

25 October 2024

Via email - communityresilience@dia.govt.nz

SUBMISSION TO DEPARTMENT OF INTERNAL AFFAIRS ON: CONSULTATION ON THE PROPOSED REGULATIONS FOR NATURAL HAZARD INFORMATION IN LIMs

Thank you for the opportunity to present Queenstown Lakes District Council's (QLDC) submission to the Department of Internal Affairs (DIA) on the proposed regulations for natural hazard information in LIMs (**the proposed regulations**).

In principle, QLDC agrees with actions that will improve the presentation and understanding of hazard information in LIMs, and acknowledges the important role that LIMs play in improving the level of understanding concerning natural hazards and natural hazard risks across Aotearoa New Zealand.

QLDC considers that the proposed regulations require further clarity and refinement to ensure Territorial Authorities (TAs) can achieve the stated objectives concerning efficiency and technical feasibility of LIM preparation. In particular, it should be noted that TAs face significant resourcing challenges. Any new regulations should be designed to optimise efficiency as well as effective service delivery.

The proposed regulations should be carefully integrated with the wider suite of proposed regulations and other amendments that central government is currently undertaking to improve the planning system. It is QLDC's preference that the proposed regulations exist within a comprehensive package of legislation that also proactively addresses natural hazard information in LIMs.

QLDC would like opportunity to be heard at any hearings that result from this consultation process, and would welcome any other opportunities to engage with DIA on the proposed regulations.

Thank you again for the opportunity to comment.

Yours sincerely,



David Wallace
General Manager – Planning and Development

1.0 The QLDC context

- 1.1 The Queenstown-Lakes District (**QLD or the district**) has an average daily population of 70,205 (visitors and residents) and a peak daily population of 99,220. By 2053 this is forecast to increase to 150,082 and 217,462 respectively¹. The district is experiencing unprecedented growth with its population projected to nearly double over the next 30 years.
- 1.2 The district is one of Aotearoa New Zealand's premier visitor destinations, drawing people from all over the world to enjoy its spectacular wilderness experiences, world renowned environment and alpine adventure opportunities.
- 1.3 Pressure to accommodate population and visitor growth within an alpine landscape context has resulted in some people and property being located within, or in close proximity to, natural hazard processes. This juxtaposition creates natural hazard risk. Significant challenges are faced by QLDC, and all local authorities and their communities, in addressing these natural hazard risks. QLDC has been working collaboratively with the community, iwi, hapū and regional council partners to find solutions to the highest priority natural hazard risks in the district.
- 1.4 QLDC's Strategic Framework² has been developed to outline how the community's aspirations and wellbeing drive everything QLDC does. The framework identifies areas that QLDC will prioritise to address local issues and make meaningful progress towards meeting community outcomes. The framework identifies *Disaster-defying resilience | He Hapori Aumangea* as a key community outcome that will be achieved by building infrastructure and providing services that build resilience and an ability to adapt to the future.
- 1.5 QLDC declared a climate and ecological emergency in 2019 and has released its second three-year Climate and Biodiversity Plan 2022 – 2025³. The plan has three goals, under which sit six outcomes related to leadership, transport, built environment, communities, business, and the natural environment. The Plan seeks to ensure that Queenstown Lakes is a place that is ready and prepared to adapt to a changing climate. It identifies actions relevant to natural hazards, including partnering with Otago Regional Council on a programme of climate change risk assessments, adaptation plans and natural hazard risk assessment studies to support community resilience projects and the implementation of a risk-based land use planning framework.
- 1.6 Together with the natural hazard risk management approach outlined within the QLD Proposed District Plan (**PDP**)⁴, these commitments illustrate QLDC's intention to implement effective and efficient natural hazard risk management.

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

² <https://www.qldc.govt.nz/your-council/our-strategic-framework/>

³ <https://climateaction.qldc.govt.nz/our-plan/>

⁴ <https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/>

2.0 QLDC responses to the DIA consultation document questions

Question 1 - Will the regulations ensure that LIMs provide property buyers with natural hazard information that is clear, concise, easy to understand and presented in a way that is nationally more consistent?

