacy of neighbours.</u>

10.3. Other PDP chapters with similar setback controls have been used as a baseline for this review, and the key changes that are recommended, compared against the notified provisions are as follows:

Addition of matters of discretion for Rule 43.5.2, restricting discretion to:

- i. Effects on amenity values
- ii. Building Design

- iii. Landscape treatment
- iv. Outlook and privacy of neighbours

10.4. Section 32(1)(b) of the Act requires an assessment of whether the proposed provisions (policies and methods) are the most appropriate way to achieve the objective or purpose of the proposal.

This assessment must:

- Identify other reasonably practicable options for achieving the objectives
- Assess the efficiency and effectiveness of the provisions in achieving the objectives, including consideration of the benefits and costs anticipated from the implementation of the provisions, and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- Summarise the reasons for deciding on the provisions

Reasonably practicable options

10.5. The relevant existing objective and policies are:

Objective 43.2.1 Visitor, residential and recreation facilities are developed in an integrated manner with particular regard for landscape, heritage, ecological, and water quality values.

Policy 43.2.1.1 Require development and activities to be located in accordance with a Structure plan so as to promote orderly and integrated development and prevent the inappropriate development of sensitive parts of the site.

Policy 43.2.1.2 Require buildings and associated landscaping to have regard to landscape and heritage values.

10.6. The following table identifies other reasonably practicable options for achieving the purpose of the variation:

Option	Achieves objective?
Option 1: Retain the rule in its current form (statues quo)	Does not achieve objective due to missing matters of discretion
Option 2: Add appropriate matters of discretion to the rule	Closes the existing gap in the policy/rule so that is can be implemented as per its intention and give effect to Objective 43.2.1

Option 3: Change the associated activity status to discretionary	Provides less guidance as to matters to consider when assessing applications for activities within setbacks, may not result in integrated management as per the objective
Option 4: Delete the rule	Will widen the existing gap in the policy and would be inconsistent with how setbacks are managed across the District.

10.7. Having considered these options, Option 2 is the preferred option because it achieves the purpose of the variation being to correct the policy gap by adding the missing matters of discretion to Rule 43.5.2 Setbacks, and allows the rule and wider associated policy to be implemented as intended.

Reasons for deciding on the provisions

10.8. The proposed provisions are considered the most appropriate because:

- a) They are efficient and effective at achieving the purpose of the variation.
- b) The provisions are in accordance with Objective 43.2.1, Policy 43.2.1.1 and Policy 43.2.3.2 of the Proposed District Plan.
- c) They are in accordance with the functions of territorial authorities in s31 of the RMA and the sustainable management purpose of Part 2 of the RMA.
- d) The proposed provisions implement an existing policy that gives effect to the operative Otago PRS.
- e) Regard has been had to the Proposed Otago RPS and account has been taken of the two relevant iwi management plans, which are not considered to have significant bearing on this proposal.