QUEENSTOWN LAKES DISTRICT COUNCIL

QLDC Council
1 March 2016

Report for Agenda Item: 6

Department: Planning & Development

Council submission on the proposed Resource Management Act reforms

Purpose

The purpose of this agenda item is to seek agreement to lodge a Council submission to the Local Government and Environment Select Committee on the proposed Resource Management Act (RMA) Reforms.

Recommendation

That Council:

1. **Note** the contents of this report;

2. **Authorise** the submission appended as **Attachment A** to be submitted to the Local Government and Environment Select Committee;

3. **Authorise** officers, in consultation with the Mayor, Planning and Development Portfolio Leader or Deputy Leader, to make minor and inconsequential changes as necessary to the submission prior to lodging it; and

4. **Confirm** whether Council wishes to be heard by Select Committee in relation to this submission.

Prepared by:	Reviewed and Authorised by:
	
Blair Devlin District Plan Manager (Acting)	Tony Avery General Manager, Planning and Development
22/02/2016	22/02/2016

Background

1. In December 2015, the Government introduced a Bill into Parliament that proposed a range of amendments to the RMA. There is an opportunity for the Council to influence the final shape of these changes by submitting its views to Select Committee before 14 March 2016, and if desired, present at the hearing.

2. The overarching purpose of the Bill is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way. Specifically, the Bill seeks to achieve:

    - better alignment and integration across the resource management system;
    - increased flexibility and adaptability of processes for decision-makers; and
    - the creation of more robust and durable decisions involving more meaningful participation at the plan making stage.

3. In addition there are a number of minor or technical fixes that are sought to some parts of existing legislation to either improve an existing process or to address an unintended consequence.

4. The RMA reform Bill proposes 36 amendments, among other items, the introduction of planning templates and attempts to speed up and improve flexibility of the plan making process. There are proposals that aim to improve the planning process through collaboration as well as proposals to simplify and speed up the consenting system. Some reforms will also require councils to proactively plan for affordable housing.

5. A workshop on the key changes was held with Councillors on 26 January 2016. **Attachment A** contains the full draft submission. **Attachment B** is the full Regulatory Impact Statement (RIS) published by the Ministry for the Environment that describes the changes in full.

6. The Council has the opportunity to present its submission to the Select Committee if it seeks to be heard.

Main points of concern with proposed RMA reforms

7. This agenda item focuses on what officers consider to be the ten most significant proposals out of the 36 for the Council. The attached submission covers the full reform proposal.

    Significant Proposal 1: Awarding the Minister with regulation making powers (pp17-19 of Attachment B)

8. This proposal gives the Minister the power to change Council planning policy by regulation without agreement from Council. We oppose this as it gives central government an effective veto power over local decision-making processes made following the submission and further submission process set out in the First Schedule. It also goes against the devolved decision-making principles of the RMA and has the potential to be inappropriately used politically by the Minister.

9. Instead officers recommend greater involvement of the Ministry for the Environment in the local plan writing process as a submitter, and more significant changes to the First Schedule process so RMA plans can be changed more quickly than at present when problems are identified.

Significant Proposal 2: Introducing consent exemption for boundary infringements with neighbour approval (pp40-41 of Attachment B).

10. This would enable an activity that requires a resource consent because of a boundary breach to be treated as permitted provided written approval from the affected neighbour has been given.

11. Officers recommend opposing this change because it confuses 'effects on people' with 'effects on the environment'. It could result in a built form completely out of character with the local context in zones, but which a neighbour thinks is acceptable. For example the residential Arrowtown Historic Management Zone. This is a real risk where the neighbour is the same person as the applicant or is subject to a legal obligation on their title to provide an affected party approval (such as at Jacks Point).

Significant Proposal 3: Creation of a 10 day fast-track consenting process for 'simple' applications (pp42-43 of Attachment B)

12. The proposal will introduce a truncated 10 working day consent process for 'simple' applications. Controlled activities (not including subdivisions) and activities defined in regulations would be subject to the new 'fast track' process.

13. Officers recommend opposing this because it wrongly emphasises the value of a quick decision over making the right decision. QLDC endeavours to process all consents as soon as possible and within the existing 20 day timeframe. Our current average is 17 working days and over 90% are processed within 20 working days.

