

**Audit, Finance & Risk Committee**

6 July 2023

**Report for Agenda Item | Rīpoata moto e Rāraki take [6]**

**Department: Corporate Services**

**Title | Taitara : Lakeview Development Programme**

**Purpose of the Report | Te Take mō te Pūroko**

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The purpose of this report is to report on the Lakeview development key milestones and consider matters raised in notices of motion submitted by Councillor Gladding in relation to the Lakeview development agreement delegation to the Chief Executive.

**Recommendation | Kā Tūtohuka**

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That the Audit, Finance & Risk Committee:

1. **Note** the contents of this report;
2. **Note** (and consider) the matters raised in a notice of motion by Councillor Gladding in relation to the Lakeview development agreement delegation to the Chief Executive and the professional advice received in relation to the matters;
3. **Agree** that, while the matter of the Lakeview development agreement delegation remains the prerogative of the Council, the Audit, Finance and Risk Committee is satisfied that the delegation to the Chief Executive is appropriate.
4. **Note** that following a further notice of motion submitted by Councillor Gladding, Elected Members intend to hold a workshop on the Lakeview development agreement delegation to the Chief Executive.

**Prepared by:**



**Name:** Paul Speedy  
**Title:** Manager Strategic Projects  
26 June 2023

**Reviewed and Authorised by:**



**Name:** Mike Theelen  
**Title:** Chief Executive  
27 June 2023

## Context | Horopaki

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1. On 17 August 2017, the Council approved several development objectives for the Lakeview site, which revolve around maximising financial return and minimising risk to ratepayers and developing a well-designed residential focused mixed-use precinct quickly and efficiently.
2. In October 2017 the Council approved to undertake a market engagement process for the sale of the Lakeview land and commit to deliver the required internal infrastructure, roads and public space to allow transfer of the land to developer partners. The Council also elected to:
  - credit 5% of its Lakeview land receipts to the Queenstown Lakes Community Housing Trust; and
  - set aside the Lynch Block (circa. 1ha land parcel) to consider its future use including specific consideration for use as worker accommodation and/or affordable housing.
3. The primary benefit in implementing the Lakeview development has always been seen from a broader perspective than pure financial return, namely being the opportunity to support the Queenstown town centre, and to deliver an integrated urban development form, within walking distance of the town centre.
4. In October 2019, Queenstown Lakes District Council (QLDC) executed a development agreement (DA) with QT Lakeview Developments (the Developer) for the development of eight land parcels within the precinct. The balance (two) land parcels have been sold to Well Smart Limited.
5. On 17 March 2022 the Council considered a notice of motion submitted by Councillor Gladding regarding the Lakeview DA delegation to the Chief Executive and resolved to review the internal governance arrangements for the project.
6. On 8 July 2022 the Council, having considered an independent review, reconfirmed the Lakeview DA delegation to the Chief Executive and recommended that enhanced monitoring arrangements be put in place with the Audit, Finance and Risk Committee (the Committee) to ensure adequate monitoring of the Project Objectives and Material Outcomes, as set out in the DA.
7. On 25 May Councillor Gladding submitted a notice of motion seeking to change (without advice or review) the Lakeview DA delegation to the Chief Executive, which she requested to be considered for the full Council meeting of 1 June 2023. The notice of motion was refused, however Mayor Lewers was comfortable for the matters raised by Councillor Gladding and subsequent professional advice received pertaining to the matters, to be considered by the Audit, Finance and Risk Committee, given that the Committee now had a role monitoring the governance of the project.
8. On 21 June Councillor Gladding submitted a further notice of motion regarding the Lakeview DA delegation to the Chief Executive, which she requested to be considered for the full Council meeting of 29 June 2023. The notice of motion was again refused (on similar grounds), however

Mayor Lewers directed the Chief Executive to convene a workshop(s) with Elected Members to discuss the matters raised by Councillor Gladding's notice of motion and consider advice whether to seek a comprehensive report on the Lakeview DA delegation for full Council formal debate and consideration.

9. Both notices of motion followed advice from the Chief Executive to Elected Members that he was about to consider (under delegation) an assessment of modifications sought by the Developer. Elected Members were briefed on the assessment and the modifications have been approved by the Chief Executive. The next six-monthly workshop for the Developer to provide information on the project to Elected Members is scheduled in August, following a previously held workshop in February.

