

QLDC Council
16 September 2021

Report for Agenda Item | Rīpoata moto e Rāraki take 11

Department: Corporate Services

Title | Taitara Submission – Natural and Built Environments Bill – Exposure Draft

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to present two submissions made to the Environment Select Committee in the course of its inquiry into the exposure draft of the Natural and Built Environments Bill.
- 2 This report seeks Council's retrospective approval of the two submissions that QLDC made on 4 August 2021:
 - QLDC submission, providing high level, strategic feedback on the draft (Attachment A); and
 - Otago Southland Council's Joint Submission - a detailed, technical submission, prepared by the QLDC Policy Planning team in partnership with all Southland and Otago councils (Attachment B)

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report; and
2. Approve retrospectively the contents of the high-level, strategic submission [Attachment A].
3. Approve retrospectively the contents of the detailed, technical submission prepared in partnership with all Southland and Otago councils [Attachment B].

Prepared by:



Michelle Morss
Strategy and Development
Manager, Corporate Services

2/09/2021

Reviewed and Authorised by:



Meaghan Miller
General Manager, Corporate
Services

2/09/2021

CONTEXT | HOROPAKI

- 1 The proposed Natural and Built Environments Act (NBA) will be the main replacement for the Resource Management Act (RMA) once enacted. It is central to the reform of the resource management system.
- 2 The Government has released an exposure draft of the NBA. The exposure draft has been referred by Parliament to a select committee inquiry process, through the Environment Select Committee.
- 3 The exposure draft for the NBA does not cover the full bill. It provides an early look at key aspects of this legislation including:
 - the purpose of the NBA (including Te Tiriti o Waitangi clause) and related provisions
 - the National Planning Framework
 - the Natural and Built Environments plans.
- 4 There will be two opportunities for public feedback on the NBA as part of select committee processes.
- 5 This submission represents QLDC's participation in the first feedback process. The inquiry is expected to take three months to examine the draft legislation before providing feedback to parliament to help shape further policy development.
- 6 Other components of the legislation that were not included in the exposure draft will be considered by the Ministerial Oversight Group in the second half of 2021 before being included in the full bill.
- 7 The second opportunity for providing public feedback will be when the NBA is introduced in full to Parliament, alongside the Strategic Planning Bill in early 2022. It is intended that these Bills will be enacted in this parliamentary term.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 8 QLDC has prepared two submissions in response to the exposure draft:
 - QLDC submission, providing high level, strategic feedback on the draft (Attachment A)
 - Otago Southland Council's Joint Submission - a detailed, technical submission, prepared by the QLDC Policy Planning team in partnership with all Southland and Otago councils (Attachment B)
- 9 Broadly speaking, QLDC welcomes the decision by government to reform the 30-year-old Resource Management Act, and to fundamentally shift to an outcome-based focus. However, the lack of detail in the draft inhibits the ability to provide a comprehensive response.

- 10 QLDC remains concerned that local communities appear to be increasingly disempowered by the process, and that the adoption of regional plans will not allow local communities to reflect their own expression of development (even within a strongly defined National Planning Framework).
- 11 In this regard the Bill seems inconsistent in its direction, and at best prioritises broad regional level outcomes ahead of the development of community building aspirations of individual parts of the system.
- 12 The QLDC submission at Attachment A makes the following points;
- QLDC has significant concerns about the implications of the NBA for local democracy
 - Key concepts in the NBA require further explanation, alignment, structure and substance
 - Environmental outcomes and limits require greater consideration
- 13 The Otago Southland Councils' Joint Submission at Attachment B makes the following points:
- That the cost and disruption of changing the resource management system will only be worthwhile if the new system brings significant improvements, which at this stage is uncertain.
 - That the new system needs to provide:
 - Strong directions and priorities that usefully guide decision-making at every level.
 - The ability to provide for local conditions, including the local environment, and local communities' aspirations.
 - A strong monitoring, assessment and review process.
 - Clear and unambiguous legislation.
 - That the draft does not give confidence that the reform will meet these expectations and enhance the effectiveness and efficiency of the resource management system.
 - That the strong focus on environmental bottom-lines ("environmental limits"), and the weak requirement to "promote" environmental outcomes implies that environmental degradation will be tolerated down to bottom lines. This is against the stated reform's objective to "protect and restore the environment (...)".
 - In addition, the lack of focus on the built environment is unlikely to result in enabling good-quality urban development, which is also one of the key purposes of the reform.

- Many questions remain on the planning committee model that is being proposed, how it is going to work, and whether it is the most appropriate model.

- 14 The Otago Southland Councils' Joint Submission at Attachment B makes fourteen recommendations of improvement.
- 15 Councillors have had opportunity to view and comment on the attached submissions prior to their inclusion in the select committee process but did not have the opportunity to formally approve the submissions at a council meeting in advance of the submission deadline.
- 16 The Chief Executive spoke on behalf of QLDC at the hearings relating to the NBA on 17th August 2021. A letter including the contents of the speech is included at Attachment C.
- 17 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
- 18 Option 1: to retrospectively agree the contents of both attached submissions.

