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Submitted via website

SUBMISSION TO ENVIRONMENT COMMITTEE ON THE RESOURCE MANAGEMENT (CONSENTING AND OTHER MATTERS) AMENDMENT BILL

Thank you for the opportunity to present this submission on the Resource Management (Consenting and Other Matters) Amendment Bill that is currently before the Environment Committee.

The resource management system is the most important tool the Queenstown-Lakes District Council (QLDC) has to protect the natural features that make the district a world class place to visit and live, while also meeting demand for development.

QLDC is supportive of reforming the resource management system to produce a simpler, more efficient and less litigious consenting and plan making process. It is critical that the resource management system supports local authorities, elected members, and communities to make holistic, evidenced-based decisions. With this in mind, QLDC's submission builds on the following key messages:

- Actions to speed up consent processes and reduce the opportunity for litigation are supported in principle but need to be underpinned by strong decision-making criteria to manage any impacts on expectations of natural justice
- Changes to planning documents and processes for the streamlined planning process and heritage need to remain consistent with their intended purposes of faster decision making and protecting heritage
- Amendments to manage natural hazard risks are supported but need to be part of a clear, connected framework for natural hazard management
- Strengthening compliance mechanisms and penalties will act as a stronger deterrent and achieve better outcomes
- Mechanisms for ensuring compliance with national direction exist through Schedule 1 engagement processes and new powers for the Minister are not necessary
- An efficient and effective regime for emergency responses is urgently needed and proposed changes are supported.
- Ensure a bi-partisan approach is taken to the resource management reform programme as cross-party support is needed to create an enduring, efficient, and effective resource management system.

QLDC would like to be heard at any hearings that result from this consultation process. It should be noted that due to the timeline of the process, this submission will be ratified by full council retrospectively at the next council meeting.

Thank you again for the opportunity to comment.

Yours sincerely,

Glyn Lewers
Mayor

Mike Theelen
Chief Executive

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1.0 Context of resource management reforms in relation to QLDC

1.1 The Queenstown-Lakes District (QLD or the district) has an average daily population of 70,205 (visitors and residents) and a peak daily population of 99,220. The district is experiencing rapid growth, and by 2053 the population is forecast to increase to 150,082 and 217,462 respectively[1]. This rapid growth places pressure on the natural environment, infrastructure, and housing availability.

1.2 While meeting the demands of growth and development, it is essential to protect the natural environment that makes the district special. The district is one of Aotearoa New Zealand's premier visitor destinations, with visitors from all over the world enjoying spectacular wilderness experiences, world renowned environments and alpine adventure opportunities. The majority of land within the district is classified as an Outstanding Natural Feature or Outstanding Natural Landscape, and these environmental qualities are a major drawcard for international and domestic visitors.

1.3 Cumulatively, these unique conditions generate significant housing affordability and capacity challenges, which has the potential to adversely affect the social and economic wellbeing of the QLD community. These effects are felt directly (i.e. cost of living challenges for households) and indirectly (i.e. businesses unable to secure long term staff to support their activities).

1.4 To assist in addressing this tension, QLDC has been working collaboratively with the community, Kāi Tahu (as mana whenua of this Rohe), Otago Regional Council and central government partners. This relationship has resulted in the Whaiora Grow Well Partnership and a first-generation Spatial Plan for the district. The Spatial Plan directs growth in a way that will make positive changes to the environment, enable housing development, improve access to jobs, and promote the wellbeing of the community. The concept to 'Grow Well' means to ensure that we build strong resilient and whole communities that meet the goals and needs of its occupants as well as responding to the aspirations of individuals and developers.

1.5 QLDC has been reviewing its operative district plan in stages since 2015. The Proposed District Plan (PDP) represents a considerable step forward in managing the district's complex land use management challenges and aligns well with the Resource Management Act 1991 (RMA's) existing suite of existing national direction instruments. QLDC, along with businesses, Iwi and the community, have invested heavily in the development of the PDP. Council's 2021 Housing Development Capacity Assessment[2] identifies that the district has sufficient plan-enabled capacity to accommodate housing growth that is more than sufficient to meet the projected demand across the short, medium and long term, as required by the National Policy Statement on Urban Development 2020. Further, a range of recently notified variations to the PDP have sought to increase greenfield capacity and up zone residential and commercial areas.