## Analysis and Advice | Tatāritaka me kā Tohutohu

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### *Structure of DA*

10. The DA is structured in a way that QLDC will progressively sell the land parcels (Super Lots) to the Developer in seven stages, which must then develop each Super Lot in accordance with a master development plan and documentation approved by QLDC having regard to QLDC's Project Objectives and Material Outcomes for the development of the Lakeview precinct. The Project Objectives and Material Outcomes are provided as **Attachment A**.
11. The Developer's master development plan currently envisages investment in the Super Lots in excess of \$1 billion over 12 to 15 years, delivering: over 450 residential apartments; approximately 96 co-living units; 600 hotel rooms; and 10,000 sq.m of commercial/retail space. By the end of the development, spending will generate annual economic impacts equal to regional GDP of \$100 million, employment for 1,800 people and household incomes of \$52 million<sup>1</sup>. The Lakeview precinct plan and proposed delivery staging are provided as **Attachment B**.
12. The Developer will progressively purchase the Super Lots. It will pay a base land payment to QLDC on settlement as and when it takes title to each Super Lot, together with 50% share of any super profit that may be achieved in respect of a stage calculated at the development completion of each stage.
13. QLDC must undertake the subdivision of the precinct to create the Super Lots (and separate title for each), which requires QLDC to complete specified roading and services infrastructure and site preparation works (Council Works).
14. Before the Developer can call for settlement of a Super Lot, it must satisfy a range of settlement conditions relating to document/design approval, consenting, funding, equity commitment and contractor engagement in respect of the Super Lot it wants to acquire.

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<sup>1</sup> Insight economics (prepared for the Developers consenting proposal).

15. The Developer will develop each stage progressively in line with a programme, with key milestones and milestone dates. While these dates can move as a result of circumstances outside the control of the Developer, there are less flexible sunset dates for key milestones that, if missed, give rise to a project review and, potentially termination rights in respect of future Super Lots. This safeguards against land banking.
16. In the event the DA is terminated, then rights to acquire future Super Lots are lost, but the Developer remains obligated to continue development of Super Lots it has acquired in accordance with the DA.
17. The Developer must adopt an approach to the design and development of the Super Lots that will achieve the Project Objectives and Material Outcomes. QLDC will, in respect of all matters requiring a decision from QLDC under the DA, have regard to, and assess such matters against the Project Objectives and Material Outcomes.

#### ***Profit Share Payment***

18. The base land payments are fixed amounts. The profit share payment is structured to enable QLDC to participate in any uplift in land value and the success of the development over time. It also provides insulation against the potential for land payment delays (as a result of circumstances outside the control of the Developer) and a means to recapture value.
19. The terms of the profit share payment are consistent with those set out in other public sector development agreements and in essence, mean that QLDC will share 50% of the development profit above the hurdle return payable to the Developer.

#### ***Key Development Milestones and Milestone Dates***

20. The delivery of the Council Works is a key prerequisite to the Developer being able to advance its own development programme. The DA contains four important milestone dates relating to the commencement of infrastructure works, and the completion of all the Council Works/issue of new Super Lot titles, which are based on QLDC's own programme.
21. The Developers programme has been based off these dates but will be rebased from the dates that QLDC achieves the relevant milestones. Accordingly, the sooner that QLDC completes the works and subdivision; the better it will be in terms of bringing the Developers programme forward.
22. The DA requires the Developer to meet progress sunset dates and fixed settlement sunset dates for settlement and completion milestones. These sunset dates include a buffer of time over and above the relevant milestone dates. If the Developer fails to achieve the relevant milestone by its sunset date, there are specific contractual consequences.
23. The monitoring of these milestones will be important for the Council in determining the successful achievement of the Project Objectives and Material Outcomes.