Advantages:

- 19 The submission will remain in the select committee's process and QLDC will have participated effectively both as an individual council and as a collaborative participant in a regional response.

Disadvantages:

- 20 There are no clear disadvantages to this option.
- 21 Option 2: to request the withdrawal of both of the attached submissions from the select committee's process.

Advantages:

- 22 The submissions will be withdrawn from the process and any inaccurate representations of QLDC's position will not be considered.

Disadvantages:

- 23 No aspect of QLDC's position will be represented in the process.
- 24 Option 3: to agree the contents of Attachment A, but request the withdrawal of Attachment B from the select committee's process.

Advantages:

- 25 Attachment A will remain in the process and QLDC will have participated in the process. Attachment B will be withdrawn from the process and any inaccurate representations of QLDC's position will not be considered.

Disadvantages:

- 26 QLDC will not be represented within the collective voice of Southland and Otago Councils and may be perceived to be failing to collaborate at a regional level.
- 27 Option 4: to agree the contents of Attachment B, but request the withdrawal of Attachment A from the select committee's process.

Advantages:

- 28 Attachment B will remain in the process and QLDC will have participated as part of a collaborative regional submission. Attachment A will be withdrawn from the process and any inaccurate representations of QLDC's position will not be considered.

Disadvantages:

- 29 QLDC will only be represented within the collective voice of Southland and Otago Councils.
- 30 This report recommends **Option 1** for addressing the matter (if representative of the council's position) to ensure that QLDC participates effectively in the consultation process.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 31 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy. This advice deals with a matter of interest to a range of individuals, organisations, groups and sectors in the community.
- 32 The persons who are affected by or interested in this matter are all residents and ratepayers of the Queenstown Lakes District communities.

> MĀORI CONSULTATION | IWI RŪNANGA

- 33 No specific or distinct consultation has been undertaken with iwi in preparing this submission.

34 RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 35 This matter relates to the Strategic/Political/Reputation. It is associated with RISK00038 within the QLDC Risk Register. This risk has been assessed as having a low inherent risk rating.
- 36 The approval of the recommended option will support the Council by allowing us to implement additional controls for this risk. This shall be achieved by monitoring future changes in legislation based on the advice to government, in particular addressing those issues that directly affect QLDC and the Queenstown Lakes District community.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

37 There are no financial implications.

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

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

- The outcomes and principles of the Vision Beyond 2050, in particular – Disaster-defying resilience and Zero carbon communities

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

39 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.

40 The recommended option:

- Can be implemented through current funding under the Ten Year Plan and Infrastructure Strategy;
- 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.

ATTACHMENTS | NGĀ TĀPIRIHANGA

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|---|---|
| A | QLDC Submission to the Environment Select Committee Inquiry |
| B | Otago Southland Council’s Joint Submission |
| C | Letter to the Environment Committee |

4 August 2021

Via email: en@parliament.govt.nz

Dear Sir / Madam,

SUBMISSION TO THE NATURAL AND BUILT ENVIRONMENTS BILL – EXPOSURE DRAFT

Thank you for providing the Queenstown Lakes District Council (QLDC) with the opportunity to submit on the abovementioned exposure draft. QLDC welcomes the bold decision by government to reform the 30-year-old Resource Management Act, and to fundamentally shift to an outcome-based focus. However, the lack of detail in the draft inhibits the ability to provide a comprehensive response.

QLDC remains concerned that local communities appear to be increasingly disempowered by the process, and that the adoption of regional plans will not allow local communities to reflect their own expression of development (even within a strongly defined National Planning Framework). In this regard the Bill seems inconsistent in its direction, and at best prioritises broad regional level outcomes ahead of the development of community building aspirations of individual parts of the system

As such, this submission traverses three key topics:

- Significant concerns about the implications for local democracy
- Key concepts require further explanation, alignment, structure and substance
- Environmental outcomes and limits require greater consideration

It should be noted that QLDC also supports the submission made collaboratively between all Otago and Southland Councils. This submission represents the view of officers and has not yet been endorsed by full council.

QLDC would welcome the opportunity to be heard on its submission.

Yours faithfully,



Jim Boulton
Mayor



Mike Theelen
Chief Executive

1.0 Background

- 1.1 The Queenstown Lakes District is a high growth area¹ and a high-profile tourist destination. The district includes both urban and rural areas, large and small population centres and townships that are geographically remote.
- 1.2 Under pressure from both resident and visitor numbers, the existing system presents a number of challenges. As one of the highest volume consenting authorities in the country, QLDC frequently tackles challenging and litigious matters that are outside of the norm.
- 1.3 Since COVID-19, the district has entered a period of volatility, uncertainty, complexity and ambiguity. Border closures have significantly impacted the district's economy, workforce and wellbeing. However, QLDC's demand projections consider this to be a short-term issue which will not change long-term projections of growth.
- 1.4 A significant percentage of the district is either an outstanding natural landscape or national park. Not only do such landscapes need to be protected but improved environmental health must be ensured.
- 1.5 QLDC has recently adopted a spatial plan that was developed in partnership with central government and Kāi Tahu. This spatial plan offers considerable potential as a long-term strategic planning tool and as such, we are keen to see such documentation afforded legislative weight through Resource Management Act (RMA) reform.
- 1.6 In June 2019, the Council declared a climate and ecological emergency² and has since established a Climate Action Plan, focusing on emissions reduction mitigation activities as well as adaptation considerations. Residents of the district have significant climate change aspirations³, in terms of both mitigation and adaptation activity. Addressing climate change requirements has become increasingly difficult within the existing framework and QLDC welcomes the introduction of an outcomes-based, fit for purpose approach.

