

**Planning & Strategy Committee
13 May 2019**

Report for Agenda Item 2

Department: Planning & Development

Proposed District Plan Stage 3 Variation Recommendations

Purpose

The purpose of this report is to provide an update to the Committee on proposed variations recommended by the Independent Hearing Panels in Stages 1 and 2 of the Proposed District Plan review, and to consider the inclusion of a number of these recommendations as variations in Stage 3 of the review.

Recommendation

That the Planning & Strategy Committee:

1. **Note** the contents of this report;
2. **Agree in principle, subject to further work, that** the matters in Attachment A are suitable for recommending to Council as variations to be notified as part of Stage 3 of the Proposed District Plan review.
3. **Note** that agreeing in principle to the above does not mean Council has formed a view on other possible future variations, possible withdrawal of areas of land from the current review and other possible future decisions mentioned in the recommendations.

Prepared by:



Christine Edgley
Senior Policy Planner

16/04/2019

Reviewed and Authorised by:



Tony Avery
General Manager Planning
and Development

16/04/2019

Background

Proposed District Plan Review

- 1 Stage 1 of the Proposed District Plan (PDP) review commenced with notification of 30 chapters in August 2015 including the residential, rural and commercial zones, designations and maps. Submissions on Stage 1 were considered at a series of hearings and decisions on Stage 1 were issued in May 2018. Many of the Stage 1 provisions have been appealed to the Environment Court and this process is still ongoing, however there are some Stage 1 provisions that have not been appealed and are now treated as operative.
- 2 Stage 2 of the PDP review was notified in November 2017 and included five new chapters (24 Wakatipu Basin, 25 Earthworks, 29 Transport, 31 Signs and 38 Open Space and Recreation) along with variations to 14 Stage 1 chapters and to the planning maps. Submissions on Stage 2 were heard during 2018 and decisions were notified on 21 March 2019. The appeal period for Stage 2 closes on 7 May 2019.

Variation Recommendations

- 3 In both Stage 1 and Stage 2 of the PDP review the Independent Hearing Panel (Panel) produced a number of detailed reports setting out their recommendations on submissions. These reports contained a number of instances where the Panel wished to recommend changes to the notified plan, but felt that they had no scope within the submissions before them to address these issues. In these instances, the Panel recommended that Council consider a variation to the PDP.
- 4 A variation is an alteration to a proposed plan at any time before the approval of the plan. A variation is subject to the requirements of Schedule 1 of the RMA, including public notification and the hearing of submissions. The purpose of this report is to provide the Committee with a list of all the variations recommended by the Panel in both stages of the PDP review and assesses these with a view to possible inclusion in Stage 3 of the PDP review or Stage 4.
- 5 Please note that this report does not address variations that will be included as part of the review of the topics in Stage 3 of the review;¹ for example, introducing new zones often requires consequential variations to existing district-wide chapters to integrate them into the plan.

Assessment of Variation Recommendations

- 6 A review of the recommendation reports from Stage 1 and Stage 2 identified a total of 126 separate variation recommendations (made up of 92 in Stage 1 and 34 in Stage 2). The variation recommendations were raised in a number of ways, including as a response to issues raised by submitters, the reporting officer, or by the Panel themselves.

¹ Those topics being the Townships Zone, Affordable Housing, the mapping of Sites of Significance to Iwi, Industrial Zones, Ballantyne Mixed Use Zone, Three Parks Special Zone, Gorge Road Natural Hazards, Rural Visitor Zones and Design Guidelines for Residential and Business Mixed Use Zones.

- 7 Each variation has the potential to require extensive evidential support and can result in costly and time consuming litigation. Due to the large volume of variation recommendations and given the time constraints relating to Stage 3 of the PDP review, it is not practicable to give effect to all the variations at this time. In addition, not all the variations that have been recommended will still be relevant (given the later stages of the PDP review) or appropriate to prioritise. It is therefore necessary to assess the variation recommendations to determine whether further action on each is required and to carefully consider the benefits and costs of addressing them alongside other potential priorities.
- 8 All variation recommendations have been summarised and grouped into topics where possible. Table 1 in **Attachment A** contains those variation recommendations that have been assessed as suitable for further investigation with a view to including them in Stage 3 of the PDP review. Table 3 in **Attachment B** contains those variation recommendations that have been assessed as not appropriate for variation at this time, for the reasons set out in that document.
- 9 To determine whether further action is required the following matters have been considered:
 - a. Whether the recommendation has since been superseded by later stages of the PDP review;
 - b. Whether the matter is subject to appeal, and if so the effect any variation might have on the appeal process;
 - c. Whether the issue raised is consistent with the strategic direction of the PDP;
 - d. The seriousness of the identified issue as it relates to plan usability or administration; and
 - e. The costs of implementing the variation including any possible work-arounds.
- 10 As indicated in Attachment B, a number of the Panel's recommendations have been included or addressed through work on Stage 2 or Stage 3 of the PDP review, in which case no further action is required.
- 11 The effect of the appeals process on variation recommendations in both Stage 1 and Stage 2 is more complex. In most instances, where the Panel's recommendation relates to a matter under appeal in Stage 1 it is not likely to be appropriate to initiate a variation that might undermine that process. There are some exceptions to this, for example where an appeal does not have the scope required to make the change sought.
- 12 Decisions on Stage 2 are currently open to appeal. At the time of writing it is not possible to know what provisions are going to be subject to appeal and whether appeals could address the matters raised by the Panel. For that reason, variation recommendations on Stage 2 matters are generally included in Attachment B as not to be pursued at this point in time.