**Table 1: QLDC Obligations**

<b>Milestone</b>	<b>Date</b>	<b>Status</b>	<b>Risk Rating</b>
Infrastructure works commencement	30 Jun 2020	Achieved 1 Sept 2020	n/a
Infrastructure works commencement sunset date	30 Dec 2020	n/a	n/a
Council Works completion target date	30 Sept 2022	Deferred and accepted by the Developer, infrastructure works programme rebased to sunset date.	n/a
Council Works completion sunset date	30 Sept 2023	<p>Infrastructure works construction contracts in place with the Alliance and programmed for completion in December 2023.</p> <p>The bonding of some subdivision works is being considered for QLDC to obtain land title(s) by the sunset date and the Developer is considering the deferral (for practical construction reasons) of some works, including the market square, from the scope of Council Works (refer pending/current QLDC decisions Table 2 Attachment C).</p> <p>Market square works budget deferred in Annual Plan to year 4 and 5 of Ten-Year Plan (2024/25 to 2025/26).</p>	Moderate risk (mitigated by bonding arrangement, subject to final acceptance of consenting and confirmation from Developer for deferral of Market Square works).

**Table 2: Developer Obligations**

<b>Milestone</b>	<b>Date</b>	<b>Status</b>	<b>Risk Rating</b>
Submission of stage 1 Development Documentation	9 Nov 2021	Achieved 16 Dec 2021, resource consent documentation approved 11 July 2022.  The Developer’s fast track consent decision (December 2022) has resulted in an overall reduction of building height, Material Modifications to their stage 1 and 2 design documentation have been approved by QLDC (refer para. 27-30 below and Attachment C).  Further developed design documentation to be provided following building consent and before settlement of stage 1.	n/a
Satisfaction of stage 1 Settlement Conditions	TBC	Expected within the 2023/24 financial year, consistent with TYP income assumptions.  The sunset date for this milestone is 20 months following Council Works completion, which will be beyond the 2023/24 financial year.	Moderate risk
Commencement of stage 1 Substantive Construction	TBC	The Developer has advised they are working toward a construction commencement date in 2024 or (at least) no more than 2 months following stage 1 settlement.	Moderate risk
Stage 1 Completion	TBC	n/a	n/a
Fixed settlement sunset date	TBC	n/a	n/a
<i>NB: Milestones for future stages i.e. 2 to 7, can be reported on after the stage 1 settlement milestone is achieved.</i>			



### ***Assessment of Modifications***

24. Modifications to agreed documentation manage programme and design flexibility appropriately balancing the Council's needs to retain adequate control and the developer's imperative to respond to market conditions and commercial drivers.
25. QLDC has developed a modification assessment plan which sets out a consistent methodology for the assessment of modification proposals. Using an evaluation panel of QLDC and external subject matter experts a request for a modification is reviewed and assessed against the specific criteria set out in the DA to determine whether the modification is a material modification requiring QLDC approval:
- Does it require an extension to a progress sunset date or a fixed settlement date?
  - If implemented, would the modification materially affect the ability to achieve any of the Project Objectives or Material Outcomes?
  - Does it trigger one of the prescribed material modifications?
  - When considered in aggregate with the cumulative effects of previous modifications, does this modification plus the cumulative effects amount to a material modification?
26. If the modification will lessen the likelihood of achievement, then the modification will be material modification. Once the evaluation is complete, the evaluation panel reports its findings and makes a recommendation as to whether the modification is a material modification, and if so, whether the material modification should be approved or not, having regard to the impact on the Project Objectives and Material Outcomes.

### **Modifications received after fast track consent and assessment**

27. The Developer was granted resource consent by the Environmental Protection Authority (EPA) under the COVID-19 Recovery (Fast-track Consenting) Act 2020 in December 2022. The consent reduced building height and required view shafts (to ground level). As a consequence, the Developer proposed a series of changes to their stage 1 and 2 design, which included reducing the number of floors of buildings by one to three floors and separating what was effectively one building (up to level five) into three distinct buildings.
28. Following an Elected Member workshop with the Developer in February, the proposed changes were provided to QLDC in the form of a modification notice (17 March) and responses to requests for further information. The modification assessment process took approximately three months.
29. The assessment of the modifications determined that some of the design changes were considered less desirable but understandable given the building envelope constraints. The assessment concluded that the modifications significantly de-risk the project from QLDC's perspective, improving delivery times frames (all else equal) and therefore the timing of receiving

the first stage base land payment. Of the proposed changes there were two identified modifications considered material modifications, which were approved by QLDC on 23 June.

30. A schedule of development decisions, including modifications to agreed documentation, is provided as **Attachment C**.