2.0 Introduction

- 2.1 QLDC broadly supports the intent of the changes to simplify and improve resource management within Aotearoa. However, the separable and disaggregated nature of the consultation process inhibits full exploration of the implications of the Bill and the wider reforms. Limiting discourse to discrete parcels of partial legislation does not enable cogent and comprehensive comment to be made.
- 2.2 QLDC notes that without visibility of schedules 1,2 and 3 it is difficult to provide commentary on the potentially significant implications for local democracy and representation.
- 2.3 QLDC's submission addresses high-level concepts and concerns, with detailed technical comment provided by officers in a combined Otago and Southland councils submission separately.
- 2.4 QLDC also supports the submission made by Taituarā.

¹ <https://www.qldc.govt.nz/community/population-and-demand>

² <https://www.qldc.govt.nz/your-council/our-vision-mission/climate-action-plan>

³ <https://www.qldc.govt.nz/your-council/our-vision-mission/climate-action-plan>

3.0 Significant concerns about the implications for local democracy

- 3.1 QLDC has significant concerns about the implications for local democracy in relation to both RMA reform and Three Waters reform. Both processes seek to reduce the role of both local government and the communities that they serve. When considered together, these contemporaneous review processes have the potential to significantly change the local government landscape, reduce accountability and remove the ability for local communities to easily influence and shape the services on which they rely.
- 3.2 The Queenstown Lakes District has a well-educated, highly engaged and frequently litigious community that increasingly seeks greater opportunities for genuine participation in matters of local democracy. The district does not typically suffer from apathy on any matters and those within the local communities who have the resources and time to do so, often express extremely strong views pertaining to the environment and resource management. Central and regional government is ill-equipped to manage relationships, partners and stakeholders at a local level and greater assurance is required as to the processes and models that will be adopted.
- 3.3 QLDC supports the creation of a national planning framework in theory but based on the information currently available does not support the creation of regional natural and built environments plans and associated planning committees. Greater detail is required in schedules 2 and 3 before considering the consequences of these changes further.
- 3.4 The implementation principle outlined at clause 18 (c) requires redrafting, to acknowledge that an understanding of local environment and communities will be central to good governance.
- 3.5 The representative model presented for the planning committees appears untenable. The provision of one representative per local authority may result in the over-representation of small districts, whilst larger urban centres and locations with large visitor populations will be under-represented. As a high growth district that plays an important role in the National tourism industry, whilst managing some of the highest consent numbers and values in the country, the suggested model does not appear fit for purpose nor democratic. In light of this, requiring local authorities to bear the cost of the secretariat appears inappropriate.
- 3.6 QLDC has concerns at the practical effect of reducing the current range of documents to 14 regional plans. While regional level planning may work well for some region-wide resources, it will not effectively address many of the urban amenity and land use issues that operate in all our urban centres. A plan that seeks to address communal level values across communities as diverse as Queenstown, Dunedin, Oamaru and Cromwell will not be credible to individual communities.
- 3.7 Similarly, the significance and importance of the district's landscape, rivers and water bodies need to be understood at both a local, national and even international level, but remains distinct and unique from the balance of the Otago region. At present, the draft is unable to demonstrate how the needs of the different communities will be reflected in the NBA plans, or what discretion local communities will have in their administration of such plans.

4.0 Key concepts require further explanation, alignment, structure and substance

- 4.1 QLDC supports the concept of Te Oranga o te Taiao and the importance of the legislation giving effect to the principles of te Tiriti o Waitangi. Further detail will be required to fully understand ways in which this can be best achieved.

- 4.2 The purpose of the legislation in clause 5 is open-ended and does not clearly prevent environmental health from being traded-off against development. The Bill needs a much stronger hierarchy, with environmental protection ensured rather than enabled. The requirement to 'promote' environmental outcomes is not a strong enough direction to ensure those outcomes are actually achieved.
- 4.3 QLDC notes that the Bill does not provide a definition of 'effect', which could be significant. There is a considerable amount of case law and institutional understanding of what this currently means under the RMA, which may be squandered if not also defined within the Bill.
- 4.4 The inclusion of offsetting and compensation alongside avoiding, remedying and mitigating⁴ adverse effects is concerning in clause 5 as there are no clear safeguards around when it is acceptable to compensate for harm (instead of simply not causing it in the first place). There is considerable risk that offsetting will be used to enable development that will result in poor environmental outcomes. QLDC recommends that the off-setting of carbon is not permitted
- 4.5 QLDC notes that the Bill adopts the precautionary approach (clause 16 and clause 18g), as opposed to the stronger formulation of the precautionary principle. The precautionary approach is generally recognized to be a softening of the principle. Use of the precautionary approach (as outlined in principle 15 of the Rio Declaration 1992⁵) feels dated, given subsequent international legislation has adopted the precautionary principle instead.
- 4.6 QLDC further notes that definitions of harm in the precautionary principle need far greater clarity and operational explanation. Explanation of serious and irreversible harm could be addressed within the National Planning Framework.
- 4.7 QLDC encourages any definition of wellbeing to align with definitions provided within section 3(d) of the Local Government Act⁶. Improvements to existing definitions should be reflected across both pieces of legislation.