QLDC supports in principle any actions that will improve the presentation and understanding of hazard information in LIMs and acknowledges the important role that LIMs play in improving the level of understanding concerning natural hazards and natural hazard risks.

QLDC agrees that the draft regulations have the capacity to improve the presentation and understanding of hazard information in LIMs.

Improving property buyers' understanding of natural hazards and natural hazard risks will facilitate more informed decision making when people are considering whether to purchase a property. QLDC considers that this is a proactive form of risk management that involves the direct engagement of property market actors.

QLDC notes that many properties will be subject to some type of natural hazard, particularly in in dynamic alpine environments such as in the QLD. If the intent is to help potential property buyers, then providing information about 'risk' (where it is available and reliable), in particular significant or tolerable risks (as opposed to acceptable risks) may be more beneficial, particularly in the context of best practice 'risk-based decision making' that is now being applied throughout Aotearoa New Zealand.

It is noted that the wording of the proposed regulations places a greater emphasis on natural hazards information rather than natural hazard risk information. The word 'risk' is used just three times in the proposed regulations. While QLDC supports the proposed regulations direction that TAs are not required to undertake risk assessments where that information is not already available, there are many instances where it may be available, and will be more useful than a simple identification of natural hazard processes.

QLDC considers that the proposed regulations should not be developed in isolation, but integrated with the wider framework of proposals central government is investigating to improve natural hazard risk management. If the intent of the proposal is to improve the usability and clarity of natural hazard information, it is important that the community also understand the implications of the information being presented in a LIM, which is intricately woven into the Resource Management Act (RMA) reform process. QLDC considers that the proposed regulations should be communicated within a comprehensive package of legislation.

Recommendations:

R1 – DIA should consider how the proposed regulations could more robustly reference the provision of natural hazard 'risk' (likelihood x consequences of hazard processes) information (where that information is already available) noting that a risk-based decision-making approach constitutes best practice natural hazard management.

R2 - The proposed regulations should be incorporated with the complete and comprehensive package of legislative changes to the RMA.

Question 2 - Do the regulations provide certainty to local authorities on the natural hazard information they need to share?

QLDC does not consider that sufficient certainty has been provided with respect to Regulation 11. The consultation document states that *'territorial authorities are not required to provide property-specific risk assessments or other further analysis for each LIM'*⁵. However, QLDC disagrees that this is necessarily the case due to the requirements set out in the proposed regulations given that TAs will be required to *'include a plain language summary of each piece of natural hazard information contained in the LIM'*⁶. This regulation will potentially require a considerable amount of additional

⁵ Page 5, Consultation: Proposals for regulations for natural hazard information in LIMs, September 2024

⁶ Regulation 11

analysis for TAs to undertake considering the quantum of natural hazard information that may be associated with each property moving forward. It is not clear from the draft regulations, nor from the consultation document, what constitutes an acceptable plain language summary. As such, it is not possible to determine what sort or the quantum of resources that will be required to fulfill this requirement.

The regulations do not define the term 'technical report'. It is unclear whether this is intended to only apply to reports commissioned by TAs (such as those commissioned to inform District Plan provisions), or if it includes any report that a TA holds (such as reports that are lodged by applicants as part of a resource consent application for example).

Regulation 7 does not provide certainty as to the extent of natural hazard information that must be included in the LIM.

There is no certainty of the meaning of 7(1)(b) '*all the relevant natural hazard information that it knows of*'.

Some hazards are implicitly known even if a technical report is not within councils' records. For example, does relevant, known information include a summary of implicit hazards such as earthquakes based on national information, such as NZS1170.5 (Earthquake Actions) which shows all of Aotearoa New Zealand is potentially subject to earthquake hazard of varying degrees dependent on the location and magnitude of an event. Another example is rain induced flooding, a 1/75 year event is very different to flooding in a 1/100 year event regarding which properties are potentially affected.

Recommendations:

R3 - Additional information is needed to clarify what constitutes a 'plain language summary'.