***Notices of motion submitted by Councillor Gladding***

31. The 25 May 2023 notice of motion submitted by Councillor Gladding was seeking to revoke the decision-making delegation of the Chief Executive in respect to DA approval(s) of design documentation of Super Lots and any decision regarding proposed modifications, including whether such modifications are material modifications, and whether any material modification is approved or declined.
32. This specific proposal to revoke the decision-making power of the Chief Executive was considered (with advice) and unsupported by full Council on 8 July 2022, as part of an independent review of internal governance arrangements.
33. The 21 June 2023 notice of motion submitted by Councillor Gladding proposed to further revoke the Chief Executive's delegation to negotiate changes to the DA, effectively requiring any QLDC decision under the DA to be made by full Council.
34. Both notices of motion were refused because the information on some key points was missing, and the information included was considered unbalanced, containing unsubstantiated opinions and neither seeking advice or review. In both instances, Mayor Lewers initiated a pathway for the matters to be considered (with advice), initially by the Committee and secondly to be discussed by Elected Members at a workshop. The matters raised by Councillor Gladding in the notices of motion are provided as **Attachment D**.

***Previous independent governance review***

35. When the Council approved its intention to undertake a market engagement process for the sale of the Lakeview land it delegated the Chief Executive to negotiate and execute the DA. The matters raised by Councillor Gladding and the subject of last year's governance review, considered whether the existing framework was efficient, given the decision-making parameters expressly prescribed in the DA; and/or are appropriate, given the complexity and long term (10-15 year) administration of the DA, lasting several (political) trienniums.
36. The Chief Executives delegation to negotiate and transact the DA, through the market engagement (procurement) process, was put in place to provide greater certainty to bidders and deliver a better commercial outcome. The nature of the contract (DA) now entered into requires a commercial approach from QLDC with efficient and timely decision-making. Similarly, to the procurement process, clarity and constancy of how modifications will be evaluated and how decisions will be made under the DA, ensures integrity of negotiation positions, engendering counterparty confidence.



37. The governance review recognised the relationship between Elected Members and the Developer are important and that regular, six monthly engagement is undertaken, to enable both partners to have a mutual understanding of the development's progress and understand each other's perspective.
38. The review recommended that Elected Members, through the work of the Committee, enquire and gain assurance on progress and matters affecting achieving their aims and that strengthened governance framework would also ensure there is good accountability on the Chief Executive's use of his delegations to make decisions in a commercial environment.
39. Last year's independent governance review is provided as **Attachment E**.

***Professional advice addressing matters raised in 25 May notice of motion***

40. The DA does not prescribe the internal process or the delegations' framework, that QLDC may apply/follow in order to make the decision required under the DA. Changing the existing framework is not a breach of an express provision of the DA and does not trigger any Developer rights to re-negotiate or take legal action.
41. The DA does however set out the parameters/contractual considerations that QLDC must properly consider/have regard to when making a relevant decision. A failure to comply with the requirements of the DA when making a decision (for example, reaching a decision that is based on, or takes into account extraneous matters outside of those prescribed in the DA) will expose QLDC to legal challenge pursuant to the dispute resolution process in the DA.
42. It is important to note that Lakeview development decisions (for example) relating to costs for delivery of the Council Works has been made by full Council, not by the Chief Executive under the DA delegation.
43. The proposed changes in the notice of motion submitted by Councillor Gladding are in contrast to the recommendations of the previous governance review and decision of the Council. It is advised that the proposed changes might increase the Elected Members sense of risk and exposure in decision-making needed with a commercial agreement.
44. The arguments in the notice of motion are essentially those traversed in last year's governance report, with limited new argument that would suggest that the Council should reconsider the delegations. Further, it is advised the implementation of the DA is best managed through the Chief Executive, as previously set out in last year's governance report.
45. In retaining the Chief Executive delegated authority, the primary recommendation from last year's governance report (being enhanced reporting through the Committee) has been implemented. The Committee's role is to monitor and review, not to make decisions.
46. The level of information has substantially improved including a better degree of risk assessment and outlining of decisions made and potential decisions both under the Chief Executive's delegation and by full Council.

47. Considering the professional advice received, it is recommended that while the matter of the Lakeview development agreement delegation remains the prerogative of the Council, the Committee can be satisfied that the delegation to the Chief Executive is appropriate.
48. Professional advice pertaining to the matters raised in the 25 May notice of motion, submitted by Councillor Gladding, is provided as **Attachments F and G**.