5.0 The environmental outcomes and limits require greater consideration

- 5.1 The environmental outcomes listed at clause 8 presents a strong summary of important matters, but without the provision of an internal hierarchy will be challenging to use effectively. In an era of complexity, prioritization of these outcomes will be needed to ensure good decision-making and process delivery.
- 5.2 Clause 8 is weighted towards environmental outcomes, and it is unclear how these outcomes will be reconciled with the government's Urban Growth Agenda and the NPS-UD. Good urban development invariably involves changes to the biophysical environment and cannot be confined to the margins if the country is to deliver strong well-developed and affordable communities. The Bill and its processes need to include process to sensibly reconcile different and competing agendas.

⁴ Through the inclusion of offsetting and compensation in the definition of 'mitigate' in Clause 3

⁵https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

⁶ promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.

- 5.3 QLDC notes that the environmental outcomes currently do not prioritise domestic and community supply and recommends that this is also included. It is essential that effective access to drinking water supply is maintained.
- 5.4 QLDC recommends that clause 8(k) includes environmental activities at (i) and adds a point to address enabling low-emissions living solutions.
- 5.5 QLDC also seeks inclusion of an additional limb to clause 8(m) that seeks to maintain the character and quality of the rural environment. The district has a large amount of rural land, a significant portion of which is classified as Outstanding Natural Landscape (ONL). The character and quality of this environment is essential for the economic and social wellbeing of both the District and New Zealand. It is therefore essential that any rural development maintains this character and quality. The areas of the rural environment that are outside the ONL classification are under considerable development pressure. Balancing these issues in the rural environment has recently been the subject of an extended and intensive Environment Court process, following appeals on the Queenstown Lakes Proposed District Plan. This time and investment should not be compromised by the proposed Bill.
- 5.6 QLDC recommends that in the section 'Contents of the National Planning Framework', water needs to be allocated (and reallocated) amongst competing activities in a way that meets the purposes of the Act and the environmental outcomes anticipated. It is important that this is done in such a fashion as to prevent effective ownership of water as a resource.
- 5.7 QLDC supports the concept of environmental limits, but all limits will need to be carefully established and monitored to prevent development 'down' to the minimum viable option.

6.0 Summary

- 6.1 QLDC welcomes the bold decision by government to reform the 30-year-old Resource Management Act, and to fundamentally shift to an outcome-based focus.
- 6.2 The Council appreciates the opportunity to comment on the Exposure Draft of the legislation but notes that the paucity of detail renders such comment limited. Until the detailed provisions are understood, it is difficult to comment in any detail.
- 6.3 The Council remains concerned that local communities appear to be increasingly disempowered by the process, and that the adoption of regional plans will not allow local communities to reflect their own expression of development (even within a strongly defined National Planning Framework). In this regard the Bill seems inconsistent in its direction, and at best prioritises broad regional level outcomes ahead of the development of community building aspirations of individual parts of the system.

**COMMENTS INQUIRY ON THE NATURAL AND BUILT ENVIRONMENTS BILL: PARLIAMENTARY PAPER
OTAGO-SOUTHLAND COUNCILS' JOINT SUBMISSION**

This submission is from the ten councils of Otago and Southland regions:

- Central Otago District Council,
- Clutha District Council,
- Dunedin City Council,
- Environment Southland,
- Gore District Council,
- Invercargill City Council,
- Otago Regional Council,
- Queenstown Lakes District Council,
- Southland District Council, and
- Waitaki District Council.

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Introduction

Otago and Southland's councils thank the Environment Select Committee (Select Committee) for the opportunity to submit on the exposure draft of the Natural and Built Environments Act (NBA).

The signatories acknowledge that there is still a significant amount of work to be done on the design of the new legislative system, including drafting the balance of the NBA and the Spatial Planning Act (SPA) and the Climate Change Adaptation Act (CAA). There is also a considerable amount of work to be done to put in place necessary arrangements to enable an effective transition from the current system to the new one.

While we appreciate it was never intended that the exposure draft would contain all the detail that will be included in the final Bill, not being able to consider a comprehensive proposal, made up of the NBA, SPA and CAA, makes it challenging to comment on the draft NBA provisions.

In preparing this submission, signatories were supported by their planning teams, who provided technical input on the exposure draft and its possible implications.

This submission reflects the signatories' shared view on the proposal and may be supplemented by individual comments from each of the councils.

Overall position

Councils have put significant investment in implementing the current resource management system, and these investments are ongoing. Many councils in the Otago and Southland regions have recently completed a review of their plans or have started a review process. The implementation costs of a new system will be substantial, especially in view of the more recent plan reviews. Depending on the timing of change, it is also likely to be disruptive to current work programmes and forward progress towards supporting additional housing capacity and work to implement the Government's freshwater package. Such costs and delays will only be worthwhile if the new resource management system brings significant improvements to the current system, which at this stage is uncertain.

