

Report to CEO on ZQN7 Procurement

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1 INTRODUCTION AND CONTEXT

QLDC's procurement of professional services from the company ZQN.7 Limited ("ZQN7") has attracted close media scrutiny over the past year, primarily from the website Crux run by the Crux Media Trust. In addition to numerous media inquiries, four LGOIMA requests specific to ZQN7 were lodged by Crux Media Trust over the period February 2020 to December 2020 covering 20 specific information requests.

In late January 2021, the Queenstown Lakes District Mayor requested a report from the Chief Executive regarding QLDCs procurement of services from ZQN7, and how they align with the Procurement Policy ("Policy") and Procurement Guidelines ("Guidelines").

This report is the response to that request.

1.1 OUTLINE OF THE REPORT

The report is laid out as follows:

- Section 2 summarises as succinctly as possible the Procurement Policy and Guidelines, with a focus on the matters pertinent to the ZQN7 engagement. It also outlines the maturing of QLDC's procurement function since the 2016 adoption of the current Policy and Guidelines.
- Section 3 outlines the sequence of engagements of ZQN7, and how each of these engagements aligned with the Procurement Policy and Guidelines.
- Section 4 summarises our conclusions
- The appendix records a number of specific questions raised by elected officials and an abbreviated set of answers to them.

2 SUMMARY OF PROCUREMENT POLICY AND GUIDELINES

2.1 PROCUREMENT POLICY STATUS AND REVIEWS

QLDC's Procurement Policy was adopted by Council on 6th October 2016. Procurement Guidelines were adopted by Council at the same time. While both the Policy and the Guidelines required a review within 12 months, no formal review has taken place.

However, the need for a review has been signalled for some time by the Commercial & Procurement Manager, most recently in a paper submitted to the Audit, Finance and Risk committee in July 2020. This included the need for both the Policy and the Guidelines to be aligned to recent changes in the NZ Government's Procurement Principles, Charter, Rules of Sourcing and OAG report on Local Government Procurement. The paper signalled that the Policy's Principles, while not inconsistent with Government guidance, "would benefit from clearer alignment" to the updated Government guidance.

The paper signalled that a review of the Policy and Guidelines would take place over the latter half of 2020. Unfortunately, this was delayed due to other procurement priorities, most significantly the establishment of the Whakatipu Transport Project Alliance, which was urgently triggered by the Government's shovel-ready funding for the district.

2.2 SUMMARY OF PROCUREMENT POLICY

The Policy is clear on its purpose and principles

- The stated purpose of the Policy is to “provide guidance and clarity ...on what QLDC considers during its procurement process” with the ultimate aim of procuring in a way that is cost effective for households and businesses.
- Like most policies, the document is high level and is framework and principle based, rather than providing specific instructions on how to carry out procurement. The latter is typically the domain of guidelines or procedures.
- The policy is mostly clear, although would benefit from improved clarity in some areas. For example, the policy makes reference variously to “procurement processes”, “procurement plans”, “procurement planning”, “procurement strategies” - terms without definition and therefore potentially open to interpretation.
- However, the policy is clear as to four Principles that should be considered “*at an early stage*”¹ in the procurement process:
 - Quality and Value for Money
 - Transparency and Fairness
 - Accountability and Integrity
 - Sustainability
- The Policy notes that the Procurement Guidelines contain more detail on how these Principles should be interpreted.

The Policy (and the Guidelines) are clear that procurement approaches are proportional to the significant of the decision being made

- While requiring that these Principles be considered by officers, the Policy is clear that “*every principle may not always be applicable in every instance*”² and that, even for those that are applicable, there are “*tensions between principles*”.
- This reflects a broader theme in the Policy that the way the policy is implemented needs to be considerate of the context of the decision being made:
 - At the expenditure category level “*QLDC’s procurement strategies will be **tailored** to the individual characteristics of each main category of expenditure, taking into account the relative **cost of the supply arrangement and the risks and complexities** associated with the category.*”³
 - At the procurement planning level “*the **extent and nature** of procurement planning will be **proportionate to the total value, complexity and risks** associated with the procurement.*”⁴
- The Procurement Guidelines reinforce this theme of the proportionality of planning and process to cost, risk and complexity of the decision being made, within the overall objective of decisions that are cost effective for the community:
 - The process should not dominate at the expense of the outcome

¹ QLDC Procurement Policy, page 1

² *ibid*

³ *Ibid*, page 2. Emphasis added.