2.0 Consent processes need to be efficient and effective for all involved, from application drafting, through to processing and resolving disputes

2.1 QLDC is supportive of creating a more efficient consenting process. In doing so, it is important to note that the time taken to process consents is minor compared to the impact of litigation on efficiency, effectiveness and costs for local authorities, applicants and other stakeholders. To deliver a more efficient system it is critical that the current litigious environment is addressed through resource management reforms, including by managing dispute resolution and appeal rights. Too often, applications for consent are treated as simply

[1] https://www.qldc.govt.nz/community/population-and-demand

[2] 3a-attachment-a-housing-development-capacity-assessment-2021-main-report.pdf

dry runs for the appeal process, and this undermines the roles of councils and communities in taking responsibility for the future of their communities.

Consent timeframes, duration and lapses

2.2 QLDC **supports** the intent of making it easier to deliver renewable energy generation and long-lived infrastructure projects, and the proposed changes to consent time frames, a default consent duration of 35 years, and longer default lapse periods. The QLD faces significant energy supply (and infrastructure) challenges and renewable energy is a critical part of the solution. A reliable, resilient, sustainable and affordable energy network is necessary to support QLD's growth in resident and visitor populations, as well as to support local business and industry.

2.3 In relation to the proposed one-year consent time frames for specified energy activity consents[3], QLDC **recommends** adding a subclause allowing the processing clock to be stopped at times when the consent authority cannot control timeframes of external stakeholders. As an example, engagement with iwi partners is a critical part of the consent process and sufficient time must be provided for full engagement. Short timeframes may not be realistic or appropriate. The ability to stop the clock should also apply if an applicant does not provide the required information. Without the ability to stop the clock there is a risk that statutory timeframes cannot be met, which will mean a portion of processing fees will be refunded to the applicant (including when the applicant has caused the delay). Ratepayers then bear the cost of the refunded fee, for a delay that was outside the consent authority's control.

2.4 QLDC **recommends** the 35-year default consent period for long-lived infrastructure is applied to municipal infrastructure by including it in the definition of long-lived infrastructure.

Requests for further information

2.5 In relation to requests for further information[4], QLDC **supports** the ability for consent authorities to return incomplete or abandoned applications and **supports** not holding a hearing on a resource consent application unless more information is needed from the applicant or submitters. These proposals will enable greater efficiency in consent processing. QLDC sees merit in the ability to decline an application without a hearing if it has enough information to do so and, in principle QLDC **supports** this amendment. On balance however, QLDC is concerned that this may conflict with community expectations concerning natural justice and could create litigation by way of judicial review applications that will impose further time and cost implications for consent authorities. The Bill should seek to manage these potential implications.

2.6 QLDC is also concerned at the extent of lobbying that occurs by applicants to avoid notification, including extensive and ongoing revisions. Consent authorities should be able to expect to receive comprehensive and complete applications to make notification determinations on, or to reject applications if they are clearly deficient.

Consent conditions and cost recovery for consent reviews due to national direction

2.7 Clause 38 formalises the process for an applicant's request to review draft consent conditions. QLDC **supports** this in principle, but **recommends** a timeframe is set for a response from the applicant. Further, QLDC **recommends** that the clause clearly states the applicant's agreement to draft conditions is not required to grant the application. For efficient and effective outcomes, consent authorities should maintain control of the condition making process. Overall, QLDC considers that the Bill provides insufficient direction for managing disputes between consent authorities and applicants in regard to this matter. QLDC also **supports**

[3] Clauses 29 and 30

[4] Clauses 30-35

the ability to add conditions to consents to mitigate the risk of non-compliance where there is strong justification[5].