In our view, to be effective, the new system needs to provide:

1. Strong directions and priorities that usefully guide decision-making at every level;
2. The ability to provide for local conditions, including the local environment, and local communities' aspirations
3. A strong monitoring, assessment and review process; and
4. Clear and unambiguous legislation.

The NBA draft, as it stands, does not give us confidence that the reform will meet these expectations, and enhance the effectiveness and efficiency of the resource management system.

The strong focus on environmental bottom-lines ("environmental limits"), and the weak requirement to "promote" environmental outcomes implies that environmental degradation will be tolerated down to bottom lines. This is against the stated reform's objective to "protect and restore the environment (...)".

In addition, the lack of focus on the built environment is unlikely to result in enabling good-quality urban development, which is also one of the key purposes of the reform.

We also note that many questions remain on the planning committee model that is being proposed, how it is going to work, and whether it is the most appropriate model.

Treaty Clause

Before expanding further on our concerns with the exposure draft, we acknowledge the importance of a deep and significant partnership with mana whenua on resource management and offer our support in principle for the draft Treaty Clause, and the requirement to “give effect to”, rather than “take into account” te Tiriti o Waitangi.

We note that the practical implications of this change are still uncertain and wish to see some clarification on the matter. We agree with the Resource Management Panel that guidance on how to implement te Tiriti should be developed. We would like confirmation that such guidance will be provided in the full Bill.

A lack of clear directions and priorities

The NBA exposure draft does provide the purpose and direction that is needed for effective and efficient resource management; and to inform decision-making.

Purpose of the Act

As a foundation to the Act and to its implementation, the purpose section needs to be clear and unambiguous. As it is, the draft purpose of the Act falls short of these expectations and is likely to give rise to long and costly arguments and litigation, as planning processes will try to achieve a purpose many will interpret differently.

In particular:

- The definition of “Te Oranga o te Taiao” is ambiguous, and not limiting. “Incorporates” implies that there are components to the concept which are not listed in the definition. And as it is not a tikanga concept, it is likely to meet the same interpretation challenges as the concept of “Te Mana o te Wai” in the National Policy Statement for Freshwater Management (2020) (NPSFM);
- The term “uphold” is vague and lacks strength. Moreover, it is not appropriate to some of the elements of “Te Oranga o te Taiao” (“upholding the interconnectedness of all parts of the natural environment”);
- The health of the natural environment is also a concept open for interpretation;
- There is no priority or guidance over how conflicts between Te Oranga o te Taiao and the ability of people to support their needs should be managed.

Under section 5, environmental limits and environmental outcomes are the key two mechanisms by which the purpose of the Act is to be achieved. The direction to “comply with” environmental limits, and “promote” environmental outcomes seems to give precedence to environmental limits, relative to outcomes. For the Act to effectively change the focus of resource management from managing effects to achieving outcomes, there should be a higher emphasis on the environmental outcomes.

Environmental outcomes

Clause 8 (Environmental outcomes) should complement the purpose of Act and provide more detail over what needs to be achieved, and what resource management's priorities are. The current draft provides a long list of outcomes, between which conflict is inevitable. No clear priority between these outcomes is provided, unless it is implicit through their order; or through the list provided in section 13.

Although we acknowledge the intention of providing guidance on how conflicts will be resolved through the National Planning Framework and the Natural and Built Environments Plans (plans), a clear sense of priorities between outcomes within the NBA itself will make for a more efficient system, avoid lengthy and costly litigation on how conflicts should be resolved, and greatly assist decision-makers.

Given that, under draft section 13, the National Planning Framework is required to provide direction on only nine of the 17 environmental outcomes listed in section 8, the National Planning Framework is unlikely to provide appropriate direction to resolve key conflicts unless the Ministry for the Environment extends its scope to additional, discretionary, outcomes. In particular, guidance would be useful from government on how to enable urban development (section 8(k) and (l)) and protect highly productive land from inappropriate subdivision, use, and development (section 8(m)(iii)).

The National Planning Framework and plans could usefully provide guidance on how to resolve conflicts between outcomes if they were to translate the NBA's environmental outcomes into a set of mutually compatible outcomes adapted to the place they apply to. This would also better reflect the need for local place-based planning decisions to reflect the needs and values of the communities affected by them, and the variation that exists across New Zealand's regions, cities and districts.

Enabling management of local conditions and aspirations

We support the fact that national directions be required, rather than discretionary, on matters of national significance. We also support the setting of environmental limits at a central level. As demonstrated by the NPSFM, national bottom-lines set useful parameters to the engagement of local communities on objectives, policies and rules for their local environment.

Regions can have a large variation in climate, geophysical and ecosystem characteristics, and economic, social and cultural characteristics. The trade-offs, outcomes and limits prescribed in legislation can only be meaningful if they are adapted to the local environment and to local communities' aspirations.