R4 - Additional information is needed to clarify what constitutes a 'technical report'.

R5 - Additional information is needed to clarify the extent of natural hazard information that must be included in the LIM

R6 – Additional information is needed to clarify what constitutes known information relating to natural hazards.

Question 3 - Are the regulations efficient and technically feasible for local authorities to implement and administer?

TA officers who prepare LIMs are not natural hazard experts. This presents efficiency and technical challenges. It is not appropriate to require these officers to summarise highly technical information. If external resources were required to meet Regulation 11 requirements, the costs would be prohibitive and significant delays may undermine the LIM process.

TAs do not typically have in-house natural hazard experts. Regulation 11 would require TAs to ask any external expert consultant that may be engaged to prepare natural hazard/risk reporting to provide assistance to meet Regulation 11. It appears that TAs will need to pay for this service. Generally, technical reports are already easily accessible and available on TA systems for interested parties to review, understand and have tested by their own experts if they so desire.

TAs often receive natural hazard/risk reporting from resource consent or plan change applicants who may engage their own natural hazard/risk experts. Such reports are typically site-specific, and not necessarily peer reviewed, accepted, or supported by TAs. Applicants can provide hazard assessments from parties without the relevant qualifications or experience if they so choose. This information will be on TA files and can be misleading to future landowners if it is shown on a LIM. QLDC requests clarification that the regulations are not intended to capture such reports and instead only cover reports that are commissioned and adopted by TAs as part of broader natural hazard investigations. In the event that the regulations are intended to include all types of reports, TAs would need to either:

- i. get the applicant to direct their own consultant to prepare information to meet Regulation 11 (and require the applicant meet the cost of that service), or
- ii. engage their own expert to prepare the information to meet Regulation 11 (and meet the cost of that service), or
- iii. prepare their own statement to meet Regulation 11.

These options would place significant technical and administrative burdens on TAs as the volume of information held in resource consent files that may relate to natural hazards is significant. In addition, the information may not be accepted, may have since been superseded or disproven, and may in turn lead to less clarity for applicants. The regulations and

consultation material are insufficient for QLDC to determine if option iii described above is technically feasible at this time (although this could be resolved through the provision of adequate guidance material). Options i and ii are not efficient for applicants or TAs, but are technically feasible.

QLDC does not see a clear pathway in the proposed regulations for TAs to require every party that provides hazard reports to provide summaries of their reporting as there is no legislative mechanism currently to require this and the proposed regulations do not control what developers need to provide to the TA through processes controlled by other legislation (i.e. RMA).

Recommendations:

R7 – The proposed regulations should define if the information needed to be included in LIMs relates to information prepared and/or endorsed by TAs, or if it also includes any hazard information provided to the TA from any source.

R8 – If it is intended that these external reports are subject to the proposed regulations, they should develop a solution for situations where TAs disagree or are not willing to endorse natural hazard information provided from unsuitable external sources.

R9 – The proposed regulations should recognise that TAs do not have in-house natural hazard experts available to accurately summarise technical reporting, consider the costs and benefits of this requirement in more detail, and develop solutions to resolve monetary and human resource barriers to the implementation of Regulation 11.

R10 – That robust guidance material be developed to support the effective and efficient implementation of Regulation 11. This guidance material should be developed in collaboration with TAs.

R11 – If it is intended that external reports are subject to the proposed regulations, DIA and other central government agencies should consider amending other legislative tools as part of the wider RMA reform programme to ensure applicants/the external commissioners of this information are required to produce the necessary summaries and cover the associated costs.

Question 4 - Will the regulations work for expected developments in natural hazard information and meet future LIM users' needs?

NA

Question 5 - We would like to hear from you on what specific areas the guidance should cover. We also welcome your thoughts on what other support local authorities will need.

QLDC considers that clear guidance will be critical to ensuring effective and efficient processing of LIMs under the proposed regulations, and to promote consistent LIM outputs across Aotearoa New Zealand. It is preferable that the regulations are sufficiently clear so that no additional guidance material is needed.