2.8 The ability for local authorities to recover costs for consent reviews due to national direction is crucial to ensure costs are not borne by ratepayers. QLDC has a small ratepayer base, and any unrecovered costs are passed onto ratepayers. In an area such as QLD that processes a high number of consents, non-recovered costs could be significant. QLDC strongly supports the ability for consent authorities to fully cost recover fair and reasonable costs from consent applicants as they receive the benefits, including cost recovery for consent reviews due to national direction6. QLDC also considers that consent authorities should have the power to better recover costs in a timely manner, in particular where consents are declined and no effort is made by parties to meet the cost of processing. This should include progressive charging regimes.

Recommendations:

R1. Ensure reforms address the current litigious environment for resource management consenting, including managing dispute resolution and appeal rights.

R2. Add a clause to allow the clock to be stopped on one-year consent timeframes if the process is outside consent authority control.

R3. Amend the definition of long-lived infrastructure to include municipal infrastructure so the 35-year default consent period applies to it.

R4. Consider the impact on natural justice and frequency of judicial reviews of the proposal to grant consent authorities the ability to decide an application without a hearing.

R5. Add a timeframe for applicants to review draft consent conditions.

R6. Add a clause that states the applicant's agreement to draft conditions is not required for the application to be granted.

R7. Provide sufficient direction for managing disputes between consent authorities and applicants in regard to reviewing draft conditions of consent.

3.0 Changes to planning documents and processes for the streamlined planning process, heritage, and natural hazards need to remain consistent with their intended purposes of faster decision making, protecting heritage, and managing natural hazard risk

3.1 The streamlined planning process (SPP) is intended to deliver faster decision making through a plan change process. QLDC **recommends** that any changes made to the SPP are consistent with both the SPP purpose and the Bill's purpose to simplify, streamline and achieve faster decision-making. QLDC is concerned that a number of the Bill's provisions may add additional complexity, resource and time costs to SPP decision-making. In particular, QLDC seeks clarification on how the proposal to allow court appeals[7] on SPP decisions would be consistent with the purpose of the SPP and the Bill's objectives. On balance, QLDC **opposes** the introduction of appeal rights to the SPP in the absence of additional clarification.

[5] Clause 39 amending s108(2)(d)

[6] Clause 10 amending s36(1)(cb)

[7] Part 2, Clause 70 amending s93A

3.2 QLDC does not agree that the SPP is an appropriate mechanism to delist heritage buildings and structures[8] and does not consider that it will better manage outcomes for historic heritage. QLDC therefore **recommends** retaining the status quo and agrees with the option listed in the regulatory impact statement to provide national direction on historic heritage. If part of the intent of the proposal is to accelerate remediation of earthquake prone buildings, QLDC **recommends** that specific wording is included to that effect rather than general amendments that affect all heritage buildings and may result in significant unintended adverse effects for built heritage features.

3.3 Clause 15 amends s70 of the RMA to give regional councils the ability to include permitted activity discharge rules and this is **supported** subject to the rigorous analysis of any adverse effects associated with permitted discharge activities through public plan change processes.

3.4 There has been a long-standing need for a comprehensive regime to manage natural hazard risk. This is particularly true for the QLD where the district's dynamic alpine environment presents significant development constraints. Local authorities, developers, and the community, require robust processes to manage this challenge and to ensure people and property are located away from areas of significant risk. In principle, QLDC **supports** the Bill's amendments relating to natural hazards. It is critical, however, that they form part of a clear, connected framework for natural hazard management across current and future legislation. QLDC considers this is best achieved through the development of a single, comprehensive piece of national direction that addresses the spectrum of natural hazard risks and provides a high level of certainty.

3.5 QLDC **supports** the amendment in clause 25(1) that allows rules in proposed plans that relate to natural hazards to have immediate legal effect from notification. QLDC **supports** in principle extending the application of s106 to land use consents[9] but has a number of specific comments:

- *S106A(1)*: Strongly **support** the ability to refuse a land use consent if there is significant risk from natural hazards. In relation to the ability to grant land use consents with conditions in areas with significant risk, QLDC **emphasises** it is crucial that consent authorities retain discretion to approve or refuse such consents and impose conditions. It has been QLDC's experience that a cautious approach is needed to engineering solutions as peer review may find the solution does not reliably remove risk in the long term, it may not reduce the accumulation of natural hazard risk across an area, or it may shift the risk offsite (i.e. onto other people and property).

