

QLDC Council  
16 September 2021

Report for Agenda Item | Rīpoata moto e Rāraki take 2

Department: Planning & Development

Title | Taitara Decisions on Submissions to Proposed District Plan Stages 3b Walter Peak Zoning

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

---

- 1 The purpose of this report is to provide the report and recommendations of the independent Commissioners on submissions and further submissions on the zoning and provisions of the Proposed District Plan that make up Stages 3b (Walter Peak Zoning) of the district plan review and to seek ratification as a Council decision.
- 2 A resolution from Council is sought to notify a decision on Chapter 46 Rural Visitor Zone as it relates to the zoning at Walter Peak and the related site specific provisions 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 Independent Commissioners report 20.7A (Walter Peak Zoning) and recommendations (section 8) on the submissions as the Council's decision and direct staff to notify the decision in accordance with Clause 10 and 11 of the First Schedule of the Resource Management Act 1991;
3. **Direct** staff to alter the provisions within Chapter 46 (Rural Visitor Zone) of the Proposed District Plan and the mapping application as it relates to the Walter Peak Zoning to reflect the Independent Commissioners' recommended zoning and provisions, to correct minor errors and to 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 report and recommendations on submissions as the Council's decision means the Council also adopts the independent hearing panel's reasons for those decisions on submissions as set out in the recommendation report; and
5. **Note** that adopting the report and recommendations as the Council's decision does not mean Council has formed a view on possible future variations, possible withdrawal of areas of land from the current review and other possible future variations mentioned in the reports and recommendations.

Prepared by:



Elias Matthee  
Senior Policy Planner

24/08/2021

Reviewed and Authorised by:



Tony Avery  
GM Planning & Development

8/09/2021

## CONTEXT | HOROPAKI

---

### Context and background

1. The Walter Peak Zoning forms part of Stage 3b of the staged District Plan review. It was notified for four weeks in November 2019 as Stage 3b, under Chapter 46 (Rural Visitor Zone) of the Proposed District Plan (PDP). Chapter 46 includes provisions addressing visitor developments in remote rural areas.
2. Stage 3b of the PDP was covered in the Council Agenda report of 18 March 2021 and the decision of Council to adopt the hearing panel's recommendation report was notified on 1 April 2021. This included the balance of the Rural Visitor Zones (RVZ). Wayfare is the owner of the Walter Peak site and their submission was heard separately from the balance of the Stage 3 matters, due to the significant impact of Covid-19 on their business and subject to amending their submission to be site-specific and thereby not effecting the rest of the Stage 3b hearing process. A hearing date of 19 April 2021 was envisaged but was vacated and the hearing was held on 22 June 2021 instead.
3. The Council appointed commissioners allocated to the Rural Visitor Zone (RVZ) topic (Hearing stream 19), to hear the submissions and to make recommendations were: Trevor Robinson (Chair), Sarah Dawson, Greg Hill, and Deputy Mayor Calum MacLeod.
4. This decision addresses the zoning of the Walter Peak site and site-specific provisions only and the Hearing Panel's recommendations in Report 2.11 (and the Council's subsequent decisions dated 18 March 2021) in relation to Chapter 46 (RVZ) are not open to review or amendment as part of this process.
5. In accordance with Clause 10 (4)(a) of the First Schedule of the Resource Management Act 1991, the Council has to give its decision and publicly notify the decision no later than 2 years after notification, being 31 October 2021.

## ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

---

6. The Hearings Commissioners have heard the submission on the notified zoning and provisions, considered written and oral evidence and submissions, taken advice from experts, questioned participants, and undertaken a site visit. It should be noted that AirBnB lodged a further submission in support of an aspect of Wayfare's submission but did not seek to be heard in respect of that further submission.
7. Their recommendations are set out in detail in report 20.7 A (Walter Peak zoning – Attachment A). In summary, the hearing panel recommend that the notified RVZ provisions and maps specific to Walter Peak be confirmed subject to a couple of amendments:
  - a. Two new policies and consequential rules to manage natural hazards on the site.
  - b. Extend the RVZ Zone to include the adjacent Beach Bay Recreation Reserve.