⁴ *ibid*

- As part of the pursuit of Value for Money, officers should “select the most appropriate procurement method for the **risk and value** of the procurement”⁵
- Practical considerations include “[consideration of] the **amounts involved, complexity and level of risk** when determining the requirements for the procurement process” as well as “compliance costs...and seek to reduce these wherever possible.”⁶

2.3 PROCUREMENT GUIDELINES

The role of the Procurement Guidelines is to provide “additional information to guide QLDC officers in the application of the QLDC Procurement Policy”. As outlined above, the Guidelines reinforce the need for proportionality of procurement effort.

The expansion on the Principles is quite detailed, and needs to be read in the context of the Policy, i.e. that not all Principles are relevant to every situation, the degree to which principles are pursued needs to be right-sized to the decision, and there are often tensions between Principles which leads to tradeoffs.

There are two aspects of the Guidelines that are directly relevant to the ZQN7 procurement:

1. Negotiating with a sole supplier (without any contestable process) is only explicitly permitted as a procurement option with an Approved Procurement Plan; and
2. Splitting contracts into component parts with a view to procuring to a lesser standard is not permissible.

We expand on each of these guidelines in turn below.

Negotiating with a sole supplier (without any contestable process) is only contemplated as a procurement option with an Approved Procurement Plan.

Table 1 – Financial Thresholds, excerpted from 2016 Procurement Guidelines.

Financial Thresholds

QLDC standard procurement processes are based on monetary thresholds.

In determining the category of procurement that is required for any purchase, the estimated whole of contract value must be used. Contracts may not be split into component parts and procured using a lesser standard than the whole of contract value would demand. The following table summarises the procurement options and thresholds:

| Contract \$ Value (excluding GST) | \$0 - \$50,000 | \$50,001 - \$100,000 | Over \$100,000 |
|--------------------------------------|----------------|-------------------------|-------------------|
| Preferred Supplier or 3 Quotes | ✓ | ✗ | ✗ |
| Restricted Tender | ✓ | ✓ | ✗ |
| Open Tender | ✓ | ✓ | ✓ |
| Approved Procurement Plan | ✓ | ✓ | ✓ |

⁵ QLDC Procurement Guidelines, page 1

⁶ ibid

Table 1 indicates what procurement options are available to an officer, for different “Contract Values (excluding GST)”. In summary:

- The first three options all presume some form of multi-supplier competitive process;
- Only projects under \$50,000 are able to use a Preferred Supplier or 3 Quotes approach. In reaching Preferred supplier status, a competitive process is required⁷, and a Preferred Supplier register must be maintained by the relevant General Manager;
- The fourth option – Approved Procurement Plan (APP) – provides for a situation where there is little or no option or commercial benefit to follow a competitive process. The APP is available to any category of cost in Table 1.

The Guidelines state that an APP allows for, amongst other things, a situation where “*there are insufficient qualified suppliers available to undertake a tender*” and outlines “*the approach proposed to obtain the best overall result for QLDC*”. It is only the APP option which contemplates that a “*facilitated negotiation of the purchase of goods and/or services with **one** or a small number of specifically qualified parties. It differs from a tender process in that there is no public price discovery mechanism.*”⁸

The Guidelines state that an APP must be “*submitted to the relevant General Manager where the estimated cost is within the financial delegation of the General Manager*”; in the case where it exceeds the GM’s delegation, the Chief Executive must approve it.

In some respects, the Guidelines’ description of the APP’s role aligns well with the Policy’s commentary around the need for procurement planning to make explicit how tradeoffs between principles were being considered. However, in one important respect – that it applies to even the smallest amount of expenditure (a dollar) where a sole-sourcing arrangement is being considered – this appears contrary to numerous statements in both Policy and Guidelines regarding the proportionality of process to cost and risk. It is an option available to any category of expected cost, but there is no guidance whatsoever in the Guidelines as to how the “*extent and nature*” of the Approved Procurement Plan should vary “*proportionate to the total value, complexity and risks*” of procurement, as required by the Policy.

In addition, the QLDC Guidelines later state that a QLDC officer can, subject to satisfying a set of tests, accept, sign or negotiate any contract up to the value of their delegated financial authority⁹.

It is clear, however, that a procurement practice has existed for some time that believes projects under \$50,000 can be negotiated with a sole supplier without a formal procurement plan in keeping with the previous paragraph. We understand this belief was held by the officer who established the ZQN7 contracts. The fact that the permissibility of sole-supplier negotiations under \$50,000 is an understanding held by a range of QLDC officers, and – to our knowledge – has not been formally questioned¹⁰ illustrates that for those acting under this belief it appears a sensible and pragmatic compromise between seeking the best value through

⁷ The process for developing a preferred supplier (under either a “standing arrangement” or “panel arrangement”) is outlined on page 4 of the Guidelines, which states that “*the supplier under a standing or panel arrangement may only become a preferred supplier following an open tender process.*”

⁸ Procurement Guidelines, page 4. Emphasis **added**.

