

QLDC Council

2 June 2022

Report for Agenda Item | Rīpoata moto e Rāraki take: [2]

Department: Property & Infrastructure

Title | Taitara: Consultation on proposal to reclassify portions of two recreation reserves to local purpose reserves for the Arterials project

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to consider notifying the proposal to reclassify portions of two recreation reserves to local purpose reserves.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 The Queenstown Arterials project, a long intended project of the Council's, has secured a designation and consents through the Fast-Track Consenting legislation. Funding for the first portion of this project has also been secured under the "shovel ready project" funding from Central Government and construction contracts have been let.
- 3 Part of the Arterial road runs through two recreation reserves vested in Council. Portions of these reserves are required to allow the route to be constructed. To enable the project to proceed, it is proposed that Council reclassifies portions of these two recreation reserves to local purpose reserves. This report recommends that Council notifies this proposal and consults with the Commissioner (as defined under the Reserves Act 1977) about the proposal.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Agree** to consult the "Commissioner" (as defined under the Reserves Act 1977¹) about the proposal to reclassify portions of the following two recreation reserves to local purpose reserves (the proposed local purposes are specified below):
 - a. Esplanade Reserve: "recreation, and roading and related purposes"; and
 - b. Ben Lomond (One Mile Roundabout) Reserve: "roading and related purposes";
3. **Authorise** the General Manager Property & Infrastructure to consult with the Commissioner;

¹ The "Commissioner" is defined in s 2 of the Reserves Act as "an officer designated by the Director-General for the purposes of this Act". The "Director-General" means the Director-General of Conservation.

4. **Agree** to publicly notify the proposal to reclassify portions of the following two recreation reserves to local purpose reserves (the proposed local purposes are specified below):
 - a. Esplanade Reserve: “recreation, and roading and related purposes”; and
 - b. Ben Lomond (One Mile Roundabout) Reserve: “roading and related purposes”; and
5. **Authorise** officers to publicly notify the proposal.

Prepared by:



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12/05/2022

Reviewed and Authorised by:



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General Manager Property and
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12/05/2022

CONTEXT | HOROPAKI

- 4 The Queenstown Arterials project is required to address traffic and congestion in the Queenstown town centre as well as improve pedestrian safety and town centre amenity. These issues have been identified in a number of strategies and studies since the early 2000s, including the 2005 FutureLinks Transport and Parking Strategy, 2008 and 2014 Inner Links Study and 2017 Queenstown Town Centre Masterplan Town Centre Arterials indicative business case.
- 5 On 17 December 2020, Council applied under the COVID-19 Recovery (Fast-track Consenting) Act 2020 to designate the corridor of the proposed Town Centre Arterial road and sought resource consents for specific activities associated with it. On 16 April 2021, the Expert Consenting Panel approved the notice of requirement and associated resource consents. The resource consents commenced on 11 May 2021, after expiration of the appeal period.² The designation is operative in the Operative District Plan and the Proposed District Plan.³

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 6 As part of the Arterials project, portions of the following two recreation reserves are required to construct the road (including the 5m-wide shared path, retaining walls and batters, and the construction laydown area):
 - a. Part Section 109 Blk XX Shotover SD, part OT109/294 – referred to as the Esplanade Reserve; and
 - b. Part Section 110 Blk XX Shotover SD, part OT109/294 – referred to as the Ben Lomond (One Mile Roundabout) Reserve.
- 7 The proposed portions of these reserves required for the Arterials project are shown in **ATTACHMENT A**. Some further refinement of the area required may turn out to be possible and it is therefore anticipated that the final plans to identify the area to be reclassified will be determined in consultation with Council’s Parks and Reserves team.

Designation

- 8 A designation is a provision in a district plan that authorises a requiring authority’s work and activity on a site, area or route without the need for land use consent from the relevant territorial authority. It can be viewed as a form of ‘spot zoning’ over a site, area or route in a district plan and functions as a planning permission. A designation does not give a requiring authority the ability to access the property and construct a public work in the property law sense.

² Resource Management Act 1991, s 116.

³ COVID-19 Recovery (Fast-track Consenting) Act 2020, sch 6 cl 41.

- 9 The Arterials project has been designated and, as mentioned above, is operative in Council's Operative District Plan and Proposed District Plan. This designation is shown by the blue lines on the plans in **ATTACHMENT A**.
- 10 While this designation enables the Arterial project without any further land use consents, it does not remove Council's obligations under the Reserves Act. This means that even though the above two reserves are situated within the Arterials designation, Council still must administer these reserves consistently with their current classification. However, the reserves' current recreation classifications and the Arterial road are inconsistent with each other.