The NBA exposure draft should provide adequately for the tailoring of provisions to local and regional communities and their environment:

- It should allow for plans to set environmental limits unless prescribed by the National Planning Framework (Section 7(2))
- It should explicitly provide for plans setting provisions, including environmental limits, which are more stringent than the National Planning Framework's provisions.

We note that Schedules 1 and 2 are currently placeholders, and that the exposure draft does not provide any indication of what community engagement will be expected as part of the preparation of both the National Planning Framework and plans. The growing importance given to national directions, and the regionalisation of plans, could curtail local communities' input in environmental

management if participation processes are not adequate. The processes set out in both Schedules 1 and 2 should ensure that there is adequate input from local and regional communities, on the decisions that affect them, and the places in which they live.

Monitoring, assessment, and review

We agree with the Resource Management Review Panel (Randerson Report) finding that under the current RMA the link between environmental monitoring and reporting and the assessment and review of plans has been weak. The evaluation and assessment framework for both plans and national directions should be strengthened. We note that the explanatory material released with the exposure draft recognises that the monitoring, assessment and review of the National Planning Framework have not been provided for in Parts 3 and 4 of the exposure draft, and that these matters will be part of the full Bill. We seek confirmation that the full Bill will set up a stronger monitoring and assessment framework that applies across the whole system.

As highlighted by the Resource Management Review Panel, the lack of clear goals and measurable outcomes has partially accounted for inadequate monitoring and oversight in the resource management system. Not requiring the National Planning Framework and plans to set clear and measurable environmental outcomes is likely to undermine future provisions on the monitoring, assessment and evaluation of plans and the National Planning Framework.

Setting a clear and unambiguous framework

It is difficult to understand from the exposure draft what the various planning instruments (National Planning Framework and plans) will look like, and how they will interact. The strength, format and level of specificity of the National Planning Framework's provisions are uncertain, especially when it comes to the "strategic goals", "vision", "direction" and "priorities" it must prescribe. Similarly, the level at which environmental limits will be set in the National Planning Framework is uncertain. Lastly, there no is clear provision on the relationship between national and regional rules. These are important matters, that need to be clarified to facilitate the implementation of the reform.

It is also important that the NBA integrates with the SPA and CAA. It remains to be seen how well the three pieces of legislation will integrate, and ultimately contribute to the achievement of the Government's reform objectives.

The language used in the Act should be clear and unambiguous. At present this is not achieved with terms such as "promote", "further", or "uphold" creating opportunities for misunderstanding and potential litigation. The relative weakness of these terms contribute to the Act not providing a strong sense of direction, and leaves many of its core concepts and provisions open for interpretation and challenge.

In addition, the draft deviates from the traditional RMA terminology, without providing a clear indication of what the change means (e.g. "marine environment" vs. "coastal environment"; or "matters" vs. "issues). Using terms which have been reviewed and interpreted by Courts over the years provides the benefits of case-law and some certainty over how commonly used concepts are to be interpreted. The purpose of this change from status quo is not entirely clear, and creates uncertainty and ambiguity.

A lack of focus on the urban environment and urban form

One of the stated objectives for the reform of the Resource Management system is to better enable development. However, there is little emphasis on urban development and urban form. Even though it is mentioned in Part 2 of the exposure draft, it is unclear how urban development is to be provided for in plans. Presumably, it is expected that such direction will be provided by the National Planning Framework. However, given the reform's objectives, and the housing crisis New Zealand is experiencing, the exposure draft could have been expected to provide for development more explicitly.

It is our understanding that regional spatial strategies will be instrumental in directing urban growth and development where it is most appropriate. The NBA exposure draft does not, however, draw an explicit relationship between regional spatial strategies and plans, in providing for urban growth.

The only focus of the sections addressing urban development is about quantity of supply, and there is no mention of the quality of the built environment, including the quality of housing, the liveability of new housing/mixed use areas, or the importance of good urban design to people and community wellbeing. These matters are of critical importance to councils and their communities and this should be reflected as a key outcome to be achieved in the NBA.

We note that the NBA seems to put more emphasis on urban development than on rural development. It is unclear whether rural development is to be enabled to the same degree as urban development, or whether rural development will be subjected to a more restrictive framework. The importance of development in small rural towns should be recognised in the NBA.

Lastly, Section 7 requires environmental limits to be prescribed for matters which relate to the natural environment. Consideration should be given to whether environmental outcomes could also be set in relation to the built environment and its link to human health.

Planning committees

The proposal to move the responsibility for plan making from local authorities to planning committees raises many issues that need to be addressed before one can judge whether this model is appropriate or not. For example:

- The responsibility of "maintaining the plan" is not well defined and could be interpreted in different ways.
- The composition of the planning committee may raise issues with respect to its representativeness. Potentially, residents of rural, sparsely populated councils, will be "over-represented" relative to residents of larger cities and districts with high populations driven by the visitor economy.
- The draft NBA sections and explanatory material do not provide direction over how decisions will be made by the committee (consensus/majority).
- Similarly, there is no indication whether committee members are expected to have specific skills and competence, or if they will be appointed for their ability to bring in a local perspective to decision-making.
- The draft NBA does not clarify the organisational structure of the committee and its secretariat. Is it expected that secretariat officers will be made of employees seconded from councils? Or will

they be employed by the committee? Such questions result in uncertainty as to ongoing resourcing and skill requirements for local councils.