- c. Amend the notified area of high landscape sensitivity to show an additional area of moderate-high sensitivity, and a consequential reduction in the area of high landscape sensitivity.
  - d. Amend Rule 46.5.7.2 to substitute “in the Walter Peak Rural Visitor Zone” for “at Walter Peak”.
  - e. Amending the web mapping application of the site to show Hazard Zones, the amended landscape sensitivity areas outlined above and for both the hazard zones and landscape sensitivity mapping to cover the additional zoned area outlined above.
8. It should be noted for context that this recommendation is consistent with the recommendation on the other RVZ sites. In particular, the confirmation of the three-tiered landscape management approach, of identifying areas of high, moderate, and lower landscape sensitivity. Similar submissions seeking to also divert from this approach were similarly declined by the Panel. Some site-specific provisions have been included in the Walter Peak RVZ recommendation, to reflect the specific activities that take place at the site (notably the wharf) and to specifically managed the hazard risk from an alluvial fan.
9. The panel considered a proposed stand-alone Walter Peak Tourism Zone as proposed by Wayfare, but do not recommend it. They also considered, and rejected, the request from Wayfare to issue an interim decision, to provide Wayfare with the ability to engage with Council regarding potential amendments to its proposed Walter Peak Tourism Zone. The reasons for not recommending the Tourism zone and rejecting the request for an interim decision is set out within the report.
10. The recommendation does not constitute a decision under the Resource Management Act. 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. Once the decision is notified the rules would have legal effect.
13. **Option 1** - Accept the Hearing Panel’s Recommendation.

*Advantages:*

- a. The plan change has been through a thorough process under Schedule 1 of the Resource Management Act. 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 in time for the 31 October 2021 deadline under Clause 10 (4)(a) of the First Schedule of the Resource Management Act 1991.

*Disadvantages:*

- a. None – Council appointed the Commissioners to hear and make recommendations on the submissions received.
14. **Option 2** – Reject the Hearing Panel’s recommendations either in full or in part and rehear submissions on this aspect of the PDP.

*Advantages:*

- a. Would allow Council to appoint new Commissioners onto the Panel to re-hear submissions on aspects of the decision 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. In accordance with Clause 10 (4)(a) of the First Schedule of the Resource Management Act 1991, the Council has to give its decision and publicly notify the decision no later than 2 years after notification, being 31 October 2021. Council officers would have to either write to the Minister to apply for a time extension or re-notify the plan change. It is unlikely that a time extension would allow enough time for the parties to prepare and agree to alternative provisions, as Wayfare has indicated that they would need substantial time to prepare a detailed landscape assessment and a structure plan/master plan. Re-notification is therefore more likely, and this will impose significant additional costs and time delays on all parties.
- b. 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.
- c. 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.
- d. 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 is a decision which is consistent with the decisions made by the Independent Panel on the balance of the RVZs.
16. Should this recommendation (Option1) be adopted as the Council's decision, the decision of the Council will be notified, with the statutory Environment Court appeal period to follow.

## CONSULTATION PROCESS | HĀTEPE MATAPAKI:

---

### > SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

17. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because the matter relates to decisions on submissions on the Proposed District Plan, which is a very significant statutory document in terms of the social, economic and environmental wellbeing of the District. However, it only affects a discrete area of the district.
18. 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.
19. The views of persons considered to be affected by this matter have been taken into account in developing the recommended decision and they also have the potential to seek recourse through an appeal to the Environment Court.
20. The 29 August 2021 QLDC Council Report on notification of Stage 3 and 3B of the Proposed District Plan describes the development and content of these provisions and consultation in detail<sup>1</sup>.
21. For a number of these Stage 3 topics Council contacted landowners and community representatives and engaged directly in facilitated conversations with staff and experts. Landowners affected by the Rural Visitor Zone were provided detailed information about the proposals.
22. Following notification, a range of online, print and face to face engagement initiatives were undertaken and a summary "Snapshot" document was sent to all ratepayers, post office boxes, and My Place participants and the district plan submitter database.
23. An enquiries service staffed by rostered duty planners was available for the 40 working day notification period along with a PDP Enquiries email service. Fact sheets were made available online along with FAQ material, explanatory videos, community notice boards, and radio ads.

---

<sup>1</sup> <https://www.qldc.govt.nz/media/cv5hs3zu/3-stage3pdp-notificationdecision-26aug19.pdf>

## > MĀORI CONSULTATION | IWI RŪNANGA

24. Consultation with Iwi authorities required pursuant to Schedule 1, clause 4A of the Resource Management Act was undertaken between 9 July and 28 July 2019, whereby sets of draft provisions were provided to iwi representatives for consideration and comment. The iwi authorities did not request any changes to the draft provisions and did not provide specific comment.

## RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

---

25. 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.

26. The recommended option considered above mitigate the risk by: Treating the risk - putting measures in place which directly impact the risk. The recommended option considered above mitigates the risk by adopting the decision of the Hearing Panel who heard all the evidence before them and made a decision based upon that evidence.

## FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

---

27. 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

---

28. The following Council policies, strategies and bylaws were considered:

- Operative District Plan
- Proposed District Plan

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

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

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

---

31. The process for dealing with plan changes is set out in the First Schedule of the Resource Management Act. This includes a requirement for decisions on submissions to be issued within two years. It is noted here that the 2 year deadline is on 31 October 2021.

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

---

32. 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 (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The recommendation contained in this report seeks to protect environmental values and well-being.

33. The recommended option:

- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council 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
---	--------------------------------------