14. The proposal represents a 50% reduction in the existing time allowed for processing certain consents. This could result in extra costs to ratepayers of increased staffing to meet the new timeframes.

15. Over the past 5 years Council has had an average of 948 resource consent applications per annum. Moving to a 10 day timeframe would put additional resourcing pressures on the Council and could result in a rushed decision being made in order to avoid paying a fee refund.

16. Controlled activity consents are not always straight-forward. For example, a controlled activity consent for a new commercial building at the Remarkables Park Shopping Centre requires Council to exercise control over 14 different matters.

17. It should also be recognised that the 20 working days for non-notified consents is already short compared to comparable consent processes in Australia (up to 60 days) and the United Kingdom (40-65 days).

18. We consider a more effective mechanism to speed up consenting would be to alter section 113 of the RMA, which sets out the very large number of matters that must be covered in a written resource consent decision, regardless of scale. This would enable faster decision writing as many of the matters required under section 113 could be dispensed with for non-notified consents, for example "a summary of the evidence heard".

Significant Proposal 4: Consent decisions to be issued with a fixed fee (pp50-51 of Attachment B)

19. While officers recognise this provides increased certainty for applicants, we consider that councils already have the ability to switch to fixed fees if they so desire. No legislative change is necessary. Officers can see the benefits of a fixed fee system however 'user pays' is arguably fairer as it does not result in large consents being subsidised by applicants for more minor consents. We request that the requirement for a fixed fee is deleted from the Bill as councils already have the ability to choose to use a fixed fee system.

Significant Proposal 5: A mandatory National Planning Template (pp20-22 of Attachment B)

20. The proposal is to develop a national planning template to improve the consistency of RMA plans and policy statements across the country. The minimum requirements for the first version of the national planning template would be:

    - standardised formatting and structure for plans and policy statements;
    - references to existing national policy statements and national environmental standards;
    - where possible, standardised definitions; and
    - electronic functionality and accessibility of planning documents.

21. The template aims to reduce the complexity involved in creating and using RMA plans and policy statements, and improve the consistency and user-friendliness of plans.

22. Officers support this proposal with regard to a standardised appearance and format of planning documents across the country. However the national planning template should not go as far as specifying outcomes (beyond those established in National Policy Statements (NPSs) and National Environmental Standards (NESs), as these are best decided at the local level.

23. Measures should also be put in place to ensure it is easy to move operative district plan provisions over to the national planning template without undue formality so the planning process does not need to be repeated. Recent operative provisions should be able to be moved without opening them up to submission again. This is particularly relevant to QLDC given we are in the early stages of a proposed District Plan.

Significant Proposal 6: Changes to the plan making process (pp29-30 of Attachment B).

24. The proposal will:

- introduce limited notification as an available option for plan changes where directly affected parties can be easily identified. This would limit public participation to only those people directly affected;
- require councils to request approval from the Minister for the Environment to extend the two year time limit for making decisions on a proposed plan or plan change; and
- clarify that councils may give effect to a proposed RPS when preparing a combined plan that includes a proposed RPS

25. Whilst officers support the principle of streamlining the plan making process, we do not think the proposed amendments go far enough.

26. The two year timeframe for making decisions on a Proposed District Plan is already set out in the RMA so this is an unnecessary step. Officers do not think that requiring approval of central government to take longer than two years to make decisions on submissions adds value, because it is unclear what it would achieve.

27. In reality it could take longer than two years to make decisions on submissions due to legal challenges, the complexity of the issues at hand, or the number of submissions received. No council wants its hearings of submissions to drag on for more than two years, but the RMA with its focus on processes rather than outcomes does not facilitate this.

28. Limited notification of some small plan changes could be useful as an option to speed matters up, however it risks shutting the public out of changes that incrementally could have wider implications, for example minor rezoning of land across the Wakatipu Basin.

29. Given the widespread use of experienced independent commissioners for plan change hearings, and how thorough the local hearing process has now become, officers would prefer either:

    - limiting or removing appeal rights on 'policy' aspects of plan changes (recognising the robustness of the local decision using experienced independent Commissioners who have completed the 'making Good Decisions' programme)
    - remove the 'de novo' nature of Environment Court appeals i.e. don't start all over again.
    - greater accountability for timely decisions from the Environment Court be inserted into the Bill, because evidence shows most time taken to make a plan change or proposed plan operative is at the appeals stage.