Reserve Act Classifications

- 11 All land administered as a reserve under the Reserves Act are assigned a classification (that determines the primary purpose of the reserve) in order to ensure the appropriate control, management and development, use and preservation for the reserve.
- 12 A "recreation reserve" is an area of land possessing open space and outdoor recreational values.⁴ This includes providing areas for:⁵
- a. recreation and sporting activities;
 - b. the physical welfare and enjoyment of the public; and
 - c. the protection of the natural environment and beauty of the countryside.
- 13 The primary objectives for the management of a recreation reserve are to allow the public freedom of entry and access, subject to such conditions as are necessary for the protection and wellbeing of the reserve, for the protection and control of public using it, and to conserve the reserve values. The Reserves Act's provisions relating to the use of recreation reserves confine that use to recreation-related activities and are relatively prescriptive, preventing construction of an arterial road.
- 14 A "local purpose reserve" is an area of land suitable for a special local educational or community purpose.⁶ The land is typically a discrete, modified area. The objectives for management of a local purpose reserve are determined by the purpose and can prohibit public access to the whole or any part of the reserve. Roading and associated purposes are permitted purposes for a local purpose reserve.

Reclassification – Reserves Act 1977

- 15 Under s 24 of the Reserves Act 1977, a territorial authority, by notice in the Gazette, can reclassify a reserve. In order for the Arterials to be built and used as road, portions of the two recreation reserves need to be reclassified as local purpose reserves. Portions of

⁴ Reserves Act 1977, s 17(1).

⁵ Reserves Act 1977, s 17(1).

⁶ See s 23 of the Reserves Act.

these reserves need to be reclassified from recreation reserve to local purpose reserve because this land is required for the Arterial road and associated shared path.

- 16 The specific local purpose that is sought for each of the reserves is as follows:
- a. Esplanade Reserve: “recreation, and roading and related purposes”; and
 - b. Ben Lomond (One Mile Roundabout) Reserve: “roading and related purposes”.
- 17 It is permissible for local reserves to have more than one purpose.⁷ The Esplanade Reserve needs to have more than one local purpose because a temporary construction laydown areas is situated on this reserve, however this area may be able to used for recreation purposes once the Arterial route has been constructed.
- 18 Unfortunately the temporary uses and leases available for Recreation Reserves under ss 53 and 54 of the Reserves Act are insufficient to authorise the use of the areas temporarily required during construction of the road. These areas are thus also proposed to be reclassified. Once construction of the road is complete, areas outside the roading infrastructure per se (carriageway, footpaths, bus shelters etc) could be again repurposed if this was considered beneficial.
- 19 When construction of the Arterial route has been completed, Council then has two options for how to administer the portions of the reclassified reserve that was not used permanently for the road:
- a. it could continue to administer them as local purpose reserves (with the specific purpose being recreation and, roading and related purposes); or
 - b. it could go through the reclassification process again to reclassify these portions back to recreation reserves.

Esplanade Reserve

- 20 The Esplanade Reserve is vested in Council as a recreation reserve.
- 21 Council needs to reclassify a portion of the land between Thompson Street and Lake Esplanade (the required area is marked as A31). This land slopes sharply from Thompson Street to the Lake Esplanade. Parts of the Queenstown Immigration Barracks are situated on the Esplanade Reserve adjacent to Lake Esplanade. As part of the Arterials designation, the potential effects of this work were evaluated. If in fact there is an actual or potential effect on an archaeological site, an archaeological authority will be sought. A31 comprises dense vegetation, both native and exotic, with no formal paths for recreation purposes. The vegetation height ranges from shrubs to mature trees greater than 20m high. The trees are a mix of planted amenity trees and some Douglas Fir trees. It is this upper section that is required for the Arterial road (as well as the flexibility of the alignment), earthworks associated with the road, and the construction laydown area.

⁷ *Friends of Turitea reserve Society Inc v Palmerston North City Council* HC PMN CIV-2006-454-879 25 July 2007.

- 22 The proposed reclassification process will not itself impact any trees on A31, however it is acknowledged that future works associated with the construction of the Arterial road, and authorised under the RMA by the Arterial designation, will impact on existing trees. Council will apply its District Tree Policy in terms of tree evaluation and replanting.