Lastly, we note that councils are expected to fund the secretariat. Beyond the likely challenges of designing a funding system that is equitable for all local authorities in the region, this removes councils' control over part of their budgets, as spendings will be authorised by a third party. This is likely to create practical challenges which need to be considered and addressed before this new model is confirmed.

In view of these challenges, and of the impact of this new model on local councils' resourcing and functioning, Otago/Southland councils would welcome an opportunity to engage with MfE on the planning committee model before the full bill is submitted to Parliament for first reading.

Transition

The resource management reform will have a significant impact on local councils, and clear implementation timeframes and transition provisions will be critical for councils to plan ahead, and resource their future activities. The implementation process and transition timeframes should be developed as soon as possible, in consultation with local councils, mana whenua, and all other parties which will have functions under the Act.

They should be designed to keep momentum on ongoing planning work seeking to bring about positive change; and to coordinate with the local government reform.

RELIEF SOUGHT

- 1) Develop direction on how to give effect to te Tiriti o Waitangi in the full Bill
- 2) Review Part 2 of the NBA to clarify the Act's purpose, and provide clear priorities and directions to guide decision-making
- 3) Consolidate and prioritise the outcomes set out in clause 8.
- 4) Require the National Planning Framework to address protection of highly productive land as an additional matter in section 13.
- 5) Require the National Planning Framework and plans to set clear priorities and measurable environmental outcomes for the matters and geographical areas they address.
- 6) Enable Planning Committees to:
 - a. Set environmental limits, even when not prescribed to do so through the National Planning Framework;
 - b. Set provisions, including environmental limits, that are more stringent than those in the National Planning Framework
- 7) Require appropriate community participation at both regional and local level in Schedules 1 and 2

- 8) Revise the draft, and clarify its terminology, to ensure that its provisions are clear and set out a clear planning architecture
- 9) Clarify how the NBA and other legislation will interact
- 10) Make more explicit provision on how plans will interact with regional spatial strategies for urban development
- 11) Recognise and provide for the importance of the quality of the built environment and the importance of quality housing and good urban design for people and community wellbeing; and consider setting environmental limits that relate to the built environment
- 12) Refine the planning committee model, in consultation with local councils, including those from Otago and Southland
- 13) Engage with local councils, including those from Otago-Southland, on the implementation of the new system, and on transition provisions
- 14) Design the implementation processes and timeframes to keep momentum on ongoing planning work seeking to bring about positive change; and to coordinate with the local government reform

Yours faithfully

Central Otago District Council

Clutha District Council

Dunedin City Council

Environment Southland

Gore District Council

Invercargill City Council

Otago Regional Council

Queenstown Lakes District Council

Southland District Council

Waitaki District Council

26 August 2021

Committee Secretariat
Environment Committee

By email: en@parliament.govt.nz

Dear Committee

**SUBMISSION TO THE NATURAL AND BUILT ENVIRONMENTS BILL
PARLIAMENTARY PAPER**

Thank you for the opportunity to speak to Queenstown Lakes District Council's submission on the Natural and Built Environment's Bill parliamentary paper on 17 August 2021.

Please find attached my notes on our submission and the additional points I was unable to talk to within the allotted timeframe.

Should you have any further queries relating to these notes and our submission, please do not hesitate to contact me on (03) 441 0471 or mike.theelen@qldc.govt.nz

Yours sincerely



Mike Theelen
Chief Executive

CC: Michelle Morss, QLDC

SUBMISSION TO THE NATURAL AND BUILT ENVIRONMENTS BILL PARLIAMENTARY PAPER

Good morning. My name is Mike Theelen and I am the Chief Executive of Queenstown Lakes District Council (QLDC).

Thank you for the opportunity to present Council's submission today.

You will have read Council's submission. In it we both draw on and endorse the submissions of the Joint Otago Southland Councils, and of Taituara. We also endorse the submission of LGNZ. We note that these cover many similar topics and views.

My purpose today is to highlight Council's key concerns and to draw on local examples and experience. I am happy to answer any questions the Committee may have.

Firstly, I wish to commend the government for initiating this comprehensive review of the RMA and for issuing this exposure draft. While some of our comments relate to the paucity of detail in it, the opportunity to comment on government's early directions is appreciated.

I also wish to acknowledge the willingness of Ministers and officials to engage with the local government sector. I have had the opportunity to share my experiences and ideas. The opportunity to engage in positive dialogue is always welcomed.

QLDC is a microcosm of the various tensions and challenges NZ communities and the NZ planning system faces. We are one of the most desirable places in the country to live, and are the fastest growing district in the country, a mixture of both natural increase and high levels of inward migration.

Each of our towns and settlements have experienced rapid growth, often compounded by a lack of clear development direction and/or adequate infrastructure to support communities.

The district has an extremely high amenity value, and over 90% of the district is denoted as Outstanding Natural Landscapes. This amenity fuels our desirability, our economy, and is fiercely contested by developers and those who consider that no change should ever happen (even when some of that quality (like wilding pines) is an environmental pest).

