

QLDC Council
16 September 2021

Report for Agenda Item | Rīpoata moto e Rāraki take 4

Department: Planning & Development

Title | Taitara Ratification of the Hearings Panel recommendation on submissions on the Large Lot Residential Variation to the Proposed District Plan

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

The purpose of this report is to provide the report and recommendations of the Commissioners on submissions and further submissions on the Large Lot Residential variation to the Proposed District Plan and to seek ratification as a Council decision. A resolution from Council is sought to notify a decision on Chapters 11 and Chapters 27 in accordance with Clause 10 and 11 of the First Schedule of the Resource Management Act 1991.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Adopt** the Hearings Panel report and recommendation on the submissions on the variation to Chapter 11 Large Lot Residential and Chapter 27 Subdivision and Development of the Proposed District Plan as a Council decision;
3. **Direct** staff to alter the Proposed District Plan provisions to reflect the recommended change and to correct minor errors and make changes of minor effect in accordance with Clause 16(2) of the First Schedule of the Resource Management Act 1991;
4. **Note** that adopting the reports and recommendation as the Council decision means that the Council also adopts the Hearings Panel reasons for those decisions as set out in the report;
5. **Note** that adopting the reports and recommendations, as a Council decision does not mean Council has formed a view on possible future variations or other possible future variations mentioned in the report and recommendation; and
6. **Direct** staff to notify the decision in accordance with the First Schedule of the Resource Management Act 1991.

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18/08/2021

Reviewed and Authorised by:



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8/09/2021

CONTEXT | HOROPAKI

- 1 A variation to Chapters 11 Large Lot Residential (LLR) and Chapter 27 Subdivision and Development of the Proposed District Plan (PDP) was notified on 22 October 2020. The LLR Variation concerns the following provisions of the PDP:
 - (a) Chapter 11, Policy 11.2.1.2, with the variation relating to imposition of colour controls on buildings in the LLR;
 - (b) Chapter 11, Rule 11.5.9, with the variation relating to the density of residential activity within the LLR Area A (LLR A) only; and
 - (c) Chapter 27, Rule 27.6.1, with the variation concerning the minimum lot area for the LLR A only.
- 2 With respect to (a), the variation was undertaken to ensure that colour controls only applied in the LLR B areas where there is landscape sensitivity, for the provisions to better provide for infill development.
- 3 With respect to (b) and (c), the variation was undertaken for the provisions to better provide for infill development. A density of 2000m² has been provided for within the LLR A zone. The variation proposal looks to address the existing PDP provisions which did not sufficiently account for many of the sections within the LLR A zone being at or close to 4000m². The density provisions did not allow for typical access requirements associated with infill development as access is excluded from net area calculations of a site under the current provisions. This resulted in subdivision consents of sites of this size within the zone being non-complying activities based on net areas of the site, with many requiring notification even though in many instances the density and total land area continued to achieve a 2000m² total area.
- 4 A total of 65 submission points were received from 34 submitters on the Variation, with 49 submissions in support and 16 in opposition. 82 further submission points from two further submitters were received in response to the original submissions. Submissions were primarily focused on the density and subdivision provisions.
- 5 On 22 April Council appointed a Hearing Panel of two Commissioners: Bob Nixon as Chair, and Councillor Heath Copland, to hear submissions and further submissions received, deliberate and make recommendations. The Chair was granted delegated authority to sit alone to hear and determine procedural and jurisdictional matters.
- 6 A hearing was held on 7 July 2021.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 7 The Hearings Panel for the most part accepted the recommendation of the Council officer. Changes were focused on drafting of the density and subdivision rules to ensure clarity.
- 8 The Hearings Panel recommend the variation be approved, such that:

- Policy 11.2.1.2 is amended so that colour controls of buildings only apply to Large Lot Residential B;
 - That Rule 11.5.9.1 be amended to allow one residential unit per site, or a maximum of one residential unit per 2000m² (total area);
 - That Rule 27.6.1 be amended to include a note that specifies that in LLR A, the average and minimum lot size is determined by total area (not net site area) and that the minimum lot size be 1500m², providing the average lot size is not less than 2000m² (total area).
- 9 The amendments provide consistency between the subdivision and land use provisions. This would allow the sites at or about 4000m² to more easily subdivide, whilst retaining the intended density within the zone.
- 10 The Hearings Panel recommendations are set out in the report (Attachment A). The recommendation does not constitute a decision under the RMA. A local authority must make a decision on the provisions and matters raised in submissions.
- 11 As discussed in the Options section of this report, for the Council to adopt some aspects of the recommendations and seek to amend others carries a high risk of creating procedural unfairness. Unlike the Panel, Councillors have not considered the full breadth of submissions, or tested the body of evidence that has informed this recommendation. Therefore, it is appropriate that they adopt the recommendations of the commissioners as a council decision.
- 12 If adopted as a Council decision the decision will be notified under clause 10 and 11 of the RMA. Once a decision is notified the rules would have legal effect. A person who made a submission on the variation may appeal the decision to the Environment Court within 30 working days of service of the notice of decision.
- 13 Option 1 Accept the Commissioner's Recommendation
- Advantages:*
- a. The plan change has been through a thorough process under Schedule 1 of the RMA. Commissioners were qualified decisions makers with the benefit of reviewing submissions and further submissions, hearing expert evidence from submitters, and Council staff in the form of an officer's recommendation. It is considered the Commissioners have reached a robust recommendation.
 - b. The submissions and hearing process gave people the opportunity to either support or oppose the proposal and be heard in relation to their submissions.
 - c. Would advance the plan change towards being made operative.

Disadvantages:

- a. None – Council appointed the Commissioners to hear and make recommendations on the submissions received.
- 14 Option 2 Reject the Commissioners recommendations in full or in part and rehear submissions on that aspect of the variation to the PDP.

Advantages:

- a. Would allow Council to appoint new Commissioners to re-hear submissions on any aspect of the recommendation it was unhappy with. It would allow Council to clearly signal concerns with the decisions or the process of deciding submissions without being drawn into the merits of the decisions or submissions.

Disadvantages:

- a. Because the Council has not heard the evidence presented at the hearing or read the submissions on Stage 3 and 3B of the PDP, a new hearing would be required. This will impose significant additional costs and time delays on all parties.
 - b. A rehearing would be required because changing the recommendations without undertaking a further hearing would not demonstrate procedural fairness or natural justice to those who have inputted into the process, and submitters who have participated in good faith.
 - c. Additional Council, applicant and submitter resources will be required to rehear the relevant aspects of the PDP which may not be the most efficient remedy, given that parties unhappy with the decisions or process can appeal to the Environment Court on a de novo basis (which means to start at the beginning).
- 15 This report recommends **Option 1** for addressing the matter as it provides the most advantages without any disadvantage. This would allow for a timely and efficient decision on the variation.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 16 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because the proposal represented a small shift in policy, which affected discrete areas of the district.
- 17 The community has had the opportunity to submit on the Variation through the notified plan change process and submissions and further submissions were received. A public hearing was also held. The Commissioners considered these submissions and hearing appearances within their recommendations.

> MĀORI CONSULTATION | IWI RŪNANGA

- 18 The Council has undertaken consultation with Mana whenua as required under clauses 3 & 4 of Schedule 1 the RMA. No feedback was received in relation to the Variation.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 19 This matter relates to the Community & Wellbeing risk category. It is associated with RISK00056 Ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a moderate inherent risk rating.
- 20 The approval of the recommended option will support the Council by allowing us to implement additional controls for this risk. This shall be achieved by adopting the decision of the Hearing Panel who heard all the evidence before them and made a recommendation based upon that evidence.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 21 There are no budget or cost implications that would arise from adopting the decision in line with Option 1.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

- 22 The following Council policies, strategies and bylaws were considered:
- Proposed District Plan: in that the variation directly relates to its provisions [Proposed District Plan \(qldc.govt.nz\)](https://www.qldc.govt.nz/Proposed-District-Plan)
- 23 The recommended option is consistent with the principles set out in the named policy/policies.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

- 24 The process for dealing with plan changes is set out in the First Schedule of the Resource Management Act 1991. This includes a requirement for decisions on submissions to be issued within two years.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

- 25 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 making the decision in a timely fashion;

- Can be implemented through current funding under the Ten 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.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Hearings Panel Recommendation Report
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