Ben Lomond (One Mile Roundabout) Reserve

- 23 The One Mile Roundabout forms part of the wider Ben Lomond Recreation Reserve and is administered under the Ben Lomond and Queenstown Hill Reserve Management Plan 2005 (currently under review). It is vested in Council as a recreation reserve and is categorised as a “natural reserve”⁸ under the Parks and Open Spaces Strategy 2017.
- 24 Council needs to reclassify two areas of the land to the west of the Fernhill Road / Glenorchy-Queenstown Road / Lake Esplanade roundabout (the required areas are marked as A29 and A28).
- 25 The area marked A29 is located within the Ben Lomond Reserve. The vegetation in A29 is dense, and comprises predominantly native species, with some large mature beech trees up to 20-30m in height and a few large Douglas Fir trees. The One Mile powerhouse walk is just outside this area and there is a well-used walking and cycling trail passing through the upper portion of this area.
- 26 The area marked A28 is a dense piece of vegetation that sits on the slope between Glenorchy-Queenstown Road and Fernhill Road. Native vegetation, comprising flax, tussock and kanuka are present. The maximum height of the vegetation is approximately 3m. Barricades along the roadside prevent this area being utilised by the public.
- 27 The land marked A29 and A28 is required to construct the Arterial road as well as the batter, and to enable flexibility for construction of the road and batter.
- 28 The proposed reclassification process will not itself impact any trees on A31, however it is acknowledged that future works associated with the construction of the Arterial road, and authorised under the RMA by the Arterial designation, will impact on existing trees. Council will apply its District Tree Policy in terms of tree evaluation and replanting.

Options

- 29 Option 1 Council accepts to consult with the Commissioner regarding the proposal to reclassify portions of the two recreation reserves and to notify the proposal to reclassify portions of the two recreation reserves to local purpose reserves.

Advantages:

⁸ A natural reserve is a reserve or open space that might only partly be developed but contains a natural feature/s such as native bush, a lake edge, river or mountain view. It is usually a large reserve or open space that provides for informal recreation. These areas may have high Kāi Tahu values as they are adjacent to lakes and rivers, or offer views towards significant mauka, may have ecological values and/or provide access to our unique landscapes. They offer diverse recreation opportunities such as biking, walking, water activities and providing connections with nature.

30 Enables the Arterials project to be constructed and become operational in a timely fashion.

31 Ensures safe vehicle passage, adequate pedestrian and cyclist amenity, and adequate footpath widths.

Disadvantages:

32 The portions of the two reserves will not be used for their current recreation purpose.

33 The public will be prevented from accessing these reserves while the Arterial route is being constructed.

34 Option 2 Council declines to consult with the Commissioner regarding the proposal to reclassify portions of the two reserves and to notify the proposal to reclassify portions of the two recreation reserves to local purpose reserves.

Advantages:

35 The portions of the two reserves will be used for their current recreation purpose.

Disadvantages:

36 Would not enable the Arterials project to be constructed and operational in the manner approved by the EPA.

37 Would not ensure safe vehicle passage, adequate pedestrian and cyclist amenity, and adequate footpath widths.

38 This report recommends **Option 1** for addressing the matter because reclassifying portions of these two reserves to local purpose reserves enables the Arterials project to provide important pedestrian and cyclist amenity while leaving the remainder of the reserves available for their current purpose. The proposed reclassification process will not undermine the effective use and viability of the remainder of the two reserves that are not reclassified.

39 This option does not intrude upon any private landowner's existing rights or arrangements.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

40 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because:

- a. affected individuals and organisations in the community have had the opportunity to participate in the approval of the designation and consents through the Fast-track Act process;

- b. the project is required to achieve Council’s existing policy and strategies;
 - c. the decision is required to give effect to the Councils objectives set out in documents such as the Infrastructure Strategy and Long Term Plan;
 - d. the project is aligned with the Council’s Climate Action Plan; and
 - e. mana whenua have been consulted in the course of preparing the project for fast-track consenting.
- 41 The Council’s Special Consultative Procedure (**SCP**), as specified in the Council’s Significance and Engagement Policy (**SEP**), provides the formal process that enables the community to have a say on significant decisions. The SCP does not need to be undertaken because the two reserves are not significant strategic assets under the Council’s SEP.
- 42 Although the SCP does not need to be followed in regards to reclassifying the two reserves, there are consultation requirements under the Reserves Act that need to be followed. The portions of the above two reserves can only be reclassified after Council consults with the “Commissioner” and publicly notifies the proposal. The “Commissioner” is defined in s 2 of the Reserves Act as “an officer designated by the Director-General for the purposes of this Act”. The “Director-General” means the Director-General of Conservation.⁹ This will enable all those affected by the reclassification to have a right of objection. This agenda item is seeking Council’s approval to commence this consultation process.
- 43 It is noted that Council has already undertaken significant public consultation in regards to the wider Arterials project.
- 44 Since 2008, Council has undertaken substantial consultation with a variety of stakeholders and interested parties including tangata whenua, Government and local government agencies, local residents and landowners. The types of consultation undertaken by the Council included public open days, letters, stakeholder workshops and meetings, public online survey, advisory groups, education campaigns, and landowner meetings.
- 45 The documents and business cases that were consulted on include:
- a. the “Future Links” transportation study in 2005;
 - b. the Inner Queenstown Transportation Study – Final Scoping Report in 2008;
 - c. the Queenstown Inner Links Business Case in 2014;