- *Definition of significant risk*: A rigorous legal definition of 'significant risk' is essential to limit litigation and create an efficient decision-making process. QLDC **recommends** development of a standard national method for determining the level of risk[10] and a standard definition of 'significant risk' for insertion in the National Planning Standard 14. Definitions Standard.

- *S106A(2):* A hazard risk assessment is required in the proposed clause but it is silent on who is responsible for providing that assessment. QLDC **recommends** adding a sub-clause that assigns responsibility for the hazard risk assessment to the applicant, which can then be peer reviewed by the consent authority.

[8] Clause 20(3)-(5) amending s80C

[9] Clause 37 amending section 106A

[10] For example, the Otago Regional Policy Statement (see APP6 and HAZ–NH – Natural hazards) establishes thresholds centred around Annual Individual Fatality Risk (AIFR) and Annual Property Risk (APR) methodologies and sets out actions that must be implemented following risk identification

- *S106A(2)(b):* **Recommend** amending the wording 'material damage' to 'consequences on people, property and the environment' as this wording is consistent with best practice and accepted risk assessment terminology.

- *Definition*s: **Recommend** clarifying the difference between climate change and natural hazards and between existing and greenfield sites.

3.6 It is not clear from the Bill if S106A is intended to apply to greenfield land or to areas of existing development/redevelopment of existing buildings. The Bill should **clarify** this matter.

3.7 QLDC supports Taituarā's submission regarding deferred zones. Deferred or future urban zones (temporary, transitional zones) are a useful option for consenting authorities when planning for future development. A more efficient pathway for the use of deferred zones can be created by allowing them to be changed to their final zone once preconditions are met without requiring a second Schedule 1 Plan Change.

Recommendations:

R8. Ensure the proposal to allow court appeals on SPP decisions is consistent with the purpose of the SPP and the Bill's objectives.

R9. In the absence of additional clarification, remove the proposed right to appeal from the SPP.

R10. Delete amendments to the process for listing and de-listing heritage buildings and structures using the SPP.

R11. In relation to R10, if amendments are intended to accelerate remediation of earthquake prone buildings, include specific wording to that effect instead of through general amendments to the process for heritage buildings and structures.

R12. Progress comprehensive resource management reforms for natural hazard management within a clear, connected framework across current and future legislation.

R13. Develop a definition and standardised national methodology for determining 'significant risk'.

R14. Insert a clause that assigns responsibility and cost of undertaking natural hazard risk assessments to applicants.

R15. Amend the wording 'material damage' to 'consequences on people, property and the environment'.

R16. Define the terms climate change and natural hazards, and existing and greenfield sites to clearly delineate them from each other.

R17. Clarify if the application of s106A is to existing sites and/or greenfield sites.

R18. Enable deferred zones that have been through a full Schedule 1 process to be changed to their final zone once the consenting authority is satisfied that preconditions for the deferral have been satisfied.

4.0 Strengthening compliance mechanisms and penalties will act as a stronger deterrent and achieve better outcomes

4.1 The current penalties for offences under the RMA are insufficient to reflect the environmental damage that can occur by private individuals and non-natural persons, and to act as a deterrent for breaches. QLDC therefore **supports** an increase in penalties for private individuals and non-natural persons and changes relating to enforcement. QLDC also **supports** amendments to section 36 that enables Council to recover investigation and processing costs where non-compliance is confirmed.

4.2 Clause 36 enables consent authorities to consider a person's compliance history when considering resource management applications. This is strongly **supported** as it could improve outcomes and reduce resource demands. It could also act as an incentive for applicants to comply with resource consent conditions. However, QLDC **recommends** including a clear definition and criteria for 'ongoing, significant or repeated non-compliance'. Providing thresholds for decision-making will reduce the potential for litigation and provide a greater level of assurance for robust and justified decision-making.

4.3 The Environment Court will also have new powers[11] to revoke a resource consent if there is ongoing non-compliance. QLDC **supports** the inclusion of this power.