30. Officers also recommend that the Council's submission seek:

    - legislative change so that submitters cannot seek to physically expand the geographical area of a plan change (the "me too" submitters) and unnecessarily hold up plan changes with 'scope' issues
    - plan changes that have recently be made operative following the publication of a Proposed District Plan, can be incorporated into that Proposed District Plan without further formality or opening them up to submission again.

Significant Proposal 7: Streamlining of the notification and hearing process (pp44 – 46 of Attachment B)

31. There are a range of proposals under this heading including:

- to clarify the notification provisions for certain types of applications and set out a new stepped approach for determining whether to notify an application.
- to refine consideration of affected parties for limited notification of district land use activities, creating a two-step test for district council land use consents.
- to require councils to identify the specific adverse effects that bring them to decide to notify an application; record those specific effects and include them in the public notice; and require submissions to be focussed on those effects.
- To require that if submissions on notified resource consent applications do not meet certain criteria (e.g. they must be supported by evidence), they must be struck out.
- to include a new regulation-making power to enable regulations that can specify applications which must be processed without public notification, and restrict the persons who may be considered affected by that activity to certain types of named person (identified in the regulations)

32. Officers share the concern of central government that the notification decision has become more important than the actual decision. In many respects, a decision to notify an application can mean it does not proceed due to the cost of a notified hearing and the potential for appeals.

33. However the reform proposals do not simplify or streamline matters, instead they tinker with the existing tests for notification. The changes would introduce a new layer of assessment of submissions for councils, in terms of now having to determine whether submissions meet the indicative criteria that submissions must:
    - be related to the reasons for notification;
    - be supported by evidence;
    - have a sufficient factual basis;
    - if pertaining to be independent expert evidence, be made by a person with suitable experience and qualifications.

34. The proposed changes also restrict the ability for submitters to be involved and identify issues of concern (based on their local knowledge) that a council officer may not be aware of.

35. We do not support these reform proposals because they do not fundamentally address the big issue of notification decisions being made on the qualitative test of whether environmental effects are more than “minor”. Greater specification of consents that must be notified (such as a list of application types that *will* / *will not* be notified) would provide greater certainty for both applicants and councils, rather than endless arguing over whether environment effects are more than minor.

36. The reforms also introduce regulation-making powers that allow the Minister to ignore the cumbersome First Schedule process that councils are forced to go

through in the plan making process, only to have to start all over again at the appeals stage. As noted in paragraph 30, substantial reform of the First Schedule process is required.

Significant Proposal 8: Strengthen requirements for councils to improve housing supply and provide for development capacity (pp25-26 of Attachment B).

37. This proposal involves:
    - Additional function of councils to ensure development capacity meets long-term demand.
    - Phases of national direction – council to assess demand for and supply of development capacity and give effect to findings in plans through rezoning. Options for methodology for assessment and options for more national direction.
    - Aims at embedding a Housing and Special Housing Areas Act (HASHAA) type policy into the RMA long-term. HASHAA expires later this year.

38. Officers support this policy and largely already do this. The Council's Dwelling Capacity Model (DCM) measures the number of dwellings that could potentially be developed under existing zones. The DCM has been used as an important tool to inform the Council's planning over a number of years. We would support a consistent methodology applied nationally so that assessments of dwelling capacity are consistent between districts.

39. The change will result in additional costs to the Council arising from additional plan changes required to meet the findings of the assessment of development capacity. The regulatory impact statement is silent on what the "long-term demand" means. For example: providing zoning for business and residential growth in Queenstown for 50 years could mean massive re-zonings now.

40. Officers recommend requesting that a definition is given for "long-term demand". The proposal also needs to recognise that housing needs and infrastructure requirements need to be planned and funded in tandem. Without some form of deferred zoning this proposal could lead to uncoordinated and sporadic development.

