

Councillor Gladding Lakeview Notice of Motion Matters (25 May 2023)

Cr Gladding was seeking to revoke the delegation to the Chief Executive and raised the following (*unabridged*) issues:

1. *Lakeview-Taumata is a large and complex, commercial development project within Queenstown's CBD. It is a staged development, expected to be completed by 2039. The delegation to the Chief Executive (CE) to "negotiate and execute the transaction documents" was authorised over five years ago. This was very early in the life of the project - long before officers or councillors understood the scope of the decisions that would be made under the Development Agreement (DA). The DA wasn't signed by the CE until two years later, in December 2019.*
2. *The delegation was agreed on 26 October 2017. The resolution authorised the Chief Executive to:*
 - "c. negotiate and execute transaction agreements with development partner(s) subject to the parameters".*
3. *The scope of "the parameters" is not defined in the report. However, it is clear they are the 'Development Objectives' that were agreed at the Council Meeting on 17 August 2017. These financial and non-financial objectives (see point 14) were the reason the Council decided not to sell the land outright. Instead, Council decided to take on the cost and risk of subdividing the land so it could retain some control of the development outcomes over time.*
4. *The Council's subdivision works have unfortunately incurred significant cost overruns, putting at risk the achievement of the financial objective and increasing the likelihood of trade-offs (with uncertain returns) between the financial, amenity and efficiency objectives. Therefore, while decisions made under the DA will always require the input of experts, there will also be value judgements to be made.*
5. *Given these issues and the level of community concern, the Notice of Motion recommends returning the 'guardianship' of the Development Objectives to the full council, through the reallocation of decision-making powers. This is to improve the likelihood that the objectives will be met to the satisfaction of the community; to provide for transparency and accountability (as required by the Local Government Act 2002); to attempt to restore a level of community-trust in the governance of this project; and to reduce the risk to councillors.*
6. *The council has previously received a report on Lakeview governance and considered a similar amendment to the Lakeview-Taumata delegation. On 17 March 2022, after considering a Notice of Motion¹, Council agreed to ask staff 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;*

¹ [0-notion-of-motion \(2\).pdf](#)

- c) Report to the full Council with options for strengthening internal governance of the Lakeview-Taumata project; and
- d) Produce the reports referred to in 2a-c no later than 30 June 2022.

7. Bruce Robertson was contracted to undertake a review of the internal governance arrangements and decision-making under the DA. His report², presented to a Council meeting on 8 July 2022, recommended leaving the existing delegation in place and improving governance oversight via quarterly reporting to the Audit Finance and Risk Committee (AFRC). He also recommended 6-monthly engagement between the elected members and the Developer.
8. Some councillors noted³ that the report did not consider or provide options for the division of decision-making as required by the resolution. Questions were also asked about whether quarterly reporting to the AFRC could deliver timely governance oversight to prevent undesirable actions or decisions - such as the application by the developer to use the Fast Track consenting process against the express conditions of Council's material modification approval.
9. Mr Robertson's recommendations were agreed by the majority of councillors (7 for, 4 opposed). An amendment to return certain key decisions, including decisions on modifications, to councillors was lost by the same margin.
10. On 17 February 2023 the Lakeview developer filed its most recent notice of modification. The closest AFRC meeting was on 14 March 2023. Potential modifications were anticipated by the staff report, but no detail was provided. This may have been intentional or due to reporting timeframes. Regardless, the AFRC was unable to make any assessment of its own. The next AFRC meeting is not until 6 July and the CE is not obliged (or likely even allowed) to wait for meaningful governance oversight from the AFRC.
11. Mr Robertson did agree that it would be appropriate for the delegation to be reviewed again by the next council (see the video linked to footnote 3).
12. It is important to note that the Chief Executive can currently sub-delegate these decisions, that these decisions made under delegation can not be revoked, and that this delegation does not reduce the responsibility of councillors or any personal financial liability for losses under s46 LGA⁴.

