

Official complaint

to CEO Mike Theelen

Tuesday, June 29, 2021

Dear Mike,

I am aware that Cath Gilmour has already written to you to object to clause 13 in the report for agenda item 3 for tomorrow's full council meeting. Reading that report today for the first time, I am concerned about another error that significantly misrepresents the process to Councillors.

In clause 5 of your advice to Councillors, you state:

*This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because the decision is **to agree the SOI to enable QAC to be compliant.***

This statement is not true. Whether or not Council agrees to the statement of intent delivered by QAC has no bearing on whether that SOI is compliant. The inclusion of this wrong advice has the effect of placing pressure on Councillors to vote to agree with the SOI, even if they don't. As such, it subverts the decision-making process.

As you will know from Schedule 8 of the LGA 2002, the steps for QAC to be compliant with its SOI are:

1. that it delivers a draft statement of intent to its shareholders by 1 March
2. that it considers comments received from its shareholders in the period 1 March to 1 May, and
3. that it delivers to its shareholders the completed statement of intent before the financial year to which it relates, which in this case is before 1 July.

If QAC completes this process, then the statement of intent is compliant. Regardless of what Council does or does not do at its meeting tomorrow, the SOI included with this agenda item will become the current statement of intent as from Thursday.

Council must ultimately agree to the statement of intent. But this need to agree to the SOI is not a compliance requirement on QAC; rather, it is a compliance requirement placed on Council.

The reasoning is that councils should not be majority owners of companies that do not align with the purpose of local government, which is to promote communities' social, cultural, economic and environmental well-being in the present and for the future.

This need for councils to agree with the SOI is to keep a check on what businesses councils invest their money in and to ensure that such investment is limited to businesses aligned with the council's purpose.

If a majority of Councillors do not agree with the statement of intent as it is delivered, then Council cannot pass a motion to agree to it. To do so would be to subvert the intent of the law.

If Council cannot tomorrow agree to the SOI as it is delivered, then the law obliges it to ensure that the statement of intent is modified (S65 (2)(b)). Council would then need to take *all practicable steps* using the straightforward process outlined in clause 6 of Schedule 8.

Note that the SOI must meet council's intentions for the company is an obligation placed on Council, not on QAC. That's why the LGA 2002 gives councils the power to direct companies to change their SOIs.

You'll see from sections 5 and 6 of Schedule 8 that the process to modify the SOI includes consultation periods, so it could take 1 or 2 months. QAC would need to deliver a modified statement of intent.

In that process, it should be clear that the modified statement of intent becomes effective from when the QAC board formally agree upon it, not from when it is delivered to Council or when Councillors ultimately agree to it.

Sadly, as with Cath Gilmour's complaint, this is the third year that this crucial point has been misrepresented.

The minutes of council's June 27, 2019 meeting, for example, record the mayor misrepresented the law to exert pressure on Councillors, where he is recorded as stating:

"The Mayor acknowledged the Council's concerns about the SOI but stated that he was equally conscious that QAC could not operate without a current SOI and the Council was legally obliged to receive the SOI by 30 June."

The mayor has extensive experience that gives considerable weight to his statements at Council meetings, particularly regarding the governance of QAC. He has been a director and CEO of CIAL, and is now mayor of the council-shareholder of QAC. Despite this experience as a leader of each party in the CCTO relationship, his assertions were wrong. They do not accurately represent the law, something he should know.

Over the past three years, I have raised this issue with you directly and with the mayor through emails and public forum submissions. It is, therefore, deeply concerning that you and Corporate Services GM Meaghan Miller continue to furnish Queenstown Lakes District Councillors with false and misleading information in your agenda item regarding QAC's SOI.

This year, I am making an official complaint. I also request that the Council executive team finally correct this error – to your Councillors, on your website, at Wednesday's meeting and within official council minutes.

In terms of rectifying this continued attempt to prevent Councillors from meeting their mandated roles and responsibility, I ask that you:

- Acknowledge to Councillors by email by Tuesday, 5:00 p.m. that QAC's compliance will not be affected in any way by the decisions they make at tomorrow's council meeting.
- Make this correction clear by Tuesday 5pm on your website, and to those on your agenda mailout list, so that the public and media do not continue to be misinformed.

- Publicly acknowledge the correction at the council meeting before public forum, so that members of the public know this has been corrected before making their oral presentations.
- Confirm by return email that these actions will be undertaken.

I look forward to a positive response to the above.

Yours sincerely,
Nāku iti noa, nā,

John Hilhorst