⁹ Procurement Guidelines, page 5,

¹⁰ In their FY2020 report to the Audit, Finance and Risk Committee, QLDC’s external auditor noted that one of their “*areas of focus*” was an updated Office of the Auditor General Audit Brief which included procurement. No issues with procurement were raised in the report.

competition, and the time, cost and complexity associated with tenders for relatively small amounts of expenditure¹¹.

The fact remains that the practice of sole-supplier negotiations without an APP is contrary to the Guidelines' articulation that a sole-supplier negotiation must be supported by an Approved Procurement Plan. However, there is no evidence whatsoever that it demonstrated deliberate or malicious intent to subvert the Guidelines, rather an intent to expedite projects in an efficient and cost-effective manner.

Splitting contracts into component parts in order to procure to a lesser standard is not permissible.

This requirement is stated twice in the Guidelines, albeit with different wording.

1. The Guidelines state that splitting a contract "*into component parts and procured using a lesser standard*" is not permitted.
2. Later, the Guidelines state that "*an officer may not arbitrarily separate a project into discrete parts so as to avoid the necessity for entering into a particular procurement process*"¹².

Despite the slightly confusing use of both "contract" and "project", in the context of ZQN7, it is important to note that both (1) and (2) explicitly refer to an intent to avoid procurement constraints.

2.4 EVOLUTION AND MATURITY OF PROCUREMENT IN QLDC.

Following the Guidelines being adopted by Council in 2016, QLDC has been on a path of continuous improvement in respect of procurement. This recognised the relative immaturity of procurement practice at that point, and the impact – both on the ratepayer, but also local businesses – of QLDC's significant purchasing power. This need was particularly obvious when the scale of the 2018 Long Term Plan was realised.

In September 2018 the organisation appointed a Commercial and Procurement Manager (for the first time) who has championed the cause of improved procurement and commercial decision making. The intention of the Commercial and Procurement Manager position is to "provide strategy, leadership, structure and quality control of QLDC's procurement function to drive effective, efficient and value-add procurement planning, sourcing and contract management."¹³

This pan-organisational role includes responsibility for strategic projects, organisational development and training, the development, implementation and maintenance of procurement policies, procedures and systems.

Key deliverables of the role have been:

- The investigation and establishment of Preferred Supplier panels
- Trialling and piloting of improved procurement procedures
- Challenging the status quo and increasing the organisations procurement capability and capacity
- Commencing the first review of the Procurement Policy and Guidelines in 2020

¹¹ There is evidence of other organisations having similar thresholds, including NZ Government agencies. NZTA's own procurement manual, which QLDC has to adhere to where NZTA funding is a component (as referenced in the QLDC Guidelines), specifically permits direct appointment of professional services firms where the contract cost estimate falls below \$100,000.

¹² Procurement Guidelines, page 6

¹³ Procurement Manager position description

The trialling and piloting approach adopted by the Commercial and Procurement Manager is understood to be good practice for policy, guideline and procedure improvements.

One of the trials currently underway is a “Procurement Departure Request”, which is intended to ultimately replace the Approved Procurement Plan referenced in the Procurement Guidelines. The intent of the Approved Procurement Plan is good practice (establishing the procurement thinking for logical commercial solutions that deliver value for money, yet do not strictly meet the procurement rules and thus require an exemption). Converting this process to an online form which tracks delegated authority sign-offs and creates a register will provide a more robust process and the ability to report “departures”.

As evidence of the ongoing maturing of procurement activities and approaches is that in 2020, QLDC achieved a clean NZTA procurement audit, as well as QLDC’s Strategy for the Procurement of Transport Infrastructure being formally endorsed by NZTA in the same year¹⁴.