Explanation of the proposed scope of Council decision-making

13. It is recommended that councillors reclaim the power to make decisions on those matters that relate directly to the achievement of the Development Objectives. At this stage of the development these are the **Design Documentation**⁵ for the 'Super Lots' and any **Modifications** as defined by the DA (see 16-18 below)

² [1a-lakeview-taumata-review-of-governance-structures-and-processes \(7\).pdf](#)

³ Recording of the Council Meeting on 8 July 2022 [Facebook](#)

⁴ See Schedule 7, Part 1, clause 32(7A) LGA)

⁵ The Drawings, Architectural Models and specifications (excluding civil, hydraulic, mechanical, structural and engineering drawings) that comprise Concept and/or Preliminary Design.

14. The Development Objectives agreed by the Council in August 2017 are defined in the DA as the **Project Objectives** and they are central to the design of the development over time. The Project Objectives 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.
15. The DA also contains a schedule of **Material Outcomes** that the developer is required to deliver. These are set out in Schedule 3⁶. The Development Documentation, including the design, must be consistent with both the Project Objectives and the Material Outcomes.
16. The developer may make Minor Modifications to Agreed Documents or to certain agreed (progress or settlement) dates. ‘**Minor Modifications**’ are clearly defined in the DA. These are modifications that do not result in a change of use or impact the value, external appearance, size, height, or quality of the development.
17. Any proposed modification that does not meet the definition of ‘Minor’ must be assessed to determine whether it is a ‘**Material Modification**’. The process for determining that (which includes a decision from QLDC) is set out in clauses 9.1 and 9.2 of the DA. If a modification is not deemed material, the developer may proceed.
18. A **Material Modification** includes extending certain key dates or any change that would materially affect the ability to achieve any of the **Project Objectives** or **Material Outcomes** in Schedule 3. Importantly, the cumulative effects of a proposed modification and previous modifications may amount to a Material Modification. The developer can’t proceed with a **Material Modification** without QLDC’s approval.

Workability of the recommendation – efficiency, effectiveness, and accountability

⁶ These relate to the Retail and Hospitality Strategy, the Arts Precinct, Active connections, the Proportionate mix (of residential, short and long stay accommodation, office and retail), Built form, and Sustainability principles.

19. *QLDC has a process for assessing modifications. This process is set out on page 6 of the report to the Audit Finance and Risk Committee (AFRC) on 14 March 2022.⁷ An evaluation panel undertakes this process and makes a recommendation. The CE then makes the decision. If the Council were to make these decisions it could make them with the same level of advice.*
20. *There are timeframes associated with decisions under the DA. QLDC must advise the Developer of a decision on materiality within 15 business days of all required information being supplied. For approval or objection to Development Documentation (including Design Documentation) the deadline is 20 working days. These timeframes are workable for full council decisions given the small number of modifications received and the ability to call emergency meetings.*
21. *Since the Masterplan document was agreed, Council has received at least 4 requests for non-minor modifications. One was a material modification that was not raised with councillors; two were workshopped with councillors on multiple occasions to provide direction; the most recent proposed modification is currently being assessed without councillor input (with the Notice filed on 17 February, 3 months ago). Three have required detailed or complex assessments and, with or without elected member input, have taken significant time (months) and much advice before a decision has been made.*
22. *The past few years have shown that Councillors generally want to have a say on these matters and that the community would like them to. They have also shown that the CE has (at least at times) needed significant input from his employer (the Council). This is unsurprising given the level of concern amongst the community.*
23. *The ‘principles relating to local authorities’, set out in section 14 of the Local Government Act, are as relevant to commercial deals as any other work of the council. Relevantly, a local authority should undertake any commercial transactions in accordance with sound business practices. However, all principles apply and where any principles are in conflict, that conflict should be resolved in accordance with the overriding principle in s14(1)(a)(i): that a local authority should conduct its business in an open, transparent, and democratically accountable manner.*
24. *Therefore, if councillors intend to continue influencing outcomes (and I would suggest that is a good thing), then it is councillors who should be making the decisions – and within formal meetings where their comments and votes will be recorded.*
25. *As discussed, the benefits of the recommended motion include improved transparency, accountability, and governance oversight. But it would also significantly improve councillors’ understanding of this incredibly complex Strategic Project and, importantly, may begin to improve trust in and within the Council.*

⁷ [item-6-lakeview-audit-finance-and-risk-committee-report-march-2023 \(4\).pdf](#)

Councillor Gladding Lakeview Notice of Motion Matters (21 June 2023)

Cr Gladding was seeking to revoke the delegation to the Chief Executive and raised the following (*unabridged*) issues:

1. *Lakeview-Taumata is a large and complex, commercial development project within Queenstown's CBD. It is a staged development, expected to be completed by 2039. QLDC has subdivided the Lakeview land and will sell the Superlots to the developer for an agreed price over the next 15 years. Therefore, the Lakeview-Taumata Development Agreement (the DA) sets out the terms of a land sale that will take place over two decades.*
2. *On 26 October 2017 the Council agreed to enter the DA and delegated decision- making power to the Chief Executive. The resolution authorised the Chief Executive to:*

“c. negotiate and execute transaction agreements with development partner(s) subject to the parameters”.
3. *The scope of “the parameters” is not defined in the report. However, it is clear they are the ‘Development Objectives’ that were agreed at the Council Meeting on 17 August 2017 (called Project Objectives in the DA). These financial and non-financial objectives (see point 15) were the reason the Council decided not to sell the land outright. Instead, Council decided to take on the cost and risk of subdividing the land so it could retain some control of the development outcomes and over time achieve both financial and non-financial value from the sale.*
4. *The Council's subdivision works have unfortunately cost QLDC significantly more than anticipated. This has reduced the ability to deliver the financial objective through the guaranteed land payments alone. To achieve its financial objective, QLDC will now need to make ‘superprofits’. These profits are not guaranteed and depend on the developer achieving a certain profit threshold once a ‘Lot’ has been developed, and according to calculations defined in the Development Agreement.*
5. *This situation increases the likelihood that QLDC will have to make trade-offs between the achievement of the financial and non-financial objectives. An example might be agreeing to modifications that will not achieve the sustainability outcomes in order to increase developer profitability, to increase the chance of obtaining super profits Therefore, while decisions made under the DA will always require the input of experts, there will also be value judgements to be made about which objectives are more important to the Council – the ‘at risk’ superprofits or the non-financial objectives.*
6. *Given these matters of judgement and the level of community concern about the project, the Notice of Motion recommends returning the ‘guardianship’ of the Development Objectives to the full Council, through the reallocation of decision- making powers. What’s recommended would provide a level of democratic accountability for key decisions directly affecting the value the community will receive from the sale and development of the land. It is also possible that greater control of the project outcomes by elected members could help to restore a level of community-trust in the governance of this project.*

7. *The council has previously received a report on Lakeview governance and considered a similar amendment to the Lakeview-Taumata delegation. On 17 March 2022, after considering a Notice of Motion⁸, Council agreed to ask staff 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; and*
 - d) *Produce the reports referred to in 2a-c no later than 30 June 2022.*
8. *Bruce Robertson was contracted to undertake a review of the internal governance arrangements and decision-making under the DA. His report⁹, presented to a Council meeting on 8 July 2022, recommended leaving the existing delegation in place and improving governance oversight via quarterly reporting to the Audit Finance and Risk Committee (AFRC). He also recommended 6-monthly engagement between the elected members and the Developer.*
9. *Some councillors noted¹⁰ that the report did not consider or provide options for the division of decision-making as required by the resolution. Questions were also asked about whether quarterly reporting to the AFRC could deliver timely governance oversight to prevent undesirable actions or decisions - such as the application by the developer to use the Fast Track consenting process against the express conditions of Council's material modification approval.*
10. *Mr Robertson's Report did consider the option of "Increased and direct involvement in of Elected Members in decision-making – for example approving all Material Modifications".*

The following advantages were listed:

- a. *May assist Elected Members have a sense of "greater control"*
- b. *The recommended enhanced role for the Audit and Risk Committee can still be implemented (and is still required).*

The following disadvantages were listed:

- c. *Increases the direct engagement of all Elected Members in the project which is beyond their current workload and arguably their role.*
- d. *May increase their sense of risk and exposure to s46 of the Local Government Act 2002.*

⁸ 0-notion-of-motion (2).pdf

⁹ Lakeview-Taumata – Review of Governance Structures and Processes, Bruce Robertson: 1a- lakeview-taumata-review-of-governance-structures-and-processes (7).pdf

¹⁰ Recording of the Council Meeting on 8 July 2022 Facebook

e. Could restrict the flexibility in decision making needed with a commercial agreement, especially as the project moves into full implementation under tight timeframes.