⁹ Council consulted with the Department of Conservation in regards to obtaining the designation for the Arterials project. Council has not consulted with the Department of Conservation in regards to this specific proposal to reclassify portions of these reserves. However, as part of the statutory consultation process in the Reserves Act, Council will consult with a “Commissioner” who has been appointed by the Director-General of Conservation. The Department of Conservation does not have any statutory ability to receive compensation for the reclassification of these recreation reserves to local purpose reserves.

- d. the Queenstown Town Centre Masterplan in 2018;
 - e. the Frankton to Queenstown Single Stage Business Case in 2019;
 - f. the Queenstown Town Centre Detailed Business Case in 2019;
 - g. the Way To Go Detailed Business Case in 2018-2020; and
 - h. the Arterials Designation and resource consent applications in 2020.
- 46 Formal consultation on the Queenstown Town Centre Masterplan was undertaken in March 2018 and focussed on the masterplan programme which included the Arterial Route following refinements from stakeholder and investment partners' feedback.
- 47 Consultation undertaken for the Arterials designation with affected parties and included both residential and commercial properties). This included an overview of the project, fast-track consent process and Stage 1 commencement date. Meetings were also held with representatives of the Wakatipu Rugby Club and the Queenstown Squash Club.
- 48 **ATTACHMENT B** is a detailed summary of the consultation and engagement activities that were undertaken for the Arterials project.¹⁰

> MĀORI CONSULTATION | IWI RŪNANGA

- 49 Iwi was consulted on the wider Town Centre master planning and considered that the project as a whole would contribute to health and wellbeing and encourage cycling and walking. Iwi also highlighted that Māori cultural landscaping should be considered in the streetscape design and that iwi could be included in the design of any art installations along the route.
- 50 The Fast-track consenting process again required further engagement with iwi. Te Ao Marama prepared a cultural impact statement as required by the legislation, and their involvement in refinement of the project design was meaningful and very valuable. The Council made a number of changes to its initial design to accommodate expressed concerns, particularly in relation to the potential for effects on Horne and One Mile Creeks. Iwi organisations did not make any subsequent comment on the application to the Expert Consenting Panel.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 51 This matter relates to the Community & Wellbeing risk category. It is associated with RISK00009 and RISK00012 within the QLDC Risk Register. These risks have been assessed as having a high inherent risk rating. This matter relates to these risks because the decision is necessary to allow construction of the Arterials to proceed.

¹⁰ Queenstown Arterials Application and Notice of Requirement, Appendix 9 Consultation Summary Report, see https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Queenstown-arterials/LP17_Appendix_9_Consultation_Summary_Report.pdf

52 The approval of the recommended option will support the Council by allowing us to retain the risk at its current level. This shall be achieved by ensuring construction of the Arterials in the way approved by the Expert Consenting Panel after consideration of the application and comments from the community can proceed.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

53 The applicant will pay for the project management and costs associated with reclassifying these two reserves.

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

54 The following Council policies, strategies and bylaws were considered:

- Significant & Engagement Policy 2021;
- District Tree Policy 2010;
- Long Term Plan; and
- Infrastructure Strategy.

55 The recommended option is consistent with the principles set out in the named policy/policies.

56 This matter is included in the Ten Year Plan/Annual Plan in the Transport section.

57 The Parks and Opens Spaces Strategy 2017 is noted. However as it acknowledges, it does not contain policies to evaluate encroachments of public infrastructure into parks and reserves.