Similarly, we are kaitiaki over some of NZ's most pristine natural waters which provide high quality supply and also significant recreational and scenic attraction, while the shores of which are home to our key settlements.

We are also a community that has extreme wealth but a lower than average income. Our planning rules are highly contested and the District Plan is not the bible of the community's aspirations as much as it is the jumping off point for those who wish to contest development rights. Every metre in gain can be worth millions.

My first point therefore is that Council endorses the direction of the reform and of the three key pieces of legislation. Our district has experienced the constant defensive battles trying to protect environmental and amenity bottom lines and the absence of clear development outcomes and priorities for decision-making. Much of our growth has been developer-led, based on a myriad of private plan changes that have not served the community well.

However, Council is concerned about the NBA insofar that it is largely seen as a replacement for the RMA/District Plan framework, whereas the key changes should come from the proposed SPA, providing a strong outcomes-based framework, and the CAA legislation, providing those key strategic changes to reverse our biophysical decline. The absence of these pieces of legislation leaves the NBA in something of a vacuum and therefore prone to repeating the same mistakes as the RMA.

One of the key considerations for the reform is to ensure the right hierarchy and relationship between these instruments, and getting these established and aligned is critical to ensuring that the myriad of individual decisions can be made in the right context.

While the NBA contains both environmental limits and outcomes and references the National Planning Framework, our Council looks to the SPA to establish the long-term outcomes and directions for a community and to provide a local context for decision-making, and the inevitable trade-off between competing and complementing value systems and processes.

Like a number of Councils (high growth councils), QLDC has completed a spatial strategy in collaboration with government and iwi. This work anticipates the future NPS-UD and the SPA. It is important that these plans become key guiding documents which both inform the NBA's and against which the local interpretation and balancing of the NBA's, environmental limits and outcomes can be applied.

The Council therefore supports both the National Planning Framework and the Environmental Limits and Outcomes. It considers that it is important to establish strong guidance and some hierarchy of purpose. At present, Clause 8 reads like an uncoordinated wish list and provides no sense of national direction or prioritisation. The risk is that councils will find these matters and the competition between them litigated or decided by the courts.

The legislation faces a challenge of providing both priority and hierarchy, but also enabling councils to make the trade-offs that support locally agreed development goals and protect environmental limits.

It is the nature of planning to be a competition of ideas and priorities. Any action or intervention involves a trade-off, even if that trade-off is not evident. The legislation needs to set that hierarchy of expectations clear but do so in a way that enables communities to support agreed local goals, that benefit not only the environmental but also their economic, social and community wellbeings. At present the draft does not provide this direction.

One of Council's key concerns is the perceived and practical loss of local direction and priority associated with the proposal to rely on fourteen regionally-drafted NBA plans.

Council acknowledges that at a system or resource level there are efficiencies to be gained from a regional level approach, but for many individuals and communities what matters most is what happens at the local and neighbourhood level.

At present, few communities and individuals engage with regional level processes or plans, but become highly engaged at the local level because that is the level at which the most relevant impacts are understood. The proposed fourteen NBA plans will remove local voice and local nuances, and in doing so reduce councils to mere implementation arms of policies written at a regional scale. This is not democracy.

Plans and planning certainly needs broad direction but it also needs to operate at a scale at which a community can influence and shape. Clear prioritisation, key standards and

accountability can deliver both efficiencies and local colour without the need to radically reduce the number of plans. In Council's view, getting the plan settings right is more important than simply reducing the raw number of plans. Unitary plans already demonstrate that resource and community/urban planning detail can co-exist but still need to remain at a scale relevant to the communities they are part of.

In contrast, crafting a single plan that equally addresses the urban objectives and needs of communities as diverse in need and identity as Dunedin, Queenstown and Ranfurly (all within the Otago region) will be fraught. The recent one-size-fits-all approach of the NPS-UD has demonstrated how unsuitable broad sweeping standards can be, when local communities have no opportunity to shape or direct them to suit local conditions.

The Council also wishes to draw the committee's attention to the inevitable trade-offs between the development needs of communities and the biophysical environment. Our Council shares a concern that development may be pursued at the expense of the environment, but also recognises that the NBA as presented runs the risk of stifling sound urban planning and development by marginalising development to achieve environmental outcomes. The absence of the role of the SPA compounds this concern. The legislation needs to ensure that these two systems can be reconciled, particularly if development is to remain efficient, effective, and affordable for communities.

Finally, I would like to draw the committee's attention to two further points. The first is Council's desire to see rural character and the quality of the current environment recognised as an Environmental Outcome. My own experience having endeavoured to do this in the early days of the RMA was to discover that rural character is almost an urban concept, many farmers recognise rural character as the outcome of an ongoing series of economic and management decisions, rather than a quality to be preserved in its own right.

The second is related to water. The council wishes to ensure that water is recognised and protected as a public good, and one that is not enabled by design or default to be privatised and alienated from the community as a whole. The Council seeks that water be prioritised to support communities through the provision of water for drinking purposes above any other economic purpose.

Thank you once again for the opportunity to speak.

Mike Theelen

17/08/21