Recommendations:

R19. Insert a definition that contains thresholds for 'ongoing, significant or repeated non-compliance'.

5.0 Mechanisms for ensuring compliance with national direction exist through Schedule 1 engagement processes and new powers for the Minister are unnecessary

5.1 There are a number of new powers provided to the Minister for the Environment, including powers to ensure compliance with national direction and to amend plans. QLDC sees a number of issues with the proposed new powers that are likely to introduce inefficiency into already complex decision-making processes. QLDC **opposes** clauses 6 and 7 and recommends they are removed from the Bill.

5.2 Consent authorities are required to give effect to national direction and produce planning documents that are consistent with it. It is therefore highly unlikely that a plan would be produced that is inconsistent with national direction. However, if that were the case, it would be preferable to address inconsistencies through existing engagement processes set out in Schedule 1 of the RMA at the time the plan is being developed or amended. Ministerial direction to change a plan once it has been produced will create inefficiency as it requires notification of a new plan change (unless otherwise specified). This does not meet a key objective of resource management reforms to create a more efficient process. It also undermines public input into the process if the Minister intervenes after extensive public engagement, debate, and decision-making.

5.3 QLDC also notes that national policy statements are generally not directive on specific types of implementation, so they can be interpreted and applied differently across different districts allowing for planning decisions that address the unique needs and challenges of each area. It is not therefore feasible for a Minister to direct specified outcomes that aren't articulated in a national policy statement.

[11] Clause 59 amending s314(a)

Recommendations:

R20. Delete clauses 6 and 7 that gives the Minister new powers to ensure compliance with national direction and to amend plans.

R21. Use the existing processes in Schedule 1 of the RMA to address any inconsistencies between plans and national direction.

6.0 An efficient and effective regime for emergency responses is urgently needed

6.1 There is a long-standing need for a comprehensive regime to support efficient and effective responses to emergency events. QLDC considers that the Bill makes some useful amendments and regulation making powers. Clause 63 extends the period in which resource consent can be sought for emergency works from 20 to 30 days after notification of the work. QLDC **supports** this extension, as 20 days is a very short time frame when managing the complexities of recovery from an emergency event. To improve clarity, it is **recommended** that a definition of 'emergency works' and 'immediate preventive or remedial measures' is added.

6.2 There is a new requirement to consult with affected Councils and seek written comments before introducing new emergency response regulations. Due to the time-pressured nature of emergency responses, QLDC:

- **Recommends** amending s 331AA(2)(f) to 'have regard to these comments'
- **Recommends** amending s 331AA(4) to provide 10 working days for comments
- **Supports** the clause to 'limit or exclude rights of appeal' in s 331AA(6)(d).

6.3 The new provision for emergency response regulations will be a powerful tool for Local Recovery Managers that complements the powers available during a 28-day local transition period under the Civil Defence Emergency Management Act 2002[12]. As a powerful tool, care is needed in how the powers are activated to ensure the powers are justified to meet the intended purpose.

Recommendations:

R22. Insert a definition of 'emergency works' and 'immediate preventive or remedial measures'.

R23. Amend s 331AA(2)(f) to 'have regard to these comments'.

R24. Amend s 331AA(4) to provide 10 working days for comments.

[12] Clause 64 inserting new section 331AA

7.0 The inclusion of transitional arrangements and the creation of enduring reforms contributes to efficiency and effectiveness

7.1 QLDC appreciates the inclusion of transitional arrangements in the Bill as they are helpful at an operational level[13].

7.2 Once the transition is made, the biggest contributor to an efficient resource management system will be that the reforms are enduring and not subject to repeated change under successive governments. QLDC encourages the Committee to take a bi-partisan approach to resource management reforms to ensure that the resource management system operates efficiently, achieves good environmental outcomes and enables sustainable development well into the future.

Recommendations:

R25. Take a bi-partisan approach to resource management reforms to ensure an enduring, efficient, and effective resource management system.

[13] New Part 8 inserted into Schedule 12 (pages 46-49)