Any guidance should be produced in tandem with the development of the proposed regulations, and released ahead of or at least at the same time as the final regulations are produced i.e. there should not be any lag time between the guidance material and the first day the regulations need to be given effect to.

Recommendations:

R12 – Guidance should be prepared on the following topics:

- a. standard LIM templates relating to natural hazard matters
- b. examples of what constitutes a *'plain language summary of each new piece of known natural hazard information'*
- c. guidance or a definition of 7(1)(b) *'all the relevant natural hazard information that it knows of'* and what constitutes a *'technical report'* must be included.

R13 – Any guidance should be included in the regulations. Any guidance that sits outside the regulations will not have

statutory weight.

Question 6 - Do you consider that the regulation provides sufficient clarity to territorial authorities?

QLDC has identified a range of concerns with the proposed regulations as set out in this submission. In the absence of further clarification requested on the matters raised in this submission, insufficient clarity has been provided.

However, QLDC generally supports the directions provided in Regulation 6 that TAs are not required to:

- (a) to prepare a risk assessment that relates to the land concerned; or*
- (b) to undertake any further analysis that relates to the land concerned; or*
- (c) to search for, or make enquiries as to the existence of, natural hazard information in relation to the land concerned, other than the information that the territorial authority already knows of.'*

Despite this, as set out in response to question 2, QLDC has some concerns regarding Regulation 6(b).

It is not clear how technical information relating to climate change risk should be addressed. In particular, it is noted that TAs may have commissioned district wide climate change risk assessments that provide information on climate change impacts the nature and scale of natural hazards and natural hazard risk.

It is not clear what action TAs should take if a hazard report or analysis is in development but is not yet complete. TAs may have many projects underway at any one time (or multiple consents/plan changes being processed) which contain some but incomplete hazard reporting.

Recommendations:

R14 - Regulation 6(b) be reconsidered with respect to the need to provide a plain language summary as this requires further analysis.

R15 – The proposed regulations should specify, or provide specific guidance, on what action should be taken in regard to reports that are in development but is not yet complete. QLDCs preference is that they are not included, or included subject with caveats that they are not yet complete.

R16 – The proposed regulations should provide clarity on how technical information relating to climate change risk should be addressed.

Question 7 - Do you consider that the proposed headings are the right ones? Are there any missing?

Some ambiguity exists between the reference to 'landslides' and 'subsidence'. Guidance would be useful to provide examples of the types of geological processes that fall into each of the listed headings, particularly in complex alpine environments with many hazard processes, such as in the QLD.

It is not clear what headings might be relevant when a risk assessment has been undertaken that addresses multiple cascading hazards i.e. where a report provides risk outputs for flooding and liquefaction processes taking place on the same site.

It is not clear which category should be applied to reports relating to climate change risk.

Recommendations:

R17 – The proposed hazard headings should be amended to specify the types of hazard processes that they encompass, or guidance should be produced to support TAs interpretation of these headings.

R18 – Further guidance is needed to determine how TAs should address reports that address risk assessments providing findings on multiple cascading hazards and climate change risk.

Question 8 - Are these the right minimum details that councils should include in LIMs for each technical report?

Regulation 9 indicates that the matters (a) – (g) need to be provided as a summary of a technical report *'If information provided in the natural hazard section of a LIM is contained in a technical report'*. However, it is not clear if the subject technical report needs to be included with the LIM. It is assumed that this is not the case as Regulation 9(d) includes *'where or how to access the report'*. This matter needs clarification.

Recommendation:

R19 – Further clarification and/or guidance is needed if the full technical report needs to be attached to the LIM in addition to the information specified for the subject report set out in Regulation 9.

Question 9 - Does this regulation provide sufficient clarity for territorial authorities on how to share natural hazard maps in LIMs?

