

QLDC Council
8 October 2020**Report for Agenda Item | Rīpoata moto e Rāraki take 2****Department: Planning & Development****Title | Taitara Ratification of Hearing Panel's recommendation on submissions on Stage 3 variation to Chapter 30 Energy and Utilities of the Proposed District Plan.****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

- 1 The purpose of this report is to provide the report and recommendations on submissions for the variation to Chapter 30 Energy and Utilities as part of Stage 3 of the District Plan review and to seek ratification as a Council decision. A resolution from Council is sought to notify a decision on the Chapter 30 variation 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 Stage 3 Hearings Panel report and recommendation on submissions on the variation to Chapter 30 Energy and Utilities and Chapter 2 Definitions of the Proposed District Plan as a Council decision and direct staff to notify the decision in accordance with the First Schedule of the Resource Management Act 1991;
3. **Direct** staff to alter the Proposed District Plan provisions to reflect the recommendation chapters;
4. **Note** that adopting the reports and recommendations as the Council decision means the Council also adopts the Stage 3 Hearings Panel reasons for those decisions as set out in the report; and
5. **Note** that adopting the reports and recommendations, as the Council's decision does not mean Council has formed a view on possible future variations or other possible future decisions mentioned in the report and recommendation.

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CONTEXT | HOROPAKI

- 2 Stage 3 of the District Plan review included a variation to Chapter 30 Energy and Utilities of the Proposed District Plan (**PDP**). In summary this variation sought to:
 - insert a range of permitted and controlled activity rules for water, wastewater, stormwater and other utilities;
 - introduce a new objective, policies and rules to manage natural hazard mitigation works;
 - clarify which rules apply in situations where the rules intersect with other chapters; and
 - vary the definition of Regionally Significant Infrastructure having regard to the Proposed Regional Policy Statement for Otago.
- 3 Due to the discrete nature of the variation to Chapter 30 and the potential for the amended provisions to assist the consenting of a large programme of planned water, wastewater and stormwater infrastructure and Covid recovery initiatives, the Panel have released their recommendations on the Chapter 30 variation ahead of the rest of the Stage 3 recommendations. The balance of the recommendations are expected to be received before Christmas in 2020, which will allow for the rest of the Stage 3 decisions to be released in early 2021.
- 4 The variation to Chapters 2 and 30 addressed four issues relating to Chapter 30, as follows;
 - a. **Issue 1:** The definition of ‘Utilities’ in the PDP includes activities that are not otherwise provided for in the rule framework. This means that anticipated activities fall as a discretionary activity through Rule 30.5.1.8. The variation identified a range of rules for general utility activities. Pipelines and works for gas, water (including irrigation), wastewater, and pump stations for water, wastewater and storm water as permitted activities with aboveground pipework as a restricted discretionary activity. Stormwater detention/retention ponds or stormwater wetlands were proposed as a controlled activity.
 - b. **Issue 2:** Rule 30.3.3.3 states that the rules in Chapter 30 take precedence over other rules in the PDP, except earthworks (Chapter 25) and Heritage (Chapter 26). Council officers identified that the rules in Chapter 30 should not prevail over rules in other PDP chapters that manage other important resources, and the following were added to Rule 30.3.3.3; protected trees (Chapter 32), indigenous vegetation and biodiversity (Chapter 33), Significant Natural Areas, temporary activities and relocated buildings (Chapter 35), Noise (Chapter 36) and Wāhi Tūpuna (Chapter 39). New provisions 30.3.3a and 30.3.3b were added to clarify the relationship between roads and airports and Chapter 30 Energy and Utilities.
 - c. **Issue 3:** Natural Hazard mitigation works are a utility and while Chapter 25 (Earthworks) provides for earthworks associated with natural hazard mitigation works, including recognition of the functional need for these activities to locate

within sensitive environments, Council officers identified that better recognition should be given in Chapter 30 for natural hazard mitigation activities, because natural hazard mitigation works are a utility, as defined. The variation proposed objectives, policies that contemplate natural hazard mitigation works and structures within sensitive environments, and rules that require a discretionary consent for natural hazard mitigation, with maintenance, repair or replacement of these activities permitted.