3 PROCUREMENT AND MANAGEMENT OF ZQN7 AND THE BYLAW REVIEWS.

Much attention has been directed towards the final cost of the various projects delivered by ZQN7 (~\$530,000 excluding GST¹⁵). We make two observations here:

- This was not a single decision nor was it a single project. Whilst there was commonality in the timing and the department that “owns” the bylaws, in reality there were discrete projects within the ZQN7 work and a series of procurement decisions made over nearly two years (March 2018 – February 2020). A number of the stages and projects had to incorporate the specific feedback received from Elected Officials and the community during the consultation phases, some of which could not have been anticipated in March 2018. We acknowledge that this has been a point of contention (i.e. contract splitting) which we consider below.
- From the perspective of compliance with the Guidelines, it is not the resulting actual cost of any project that should be considered. Rather it is the estimated value at the time procurement occurs which is the metric for compliance assessment. Due to uncertainty in predicting the amount of work required for any project that is scoped as time and cost¹⁶, it is not uncommon that projects end up costing more or less due to estimation errors or insufficient known factors at the time of estimating. Indeed, in the case of ZQN7, there were projects which came in under the initial estimate, while the majority came in over the initial estimate (in some cases significantly over, as is addressed below). But by the time this was realised, procurement had already occurred¹⁷.

¹⁴ Letter from Waka Kotahi to QLDC, 20 May 2020.

¹⁵ We note that the figure most often quoted in the media, exceeding \$600,000, is a GST inclusive number.

¹⁶ Of course, this can be managed by requesting fixed price quotes for work. This shifts all the project risk to the consultant, which can result in significant conservatism applied by the consultant and leaving the client – QLDC - no upside if the project results in less work than implied by the conservative quote. Project cost caps are common, but, in essence, do not provide the cost certainty one might expect, as the work still needs to be done.

¹⁷ We acknowledge that this raises a question about how the original estimate was formed, especially for Stage 2, and how it could underestimate cost to such a significant degree. While we don’t know how the original estimate was formed, we highlight some of the challenges with Stages 2 and 3 later.

The initial estimate may be evidenced by a direct estimate or quote by ZQN7 as part of its proposal. If the proposal only stated an hourly rate (i.e. time and materials), the estimate would have likely been developed by QLDC, and evidenced through the original purchase order (PO) value raised. In the absence of any other information, we assume that the original PO value¹⁸ was QLDC's best estimate of the work described by the scope.

While we discuss the specific projects below, we draw attention to the fact that the work was split into three streams (one for each separate bylaw), and each stream split into stages (initially two, and eventually a third). It is reasonable to expect that the "estimated total contract value" test required by the Guidelines should have led the officer to - at least - consider the first two stages that were the subject of the original ZQN7 proposal (the eight steps outlined in Section 3). It is a matter of debate as to whether the third implementation Stage should have also been considered, as it may not have been clear whether ZQN7's services would be retained for this as-yet un-scoped stage, which was also highly contingent on the previous stages. However, we have found no evidence that suggests that the decision to split the bylaws' reviews was anything other than an attempt to track the costs of each bylaw review separately, and manage the significant scope and resource uncertainty about subsequent (consultation) stages: as outlined below, the two stages were fundamentally different in respect of scope and cost uncertainty, with the first stage being reasonably predictable, and the second (requiring public consultation) highly uncertain. It is quite logical, therefore, for the officer to want to hold off from making a prudent estimate of Stage 2 until they had the information that would be gleaned from Stage 1.

Each individual decision by the officer to segregate project work may have been logical and well-intentioned, but – to our knowledge - the justification was neither documented nor tested. And, in aggregate, the practice of segregation diverges from the question effectively raised in the Guidelines of "how much is this all going to cost, and what procurement option will get the best outcome for the community?"

The need to manage uncertainty of professional services costs in multi-stage projects is not unique to bylaw reviews. This highlights that the Guidelines could be clearer on how officers are to estimate "whole of contract value" when situations like this exist.

3.1 SUMMARY OF PROJECT ACTIVITY

Table 2 below summarises the arrangements and costs of the ZQN7 projects.

¹⁸ In the cases where ZQN7 provided a quote, the original PO closely matches that quote.