QLDC is concerned with the wording in Regulation 10(a)(ii) that any maps must *'show the natural hazards that affect or have the potential to affect the land concerned'*. There is often a critical difference between known natural hazard processes (i.e. unstable land or the presence of an alluvial fan) and natural hazard risk (i.e. the potential likelihood and consequences for the process to affect the subject land). TAs have a generally good understanding of the spatial location of natural hazard processes (including mapping), but do not have a full understanding of the spatial extent of the natural hazard risk that may be associated with each of these natural hazard processes. For example, it is not often known where rockfall or a debris flow associated with an alluvial fan could affect properties (i.e. how far it might travel, how often, and at what scale). QLDC does not consider that the wording in Regulation 10(a)(ii) is technically feasible in every case and should be amended to reflect this situation. QLDC objects to this wording.

QLDC considers that the current wording in Regulation 10(a)(ii) may create litigation risk for TAs. Has the potential cost of litigation against Councils been considered in the cost/benefit analysis for the proposal? What support will be provided to Councils in the event of litigation?

QLDC acknowledges that Regulation 6(b) does not require TAs to undertake any further analysis of the land concerned. If this is the case, the words *'have the potential'* in Regulation 10(a)(ii) should be deleted and amended as follows - *'show the natural hazards or risks that are known to affect ~~or have the potential to~~ affect the land concerned'*.

Recommendation:

R20 – The wording in Regulation 10(a)(ii) be amended to read *'show the natural hazards or risks that are known to affect ~~or have the potential to~~ affect the land concerned'*.

Question 10 - Should this requirement apply to all pieces of natural hazard information or only to technical reports?

QLDC supports the position that excludes the application of Regulation 11 to natural hazard information created before the regulations come into force.

The consultation document states that *'we anticipate local authorities will request summaries for natural hazard information from technical consultants that can be included in LIMs when commissioning this information'*⁷. While this may be technically feasible, QLDC notes TAs will need to cover the cost of this additional work for each hazard report it commissions. QLDC considers that other legislative tools should be considered as part of the wider RMA reform programme so that this requirement also apply to any hazard report commissioned by a resource consent or plan change applicant (or any other person preparing hazard information to support an application (i.e. resource consent

⁷ Page 6, Consultation: Proposals for regulations for natural hazard information in LIMs, September 2024

⁷ Regulation 11

application/private plan change) for development within TA boundaries. In the absence of such a requirement, TAs may need to prepare their own material to meet Regulation 11. The issues with this have been addressed in response to question 3 above.

Recommendation:

R21 – If it is intended that externally produced reports (i.e. those not commissioned by TAs) are subject to the proposed regulations, DIA and other central government agencies should consider amending other legislative tools as part of the wider RMA reform programme to ensure applicants/the external commissioners of this natural hazard information are required to produce the necessary information and cover the associated costs of Regulation 11.

Question 11 - Does this regulation sufficiently clarify for territorial authorities what district plan information related to natural hazards should be included in LIMs?

As per the comments on Regulation 10, QLDC is concerned with the wording in Regulation 12(1)(a)(i) which states that *'the natural hazard information contained in a LIM must include any information in the territorial authority's district plan that shows the natural hazards that affect or have the potential to affect the land concerned'*. QLDC objects to this wording on the basis of the same rationale set out in relation to Regulation 10.

Recommendation:

R22 – The wording in Regulation 12(1)(a)(i) be amended to read *'show the natural hazards or risks that are known to affect or have the potential to affect the land concerned'*.

Question 12 - Does this regulation sufficiently clarify how territorial authorities should include information on Building Act notices related to natural hazards in LIMs? (Regulation 13)

QLDC considers that sufficient information is provided in regard to this matter.

Question 13 - Does this regulation sufficiently clarify the responsibilities of territorial authorities and regional councils in the LIM system? (Regulation 14)

NA

Question 14 - Does this regulation sufficiently clarify the responsibilities of regional councils in the LIM system?

QLDC supports the requirement in Regulation 16(2)(a) and (b) for regional councils to provide TAs with the information required under Regulation 9 (i.e. Minimum requirements in relation to technical report) and Regulation 11 (LIM must include plain language summary).

Question 15 - Will this regulation be sufficient to ensure territorial authorities are able to share regional council information in LIMs in a way that complies with the LGOIMA and the regulations?

NA