- d. **Issue 4:** Policy 4.3.2 of the Partially Operative Regional Policy Statement for Otago (PORPS) identifies what is ‘regionally significant infrastructure’ (**RSI**) to the Otago region, and as a result of amendments to PORPS Policy 4.3.2 (made as a consequence of appeals on the Regional Policy Statement), municipal infrastructure is now included as RSI. To ensure the PDP is consistent with and gives effect to PORPS Policy 4.3.2, the variation added a definition of municipal infrastructure to Chapter 2 of the PDP and included municipal infrastructure as part of the definition of regionally significant infrastructure.
- 5 There were a total of 35 submissions points on the variation. Hearings for Stage 3 commenced 29 June 2020 and concluded on 13 August 2020. Stage 3 Hearings Panel (**the Panel**) members Trevor Robinson (Chair), Sarah Dawson, Greg Hill and Calum Macleod, heard the Chapter 30 variation. The Panel have heard submissions on the variation and considered written and oral evidence.
- 6 The majority of submissions on the variation were supportive, with only minor amendments requested by submitters. The Council officers hearing report recommended minor amendments to some provisions and these were accepted by the Hearing Panel. A more substantive change was the matter of potential bird strike from stormwater ponds or wetlands in proximity to airports, which was raised through a submission by Queenstown Airport Corporation (**QAC**). The Council officers report agreed in part with the QACs submission, as did the Hearings panel, and a new restricted discretionary activity rule was added for stormwater ponds in proximity to the Queenstown and Wānaka airports, with adoption of the airport approach and protection measures figures to define these areas.
- 7 The Panel have recommended that the variation be accepted, subject to minor changes to wording, insertion of cross-referencing and renumbering of provisions, as set out in Appendix B.
- 8 It is noted that some further amendments to Chapter 30 have been proposed through Stage 3 Stream 16 Wāhi Tūpuna. These are separate to the variation set out above. The Panel consider the recommendation for this variation does not impact or direct any decision in relation to the matters raised in the Stream 16 wāhi tūpuna variation to Chapter 30.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 9 The status quo is not considered a viable option as a decision to adopt the recommendation or require them to be reheard is required.

- 10 Option 1 Accept the recommendation to adopt the Panel's report and recommendation on the Stage 3 variation to Chapter 30 of the Proposed District Plan as set out in Attachments A as the Council decision.

Advantages:

- 11 The variation has been through a First Schedule process. The Hearings Panel was comprised of experienced commissioners, who had the benefit of submissions and further submissions, as well as assistance (in the form of an officer's recommendation), legal submissions and a range of expert evidence to reach a robust decision.
- 12 Adopting the recommendations will progress the provisions and should no appeals be received, the rules would be beyond challenge and a range of infrastructure proposals could be subject to a single set of plan controls. The primary benefit of this will be enabling some of the general utility activities that have been better enabled, and where permitted, a resource consent would no longer be required. This would benefit utility projects within the district, which could have positive impact in terms of Covid-19 recovery within the District.
- 13 These changes to Chapter 30 are self contained and will not affect other appeals or decisions on other parts of Stage 3.

Disadvantages:

- 14 Notification of more than one decision on Stage 3 will be required.
- 15 Option 2 Wait for all reports and recommendations on Stage 3 of the District Plan Review.

Advantages:

- 16 Potential that only one notification of decisions on Stage 3 would be required.

Disadvantages:

- 17 There would be further delay in these rules having legal effect. The balance of the deliberations for Stage 3 are underway, however, due to the scale of matters traversed these are expected to take months.
- 18 Option 3 Reject the Panel's recommendations and re-hear submissions.

Advantages:

- 19 This would allow Council to appoint new Commissioners onto a Panel to re-hear submissions on aspects of the decision that it was not happy about.

Disadvantages:

- 20 All submissions, Council officer recommendations and evidence would need to be reheard, requiring additional Council and submitter resources. To change

recommendations without undertaking a further rehearing would not demonstrate procedural fairness or natural justice to those who have inputted into the processes and submitters who participated in good faith.

- 21 This report recommends **Option 1** for addressing the matter as it has the most advantages with limited disadvantages.

22 CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 23 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because utilities, and recognising natural hazard mitigation affects the whole District .
- 24 The persons who are affected by or interested in this matter are the community, and more specifically utility providers, including Council.
- 25 The submissions and hearing process gave the public and interested and affected parties the opportunity to either support or oppose the proposals contained within the PDP and be heard in relation to their submissions.

> MĀORI CONSULTATION | IWI RŪNANGA

- 26 The Council has undertaken consultation with Kā Rūnaka as part of policy development. No direct comment was received in relation to this aspect of the Stage 3 variation to Chapter 30.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 27 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. This risk has been assessed as having a moderate inherent risk rating. The approval of the recommended option will support the Council by allowing it to implement additional controls for this risk.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 28 There are no budget or cost implications resulting from the decision.

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

- 29 The following Council policies, strategies and bylaws were considered:

- The Proposed District Plan
- The Partially Operative Otago Regional Policy Statement 2019

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

31 This matter is not included in the Ten Year Plan/Annual Plan

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

32 The process for dealing with plan changes is set out in the First Schedule of the Resource Management Act 1991.

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

33 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	Report and Recommendations of Hearings Panel – Stage 3 variation to Chapter 30
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