Table 2 – Summary of ZQN7 projects

| Date of PO | PO# | Project | Stage | High level description of work | Documentation | Approved PPlan | Initial PO (excl GST) | Final Cost (excl GST) | Over/Under |
|------------|-------|---------------------|-------------------------|--|----------------------|----------------|-----------------------|-----------------------|--------------------|
| Mar-18 | 22264 | Speed | Stage 1 | Programme Management of Speed Limit Bylaw Review | Proposal | N | \$ 10,000 | \$ 10,000 | \$0 |
| Mar-18 | 22263 | Trade Waste | Stage 1 | Programme Management of Bylaw Review | Proposal | N | \$ 15,000 | \$ 7,713 | \$7,288 |
| Mar-18 | 22265 | Traffic and Parking | Stage 1 | Programme Management of Bylaw Review | Proposal | N | \$ 20,000 | \$ 20,000 | \$0 |
| May-18 | 23245 | Speed | Stage 2 | Speed Limit Bylaw review prep of statement of proposal and draft bylaw (and associated council reporting) completing public consultation process (including hearings) | Contract with scope | N | \$ 10,000 | \$ 76,589 | (\$66,589) |
| May-18 | 23246 | Trade Waste | Stage 2 | Bylaw review prep of statement of proposal and draft bylaw (and associated council reporting) completing public consultation process (including hearings) | Contract with scope | N | \$ 10,000 | \$ 42,724 | (\$32,724) |
| May-18 | 23244 | Traffic and Parking | Stage 2 | Bylaw review prep of statement of proposal and draft bylaw (and associated council reporting) completing public consultation process (including hearings) | Contract with scope | N | \$ 10,000 | \$ 66,919 | (\$56,919) |
| Jun-18 | 24812 | Trade Waste | Stage 3 | Customer information and data collection | Proposal & estimate | N | \$ 24,000 | \$ 30,324 | (\$6,324) |
| Jan-19 | 27507 | Traffic and Parking | Stage 3 | Bylaw implementation plan (T&P procurement plan) | Proposal & estimate | Y | \$ 136,000 | \$ 148,128 | (\$12,128) |
| Mar-19 | 28321 | Speed | Stage 3 | Complete the amendments required to Speed Limits Bylaw, including recommended Speed Limit changes for public consultation and associated engagement, following the speed management review | Proposal & estimate | N | \$ 50,500 | \$ 87,525 | (\$37,025) |
| Oct-19 | 32542 | Bus Stops | | Bus Stops Policy Review | Proposal & fixed fee | N | \$ 10,000 | \$ 10,000 | \$0 |
| Oct-19 | 32452 | Speed | Stage 4 (School Safety) | Speed Management Implementation school safety consultation/engagement | Proposal & estimate | N | \$ 12,000 | \$ 10,522 | \$1,478 |
| Jan-20 | 33647 | Speed | Stage 4 (NZTA) | Deliver Stage 3 of the Speed Management Review, addressing some NZTA concerns | Proposal & estimate | N | \$ 16,500 | \$ 17,700 | (\$1,200) |
| | | | | | | | \$ 324,000 | \$ 528,144 | (\$204,144) |

3.2 STAGE 1 OF BYLAW REVIEWS

In March 2018, following interaction with the QLDC officer sponsoring the bylaw reviews, ZQN7 submitted a proposal to QLDC to assist with three separate reviews: Traffic and Parking Bylaw, Speed Limits Bylaw and Trade Waste Bylaw. We have found no evidence of three quotes being sought, a tender being conducted, or ZQN7 having Preferred Supplier status. Hence we conclude that the engagement of ZQN7 was a sole-supplier negotiation.

We understand that the two advisors who were part of ZQN7 were known to the sponsoring QLDC officer as having the requisite skills to conduct an effective bylaw review due to their prior experience with Dunedin City Council and Accident Compensation Corporation on bylaw reviews. Two of these reviews (Traffic and Parking and Trade Waste) were under tight statutory timeframes relating to expiry dates of the existing bylaws. A review of Speed Limits was also under time pressure in order to align with a new national framework for setting speeds as well as alignment with the proposed timing of Waka Kotahi NZTA's State Highways Speed review. This may have increased the need for an accelerated procurement process.

For the avoidance of doubt, any historical relationship ZQN7 staff or directors and the Queenstown Lakes District Mayor is irrelevant, as Elected Officials are not involved in procurement decisions.

The March 2018 proposal from ZQN7 covered what eventually comprised Stage 1 and Stage 2 of the three reviews¹⁹:

- i. Confirmation of the need for the bylaws in the region
- ii. Confirmation of the Council intention to review
- iii. Review of existing bylaws
- iv. Research of best practice/model bylaws in NZ
- v. Stakeholder engagement on issues and options (as required)
- vi. Preparation of statements of proposal and draft bylaws (and associated council reporting)
- vii. Completing public consultation processes (including hearings if required)
- viii. Finalising bylaws for council adoption

In respect of fees, ZQN7's proposal stated *"as the scope of works required...is dependent on the extent of information available from council, council's internal stakeholder input and council's administrative support or otherwise, we have agreed to proceed on a time and cost basis."* An hourly rate was proposed. The proposal also outlined that time would be apportioned to each bylaw as a separate project.