41. The proposal fails to deal with the issue of "land-banking". The link between zoning land and it being developed is not linear as evidenced in the Queenstown Lakes District where large areas of land zoned for residential development have sat vacant for decades, despite considerable demand.

Significant Proposal 9: Improving processes for specific housing consents (pp47-49 of Attachment B).

42. This proposal:
    - reverses the presumption in favour of subdivision, so that subdivision is allowed unless it is restricted by a rule in a National Environmental Standard (NES), a plan or proposed plan; and
    - Restricts public input on subdivision/residential activities at the consent stage and prevent public objections to consent applications stopping developments consistent with the zoning from occurring; and

- Prevents Environment Court appeals for subdivisions, residential activities in a residential zone and boundary infringements to be precluded unless they have non-complying status.

43. This proposal would mean that where subdivisions have been anticipated in residential zones in QLDC's District Plan, we would be able to rapidly process subdivision applications (normally grant but with the ability to decline non-notified for bad design etc). It also encourages public input at the plan-making stage when zonings are set, rather than at the resource consent stage.

44. In general officers support these changes as developers should be able to get on and develop residential activities on land zoned for residential development without the concern of notification or Environment Court appeals. However the safety valve of the 'non-appeal provisions' not applying in the case of a non-complying activity is important and must be retained. The Council also has the safety valve of "special circumstances" under the RMA to notify an application if for some reason public comment should be essential for an application that is not non-complying.

Significant Proposal 10: Enable the Environment Court to allow councils to acquire land where planning provisions have rendered land incapable of reasonable use and placed unfair and unreasonable burden on the landowner (pp64-66 of Attachment B)

45. Officers do not support this proposal as legislative change is not necessary for this to happen. The change is very weakly worded, such that the Environment Court might "allow" councils to acquire land. The Council can acquire land already without the Environment Court allowing it to happen, provided there is a willing buyer and willing seller, and is able to fund the purchase.

46. There is a concern this could be used as a threat to try to achieve a developers' preferred outcome and cost rate-payers considerably in terms of court costs to defend the Council's decision. The proposal would enables persons to apply to the Court or appeal at any time, rather than the discrete opportunities currently provided.

Options

47. 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:

48. Option 1: Make a Submission to the Select Committee addressing both helpful and unsuitable proposals

Advantages:

- Allows the Council to request changes to provisions where it has identified improvements can be made. Ensures remedial actions are identified in a pro-active manner.
- Allows the Council to reinforce its overall structural and strategic approach to plan/decision making.

Disadvantages:

- Resource spent on this project could be used in other areas.

49. Option 2: Do not make a Submission on the Proposed RMA Reforms Bill

Advantages:

- Further resource required for this project could be used in other areas.

Disadvantages:

- Would not allow the unique perspective of the QLDC to be communicated to the Select Committee (high growth in a sensitive and litigious environment).
- Could result in the Council potentially being required to adhere to the various changes to the RMA that it does not support.

50. This report recommends **Option 1** for addressing the matter.

Significance and Engagement

51. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy. As a fast growing district the proposed reforms to the RMA have the potential to impact on the environment, culture and people of the district.

Risk

52. This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)', as documented in the Council's risk register. The risk is classed as high. This matter relates to this risk because the district plan making process, as well as the current resource consenting process, are central to the current and future development needs of the community. Proposed changes to the RMA affect both these matters.

53. The recommended option 1 considered above mitigates the risk by:

Treating the risk - putting measures in place which directly impact the risk. By submitting on the reform Bill Option 1 mitigates the risk of the undesirable aspects of the reform proposals being accepted into the final Bill.

Financial Implications

54. There are no direct budget or cost implications resulting from the recommendation.

Council Policies, Strategies and Bylaws

55. The Operative and Proposed District Plans are relevant to this proposal. No other Council policies, strategies and bylaws are considered relevant to the submission. The parameters for the preparation of the submissions are provided by the Resource Management Act 1991.

Local Government Act 2002 Purpose Provisions

56. The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring Council's unique perspective is communicated to the decision makers on the Select Committee;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

57. No consultation was undertaken. The submission is being made within a formal statutory process, and other parties also have the opportunity to make a submission on the Council's submission.

Attachments

A Draft Submission on RMA reforms
B Regulatory Impact Statement (RIS)