

Notice of Motion – Councillor Gladding - Lakeview-Taumata: opportunity to review governance structure and processes

NOTICE: The purpose of this Notice is to ensure that all decisions made under the Lakeview-Taumata development agreement are made at the appropriate level of the organisation and in accordance with the Local Government Act 2002 and the LGOIMA, and that QLDC has appropriate structures and processes in place to ensure good governance.

In accordance with Standing Orders, please place the following Notice of Motion on the agenda for the Queenstown Lakes District Council meeting being held on Thursday, 17 March 2022:

RECOMMENDATIONS

That Council:

1. **Notes** that on 26 October 2017, the Council authorised the following broad delegation with respect to the Lakeview-Taumata development:

“That Council:...

4. *Authorise the Chief Executive to...*

(c) “negotiate and execute transaction agreements with development partner(s) subject to the parameters”,

2. **Directs** officers to:
 - a) **Consider** the scope of the decisions that might be made under the Lakeview Development Agreement,
 - b) **Report** to the full Council with options for the division of decision-making powers between the Chief Executive and the full Council,
 - c) **Report** to the full Council with options for strengthening internal governance of the Lakeview-Taumata project.
3. **Agrees** that until the review is complete and Council has made a further decision on the matter, all decisions under the Lakeview-Taumata Development will be made by the full Council.

CONTEXT | HOROPAKI

Background

1. Lakeview-Taumata is a large and complex, 20-year commercial development project within Queenstown’s CBD. QLDC has responsibility for completing the subdivision works and making decisions under the Development Agreement (DA) until the project

is completed or the Agreement terminated. This requires QLDC to manage the developer relationships, issues of commercial sensitivity, the achievement of project objectives, the requirements of relevant statutes (including the LGA 2002 and the LGOIMA 1987), multiple risks, political pressures, and its relationship with the community. The premise of this Notice is that, given this level of complexity, the project would benefit from a review of governance and decision-making arrangements.

2. The delegation to the Chief Executive to negotiate and execute the transaction documents was authorised four and a half years ago. This was early in the project and before the scope of the decisions it enabled or the timeframes for settlement, were fully progressed and/or understood.
3. On 26 October 2017 a report was presented to the Council, entitled “Lakeview Development Community Feedback and Transaction Options”. The purpose of the report was to:

“provide feedback from the community engagement regarding the nature of tenure of any development of the Lakeview site and to seek Council approval to move forward with development of that land in accordance with the approved development objectives.”

4. The resolution agreed by Council included authorising the Chief Executive to:

*“c. negotiate and **execute transaction agreements** with development partner(s) subject to the parameters”.*

The scope of “the parameters” is not clear from the report.

5. It has been assumed that the parameters include the Development Objectives, which were agreed on 17 August 2017 and are included in the Development Agreement (DA). These are to:

a. Maximise financial return in a manner that minimises risk to ratepayers;

b. Establish a thriving residential focused, mixed use precinct, which is stitched into the Queenstown town centre context and:

i. Exhibits best practice urban design principles, is walkable, activated, liveable and authentic;

ii. Exhibits a consistent design language and high quality built form outcomes that complement the natural environment, fit into the Queenstown context and are of human scale;

iii. Provides a diverse retail mix which complements and provides for the natural expansion of the existing town centre core and will appeal to locals and visitors;

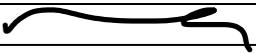
- iv. Provides for the intensification sought via Plan Change 50 and delivers for a variety of housing outcomes and/or a diverse residential community;*
- v. Considers opportunities for visitor accommodation and / or visitor facilities where these are economically viable.*

c. Ensure Lakeview's development potential is unlocked in a timely and efficient manner.

6. The Report is clear that the delegation was (and is) subject to the “financial parameters” which were agreed the following year on June 2018 (with the public excluded).
7. The scope of the decisions that might be required under the DA is broad and is considered to be covered by the existing delegation to the Chief Executive. These include decisions regarding:
 - a. Material modifications to the Masterplan document;
 - b. Changes to the control of the entities;
 - c. Extensions to timeframes;
 - d. Project Review Events; and
 - e. Amendments to the Development Agreement itself.
8. The Delegation is subject to meeting “the parameters” but is otherwise unfettered, meaning the Chief Executive is able to sub-delegate.
9. When the delegation to the Chief Executive was authorised, the following aspects of the project were not known to the full Council:
 - a. The financial parameters (agreed later in June 2018);
 - b. Land payment mechanisms (e.g. super profit share);
 - c. The content of the DA, including governance arrangements and the scope of decisions;
 - d. The staging and timeframes for the development;
 - e. Design approval processes to produce agreed masterplan/stageplans;
 - f. The eventual cost of the subdivision works
10. The Development Agreement, enabling the sale of the Super Lots, was signed by the Chief Executive in December 2019 in alignment with the delegation. Council was not invited to consider the content of the DA before it was signed.
11. The DA allows for the sale and development of Super Lots over two decades (until 2039). The existing delegation will therefore remain with the Chief Executive for the entire period unless it is either revoked or amended.
12. Governance of the project is undertaken by the Project Control Group (PCG) which includes members of QLDC and Ninety-Four Feet. There is currently no formal structure or process in place to ensure oversight of the PCG by senior management or Council.

13. Over the last two years the Council has received two requests from the developer for 'material' modifications to the agreed design documents. Both times the Chief Executive has sought discretionary feedback from Councillors in workshop sessions. While this approach recognises the political sensitivity of these decisions and is no doubt appreciated by Councillors, there is a risk that Council is perceived to be making decisions in a workshop setting without transparency or accountability. There is further risk that Council direction will be ignored by staff, and there is a risk the process could be considered unlawful.
14. If proposed modifications are material then it is sensible to consider whether the power to make decisions on these matters should sit with Councillors only, rather than the Chief Executive. It may also be prudent to consider whether other decisions required under the Development Agreement should sit with Council, given that decisions made can not necessarily be reversed without the agreement of Ninety Four Feet.
15. When the 2017 delegation was authorised, Council expected to see profits that would contribute to infrastructure projects within the period of the 2018-2021 Ten Year Plan. This is no longer an achievable outcome. Importantly, the COVID-19 Fast Track consenting legislation, did not exist and had not been anticipated. Despite the changes in context and understanding, the Lakeview-Taumata delegation has not, to date, been reviewed.
16. Consideration of decision-making powers and governance arrangements should be considered holistically with a view to supporting both efficiency and democratic decision-making.
17. By reviewing the delegation, with full understanding of the scope of decision-making under the DA and the changes in the wider context of the development, the Council will be seen to be doing due diligence, and will have the opportunity to minimise any risks to individuals, the organisation, and ratepayers by either retaining, revoking or amending the existing 2017 delegation if necessary.
18. There is a personal financial risk to councillors under s46 LGA, arising out of any loss to the local authority reported by the Auditor General under s44 LGA. The risk is a general one and is in no way specific to the Lakeview-Taumata Project. This risk is not removed simply because the power to make decisions under the DA has been delegated (Schedule 7, Part 1, clause 32(7A) LGA).

SIGNATORIES | KĀ KAIHAINA

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