The proposal thus made it clear that there was considerable uncertainty about the scale of the overall work. This, more than anything, is likely to have led the QLDC project sponsor to separate out the more analytical (and therefore more predictable) tasks (i) – (v), electing to delay (vi) – (viii) to a further stage once issues, options and stakeholder feedback was better understood. This is a plausible method to manage risk. The QLDC officer added "council reporting" to tasks (i) – (v) and established it as "Stage 1" of the bylaw reviews.

¹⁹ Letter proposal from Ruth Stokes to Myles Lind, 13 March 2018. ZQN's proposal did not split the eight steps into two stages.

For the purposes of contracting, the officer also separated the three bylaws out into three separate contracts. Although the reviews should be considered as separate projects, in light of them being conducted by one supplier with identical scopes for each there is no obvious reason why all three reviews couldn't have been the subject of one contract. It may have been for administrative simplicity, and to align with the fact that three purchase orders were raised; ZQN7 were going to report time by bylaw project in order to enable QLDC to separately track the costs associated with each bylaw review.

Based on the belief that it was too difficult to estimate Stage 2 costs at this point, there was nothing to be gained for the officer – in terms of ease of procurement – by separating the contracts as commissioned for Stage 1. As Table 2 above shows, the Stage 1 work was estimated to cost \$15,000, \$20,000 and \$10,000 for Trade Waste, Traffic and Parking, and Speed respectively²⁰. Under the Procurement Guidelines, and the accepted practice of sole-supplier arrangements described above, the same set of procurement options were available to the officer irrespective of whether this work was combined or separated, as the combination of contracts was \$45,000 (less than the first \$50,000 threshold in the Guidelines, and the believed \$50,000 threshold for sole-supplier negotiations). Since the Guidelines tie its restriction on splitting to an intention to circumvent cost thresholds for procurement options, we are of the view that there is no evidence of a breach of this aspect of the Guidelines by splitting out contract components.

However, there is no evidence of an Approved Procurement Plan for the 13th March proposal from ZQN7, or any of the individual bylaw review contracts, as required by the Guidelines.

Stage 2

The Stage 1 reviews each came in on budget or under budget. In proceeding to Stage 2, the QLDC officer continued to procure the services of ZQN7²¹. No revised proposal is evident, however the steps in Stage 2 were effectively tasks (vi) – (viii) from the 13th March 2018 proposal. The project continued to be managed through three separate (new) contracts for each bylaw (signed on 21st May 2018), which were again based on time and costs. Three purchase orders were established for \$10,000 each²².

It is understandable that the contracts would continue to separate the three bylaws on the same logic used in Stage 1. Again, there is no evidence that this continued separation is an attempt to procure to a lesser standard as, acting under the belief that a sole-supplier negotiation was permissible if the total estimate contract value was less than \$50,000, the total of the three contracts was also under \$50,000.

There is no evidence of an Approved Procurement Plan for Stage 2 of the bylaw reviews.

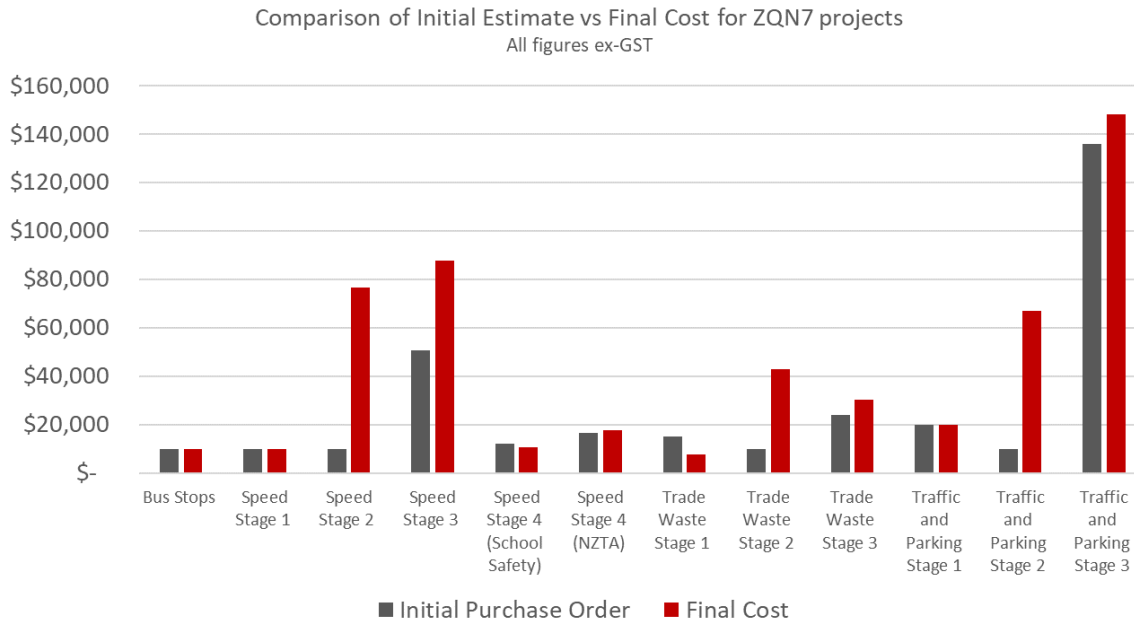
Stage 2, which was undertaken over July 2018 to February 2019, saw actual costs significantly exceed the original POs (Figure 1). Stage 2 of Speed was particularly beset by complexities and delays, some resulting from Elected Officials requesting additional work and revisions at a second workshop, and a realisation of the illegality of temporary speed zones that had been in place from previous years. In terms of consultation, a Special Consultative Procedure was ultimately required, which itself needed to be extended by a month.