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

58 Council has the ability to reclassify reserves under s 24(1)(b) of the Reserves Act. Section 24 of the Reserves Act states:

- (1) Subject to section 13(2), where—
- (a) the Minister considers for any reason that a change of classification or purpose of the whole or part of any reserve is advisable or that the reservation of any land as a reserve should be revoked; or
 - (b) the **local authority** within whose district a reserve is situated or the administering body of any reserve **notifies the Commissioner in writing that, pursuant to a resolution of the local authority** or of the administering body, as the case may be, **it considers for any reason**, to be stated in the resolution, **that the classification or purpose of the whole or part of the reserve should be changed to another classification or purpose**, or that the reservation of the whole or part of the land as a reserve should be revoked,—

then, subject to the succeeding provisions of this section, the **Minister may, in his or her discretion, by notice in the Gazette, change the classification or**

purpose of the whole or part of the reserve, which thereafter shall be held and administered for that changed classification or purpose, or revoke the reservation of the whole or part of the land as a reserve:

...

(2) Before any classification or purpose is changed or any reservation is revoked pursuant to subsection (1),—

- (a) where subsection (1)(a) applies and there is an administering body of the reserve, the Commissioner shall notify the administering body in writing as to the Minister’s reasons for considering that a change of classification or purpose is advisable or, as the case may be, that the reservation should be revoked, and shall invite the administering body to comment thereon in writing to the Commissioner:
- (b) the **administering body of the reserve after consulting the Commissioner**, or the Commissioner if there is no administering body, **shall publicly notify the proposed change of classification or purpose** or proposed revocation of reservation, as the case may be, **specifying the reason or reasons for the proposal**:
- (c) **every person claiming to be affected by the proposed change of classification** or purpose or revocation **shall have a right of objection to the change** or revocation, and may, **at any time within 1 month after the date of the first publication of the notice of the proposal, give notice in writing of his or her objections to the proposed change** or revocation and of the grounds thereof to the Commissioner if there is no administering body, and **to the principal administrative officer or chief executive of the administering body in any other case, who shall forward all such objections to the Commissioner with a copy of the resolution of the administering body in relation to those objections, after the administering body has considered those objections**:

provided that, where the date of the first publication of the notice of the proposal falls between the period commencing with 10 December in any year and ending with 10 January in the next succeeding year, notice of objection to the proposed change or revocation may be given at any time before 10 February next following that period:

...

- (e) **the Minister shall as soon as practicable consider the proposed change of classification** or purpose or revocation **and all objections received thereto and, in the case of objections made to an administering body, the resolution of the administering body thereon**, and, in any case where paragraph (d) applies, the attitude of the administering body to the proposal:
- (f) the Minister shall have power to receive such submissions and make such inquiries as he or she thinks fit on the proposal:
- (g) the procedure to be followed by the Minister in any matter arising under this section shall be as prescribed in regulations made under this Act or, where there are no such regulations or so far as the regulations do not extend, as the Minister determines:

- (h) any person who does not lodge an objection in accordance with this subsection shall be deemed to have assented to the change of classification or purpose or the revocation of reservation set forth in the public notification.

...

59 The Minister's powers to reclassify a reserve and consider objections to a proposed reclassification under ss 24(1), 24(2)(e) and 24(3) have been delegated to Council.¹¹ This means that under s 24(1) of the Reserves Act, Council (as the local authority who administers the reserve) can reclassify the two recreation reserves to local purpose reserves.

60 In order to be able to reclassify these reserves, Council needs to:

- a. Notify the Commissioner regarding the proposal to reclassify the two reserves.¹² The "Commissioner" is defined in s 2 of the Reserves Act as "an officer designated by the Director-General for the purposes of this Act". The "Director-General" means the Director-General of Conservation.
- b. After consultation with Commissioner, Council must publicly notify the proposed reclassification, specifying the reasons for the proposal.¹³ All those affected by such a change have a right of objection.¹⁴ After the first publication of the proposal notice, they have a one month period to make a submission.
- c. As soon as possible after that, Council (acting on delegated authority from the Minister) must consider any objections to the proposed change.¹⁵ The Council must consider all objections properly lodged before making a decision.
- d. After considering any objections received, Council (acting on delegated authority from the Minister) may reclassify the two reserves by notice in the Gazette.¹⁶

61 Legal advice has been sought in relation to the relevant Acts and the recommended option is consistent with that advice.

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

62 Section 10 of the Local Government Act 2002 states the purpose of local government is:

- a. to enable democratic local decision-making and action by, and on behalf of, communities; and

¹¹ Reserves Act 1977 Instrument of Delegation (12 June 2013).

¹² Reserves Act, s 24(2)(b).

¹³ Section 24(2)(b).

¹⁴ Section 24(2)(c).

¹⁵ Section 24(2)(e).

¹⁶ Section 24(1).

- b. to promote the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

63 Approval of the recommendation will enable efficient and timely construction of the consented and designated Arterials route, which has been the subject of significant public consultation and comment.

64 The recommended option:

- 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	Plans
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