Errors and Omissions

13 Table 2 in Attachment A sets out provisions that, while not the subject of a variation recommendation from the Panel, have been identified by Council staff as an error, omission or inconsistency that cannot be corrected as a minor error through Clause 16(2) of Schedule 1 to the RMA. The provisions in Attachment A have been identified as the ones that are likely to cause confusion or inefficiencies for plan users and are therefore recommended to be included for review to include in any future action. Errors and omissions that have been identified but are not considered to be high priority are listed in Table 4 in Attachment B.

Future Action

14 The assessment of the matters in Attachments A and B are not an evaluation under section 32 of the RMA, but rather are the first step in determining what issues are suitable for further consideration for inclusion in a future variation to the PDP. A full assessment of the costs and benefits of any proposed change will be required under section 32 in the event that the recommendations are progressed to a variation. It is possible that, following the evaluation, the status quo may be the most appropriate course of action.

15 Further plan changes or variations to the PDP, other than what is being proposed in Attachment A, are likely to be required in the future. The National Planning Standards (**‘the Standards’**) were gazetted on 5 April 2019 and set mandatory timeframes for territorial authorities to implement changes to their District Plans that are required by the Standards. Future plan changes or variations are also likely to be needed to address any errors or omissions that arise from Stage 3 or other later stages of the PDP review. In short, there will be future opportunities to address matters that have not been identified as suitable for inclusion at this point in time.

Options

16 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:

17 Option 1 Do nothing and reconsider the variations at a future time– Status quo remains

Advantages:

18 This option will result in cost and time savings through not revisiting plan provisions that have recently been through a thorough consultative process and in some cases are no longer subject to challenge.

Disadvantages:

19 Any existing inefficiencies, errors or omissions in the PDP will remain, with the potential to create unintended or inefficient outcomes and confusion for users of the plan.

20 Option 2 Include all Panel variation recommendations in future variations to the PDP.

Advantages:

- 21 The Council is seen to be responding to concerns raised by the Panel in considering the submissions in a timely manner.

Disadvantages:

- 22 This option would risk undermining the appeal process currently being undertaken for Stage 1, where the provisions recommended to be varied have been appealed, or potentially prejudice appeals not yet received for Stage 2.
- 23 It could result in doubling-up of review in those instances where later stages of PDP review have addressed or will address the matters raised by the Panel.
- 24 Option 3 Further investigation of the recommended variations in **Attachment A** and the errors and omissions in Attachment B with a view to including them in Stage 3 of the PDP review.

Advantages:

- 25 The review of the Panel's recommended variations are focused on those that would have the biggest impact in terms of plan usability and efficiency.

Disadvantages:

- 26 A further variation or plan change is likely to be required in the future, to address those matters that are not prioritised at this time.
- 27 This report recommends Option 3 for addressing the matter because it allows for improving plan usability and efficiency without

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 provisions of the Proposed District Plan, which is a 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 option considered above mitigates the risk by: Treating the risk - putting measures in place which directly impact the risk. It does this by

Financial Implications

- 31 There is no budget or cost implications resulting from the decision.

Council Policies, Strategies and Bylaws

32 The following Council Policies, Strategies and Bylaws were considered:

- The Operative District Plan
- The Proposed District Plan

33 The recommended option is consistent with the principles set out in the above named policies.

34 This matter is not included in the 10-Year Plan/Annual Plan.

Local Government Act 2002 Purpose Provisions

35 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 by improving plan efficiency;
- 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

36 The persons who are affected by or interested in this matter are the submitters on Stages 1 and 2 of the PDP, and visitors to and residents of the District.

37 Submissions from Stages 1 and 2 were considered by the appointed Panel in each stage. Public consultation on any variations will be required under the RMA.

Legal Considerations and Statutory Responsibilities

38 The process for dealing with plan changes is set out in the First Schedule of the Resource Management Act.

Attachments

- A Variation Recommendations and Errors and Omissions recommended for further action
- B Variation Recommendations and Errors and Omissions not recommended for further action