²⁰ We have no information showing how these estimates were arrived at.

²¹ We can only speculate that this was due to the efficiency that would be gained through their knowledge of Stage 1 (compared to bringing a new consultant up to speed).

²² Again, we have found no information of how these estimates were arrived at.

Figure 1 – Comparison of forecast vs actual project costs, by stage



We also note that near the start of this period, the Asset Planning Manager in Property & Infrastructure resigned and left QLDC, and the Policy and Performance Manager stepped into the (acting) role. No-one was appointed to the vacant Policy and Performance Management role while (prolonged) recruitment of a replacement Asset Planning Manager took place. Hence an increased reliance on consultants was understandable for Policy work (which included bylaw reviews).

Stages 3 and 4

All three bylaw reviews required a final implementation stage (Stage 3). This was not contemplated in the original scope provided by ZQN7, since, at that stage, it would have been impossible to scope what steps were required to implement a bylaw which hadn't even been reviewed, developed or consulted on yet.

This implementation work commenced in September 2018 (Trade Waste), February 2019 (for Traffic and Parking) and March 2019 (Speed Limits). There were also later implementation activities (school safety and NZTA concerns) commissioned in December 2019 and February 2020; these dealt with issues that arose out of what were referred to as "Stage 3" consultation activities for the Speed Limit Bylaw review, including the Speed Management Review it required. In Table 2 above we have referred to these as "Stage 4", as they were contracted as separate pieces of work which were not foreseen as part of the Stage 3 scoping exercise.

The choice to continue to use ZQN7 to provide implementation plans was likely driven by the fact that they now had a comprehensive knowledge of the specific issues, the community sensitivities and the network of people involved in these complex issues. This does not preclude a more competitive process where different service providers could have been evaluated on their merits. We note, however, that the APP for Traffic and Parking also raised the issue of urgency as a reason to depart from the Procurement Guidelines and seek a direct appointment.

What is notable is that the Stage 3 and 4 projects were more formally scoped between QLDC and ZQN7, with documented workplans and estimates provided by ZQN7 through formal proposals. These estimates formed the basis on which the

new QLDC project owner raised invoices. There was an Approved Procurement Plan signed off by the General Manager of Property and Infrastructure for Stage 3 of Traffic and Parking. However, no other Approved Procurement Plans were submitted for the remainder of the work, again, on the understanding that sole-supplier negotiations could be conducted for projects less than \$50,000. We note here that one project failed the threshold associated with this management practice (Stage 3 of Speed, estimated at \$50,500 + GST). This has been disclosed publicly²³.

The Speed Limits Bylaw continued to experience cost overruns (18%) but Traffic and Parking only saw a 9% overrun, while Trade Waste exceeded the original PO by 25%.

Late in 2019, ZQN7 was commissioned to complete a further project (Bus Stops Policy). There was no Approved Procurement Plan submitted for this project.

4 CONCLUSION

Above we have summarised the manner in which ZQN.7 Ltd was engaged to undertake three discrete bylaw reviews, and how the approach applied to procurement aligned with the Procurement Policy and Guidelines.

The bylaw reviews have been conducted, new bylaws drafted and implemented. From a delivery perspective, ZQN7's work was successful. However, the cost of the work, and the way ZQN7 was engaged, has been questioned.

We did not find any misalignment between the way ZQN7 was engaged and the Procurement Policy.