## Consultation Process | Hātepe Matapaki

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### Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

49. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because it is consistent with existing strategy, and does not impact on the objectives set out in the Financial Strategy, Ten Year Plan or Annual Plan.
50. Although the matter is of importance to the district and is of community interest, it is of low significance due to its alignment with the Council's existing contractual commitments. While the matter of the Lakeview DA delegation remains the prerogative of the Council, the significance of any decision to revoke the Chief Executive's DA delegation would need further assessment in regard to the Council's existing contractual commitments.
51. The persons who are affected by or interested in this matter are all residents/ratepayers of the Queenstown lakes district community. As the significance of this matter is low and only for noting, no consultation with the community or local iwi is required.

## Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

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52. This matter relates to the Financial risk category. It is associated with RISK00021 unexpected change in funding within the QLDC Risk Register. This risk has been assessed as having a moderate inherent risk rating.
53. As the Council wishes to retain some control over outcomes at Lakeview given its importance, but at the same time is seeking to achieve good value within that framework, it is recommended that QLDC seek to carefully manage (limit) the control it seeks to essential matters. It is therefore imperative that obligations imposed on the Developer are restricted to those that are essential to meeting the stated Project Objectives and Material Outcomes.
54. The transparent reporting and monitoring of key development milestones will support the Council by allowing us to retain the risk at its current level. The effectiveness of these controls shall be supported by the continued governance of the development milestones by the Audit, Finance and Risk Committee.

Financial Implications | Kā Riteka ā-Pūtea

55. There are no budget, cost or resource implications to consider currently. An overview of the Lakeview financial programme is provided below.

**Table 3: Lakeview capital works programme end of May 2023 (\$M).**

workstream	costs			funding source		
	life to date	forecast cost to complete	adjusted budget	cost of sale	rates/DC's	
subdivision projects	29	11	40	35	5	note 1.
site clearance - subdivision	11	2	13	13	0	
site clearance - ancillary	2	0	2	2	0	note 2.
ancillary projects	8	7	15	0	15	note 3.
<b>total capital works</b>	<b>50</b>	<b>20</b>	<b>70</b>	<b>50</b>	<b>20</b>	

notes:

1. Some identified trunk infrastructure funded from rates and development contributions.
2. Assumed as a cost of sale for this assessment until value of land required for arterial determined.
3. Trunk infrastructure projects which are not a subdivision requirement, benefiting from parallel investment.

**Table 4: Lakeview transaction return on investment (\$M).**

expected income from property disposal	88	note 1.
less: transaction cost of sale	11	note 2.
<b>net income from property disposal</b>	<b>77</b>	
<b>capital works (cost of sale)</b>	<b>50</b>	note 3.
<b>net surplus</b>	<b>27</b>	

notes:

1. Assumed gross land payments (QT Lakeview Developments, Well Smart, land required for arterial etc.) not including super profit payments or value of Lynch Block (circa. 1 hectare).
2. Management overhead, contribution to affordable housing, transaction costs etc.
3. Direct capital works (site clearance and infrastructure) costs of sale from table 3.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

56. The following Council policies, strategies and bylaws were considered:

- Vision Beyond 2050: A unique place. An inspiring future. He Wāhi Tūhāhā. He Āmua Whakaohoho, in particular the principles of thriving people | Whakapuāwai Hapori and zero carbon communities | Parakore Hapori.
- Property Sale and Acquisition Policy (2014)
- Significance & Engagement Policy | Te Kaupapa Here Hiraka Whakapā (2021).
- Disability Policy.
- Financial Contributions Headworks Policy.
- Development Contributions Policy (2021).
- Revenue and Financing Policy.
- Infrastructure Asset Management Strategy.

57. The recommended option is consistent with the principles set out in the named policy/policies and included in the Ten-Year Plan/Annual Plan.

#### Attachments | Kā Tāpirihaka

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A	Lakeview Project Objectives and Material Outcomes
B	Lakeview precinct plan and proposed delivery staging
C	Lakeview development schedule of decisions and modifications
D	Matters raised by Councillor Gladding in notices of motion (25 May and 21 June 2023)
E	RB Robertson review of governance structures and processes (June 2022)
F	MERW advice addressing notice of motion
G	RB Robertson comments addressing notice of motion.