However, in a number of instances, the engagement of ZQN7 did not meet the requirements of the Procurement Guidelines:

- ZQN7 were engaged via 12 separate arrangements. 11 of these related to various stages of the three bylaw reviews, with one additional piece of work unrelated to the bylaw reviews (Bus Stop Policy). From the evidence we have reviewed, all engagements of ZQN7 were sole-supplier negotiations with no competitive process. ZQN7 was engaged due to their expertise in bylaw reviews, and their immediate availability for QLDC's bylaw review projects that were under tight (statutory) timeframes. However, the active 2016 Procurement Guidelines require that sole-supplier negotiations are supported by an "Approved Procurement Plan". Out of the total \$528,144 (GST excl) of work undertaken by ZQN7, only one engagement that resulted in \$148,128 (GST excl) of work was supported by an Approved Procurement Plan.
- The reason 10 out of 12 engagements were not supported by an Approved Procurement Plan is due to an understanding of procurement practice that permits sole-supplier negotiations without Approve Procurement Plans, as long as the estimated cost of those engagements is less than \$50,000 (GST excl). Acting under this belief, one further engagement – estimated to cost \$50,500 – should have had an Approved Procurement Plan, but did not. This has been previously publicly disclosed.
- While some of the later engagements could not reasonably have been foreseen when ZQN7 were first engaged, out of the twelve engagements, the first six, spread over two stages in 2018, were essentially the subject of one

²³ We note that the public disclosure referenced this as a \$52,000 project, and thus a \$2,000 breach. The information we reviewed shows that the original PO was raised for \$50,500.

proposal from ZQN7. Our assessment is that, while there were likely logical and well-intentioned reasons for segregating the first six components, a lack of any documentation as to why this occurred, or any review of this segregation against the Guidelines, has made the segregation difficult to justify in respect of the Guidelines' requirement that the "estimated whole-of-contract value" is used to determine the category of procurement.

- That said, we have found no evidence whatsoever that the segregation of the early stages was an intent to avoid procuring to a higher standard, which is expressly forbidden by the Guidelines.

APPENDIX: SPECIFIC QUESTIONS RAISED BY ELECTED OFFICIALS

Six specific questions have been raised by Elected Officials, which are set out in the table below. A brief summary of the response to these questions is given in the table, but answered more fulsomely in the main body of this report.

| Question | Source | Answer (brief) |
|---|-------------|---|
| What was the original amount quoted to Council by ZQN7/Ruth Stokes for consultancy services on the Speed Limit and Traffic and Parking Bylaws? | Cr Shaw | ZQN7 submitted a proposal on 13 th March 2008. It contained a recommended scope which eventually became Stages 1 and 2 of the bylaw reviews, but agreed to work on a 'Time & Materials' (T&M) basis due to uncertainty of project. PO's raised for \$20k and \$10k for Stage 1. |
| Did council pay ZQN7 for these projects in tranches of <\$50k? | Cr Shaw | No. Council paid based on presentation of invoices based on T&M which are only limited by POs; and POs were extended when it became evident that original estimate was too low. |
| With regard to ZQN7, was the Council's 2016 Procurement Policy breached; and if so, to what extent? | Cr Shaw | No evidence that Policy was breached. However, Guideline requirement that Approved Procurement Plan required for sole-supplier negotiations was not met for 11 of the 12 projects commissioned from ZQN7. |
| Can I please have a copy of the letter of offer from Ruth Stokes (ZQN7) that was withheld from Crux. It's attached to an email from Ruth to Myles Lind - dated 13 March 2018 at 12:39:35 PM with the subject line '(1)Bylaw reviews'. | Cr Gladding | Commentary included in report, but release of letter offer part of LGOIMA process. |
| Can I please see the initial emails between Myles Lind and Ruth Stokes. I just want to understand why and how ZQN7 (a brand new company at the time) was decided on as a preferred supplier for three Bylaw reviews. | Cr Gladding | ZQN7 did not have preferred supplier status. We understand it was selected due to the expertise held within the company and their timely availability given impending deadlines for the reviews to be completed. |
| In your reply to Crux you say that in one instance only we breach the Procurement Guidelines by only \$2000 but that doesn't seem to fit with the table Pete supplied me with (see below). The table seems to suggest that, even if we agreed that splitting the Bylaw work into 3 stages was not a breach, 4 POs exceed the \$50,000 threshold - one is for \$148,000. Could you | Cr Gladding | Procurement Guidelines refer to the expected cost (which in this case was under \$50k for most, and APP was completed for the \$148k mentioned), and is a planning gateway; they don't require the officer to retrospectively change procurement method when actual costs exceed what was expected at the time of procurement |

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| explain why these are not breaches of the procurement policy and which one you were referring to (as \$2000 over the threshold)? | | |
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