- 11. Mr Robertson’s recommendations to retain the existing delegation and increase the role of the AFRC were agreed by a majority of councillors (7 for, 4 opposed). An amendment to return certain key decisions, including decisions on modifications, to councillors was lost by the same margin.*
- 12. There is now a new Council with 7 of the 12 Council members being newly elected. Mr Robertson agreed, during the debate, that it would be appropriate for the delegation to be reviewed again by the next council (see the video linked to footnote 3).*
- 13. On 17 February 2023 the Lakeview developer filed its most recent notice of modification. The next AFRC meeting was on 14 March 2023. Potential modifications were anticipated by the staff report, but no detail was provided. This may have been intentional or due to reporting timeframes. Regardless, the AFRC was unable to make any assessment of the risks posed by the proposed modifications. The next AFRC meeting is not until 6 July and the CE is not obliged (or likely even allowed) to wait for meaningful governance oversight from the AFRC before he makes the decision. That decision is now imminent, and this Notice seeks to ensure that the full Council has opportunity to make that decision.*

Relevant provisions of the Lakeview-Taumata Development Agreement

- 14. It is recommended that councillors reclaim the power to make decisions on those matters that relate directly to the achievement of the Development Objectives. At this stage of the development these are the Design Documentation¹¹ for the ‘Super Lots’ and any Modifications as defined by the DA (see 18-20 below).*
- 15. The Development Objectives agreed by the Council in August 2017 are defined in the DA as the Project Objectives and they are central to the design of the development over time. The Project Objectives 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;*

¹¹ The Drawings, Architectural Models and specifications (excluding civil, hydraulic, mechanical, structural and engineering drawings) that comprise Concept and/or Preliminary Design.

- 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.
16. The DA also contains a schedule of Material Outcomes that the developer is required to deliver. These are set out in Schedule 3¹². The Development Documentation, including the design, must be consistent with both the Project Objectives and the Material Outcomes.
 17. The developer may make Minor Modifications to Agreed Documents or to certain agreed (progress or settlement) dates. ‘Minor Modifications’ are clearly defined in the DA. These are modifications that do not result in a change of use or impact the value, external appearance, size, height, or quality of the development.
 18. Any proposed modification that does not meet the definition of ‘Minor’ must be assessed to determine whether it is a ‘Material Modification’. The process for determining that (which includes a decision from QLDC) is set out in clauses 9.1 and 9.2 of the DA. If a modification is not deemed material, the developer may proceed.
 19. A Material Modification includes extending certain key dates or any change that would materially affect the ability to achieve any of the Project Objectives or Material Outcomes in Schedule 3. Importantly, the cumulative effects of a proposed modification and previous modifications may amount to a Material Modification. The developer can’t proceed with a Material Modification without QLDC’s approval.
 20. It is also proposed that the power to make changes to the Development Agreement itself be returned to the full Council.
 21. QLDC staff have developed a process for assessing modifications. This process is not an obligation under the Lakeview DA. It is described on page 6 of the report to the Audit Finance and Risk Committee (AFRC) on 14 March 2022.¹³ An evaluation panel undertakes this process and makes a recommendation; the CE then makes the decision. If the full Council were to decide to make these decisions it would make them with the same advice – or more if required.
 22. There are timeframes associated with decisions under the DA. QLDC must advise the Developer of a decision on materiality within 15 business days of all required information being supplied. For approval or objection to Development Documentation (including Design Documentation) the deadline is 20 working days. These timeframes are workable for full Council decision-making given the small number of modifications received, the ability to call emergency meetings, and the length of time it takes to develop Design Documentation and assess modifications in practice.

¹² These relate to the Retail and Hospitality Strategy, the Arts Precinct, Active connections, the Proportionate mix (of residential, short and long stay accommodation, office and retail), Built form, and Sustainability principles.

¹³ item-6-lakeview-audit-finance-and-risk-committee-report-march-2023 (4).pdf

23. *Since the Masterplan document was agreed, Council has received at least 4 requests for non-minor modifications. One was a material modification that was not raised with councillors; two were workshopped with councillors on multiple occasions to provide direction; the most recent proposed modification is currently being assessed without councillor input (with the Notice filed on 17 February). Three have been complex assessments and, with or without elected member input, have taken significant time (months) and required expert advice before a decision has been made.*
24. *The past few years have shown that Councillors generally want to have a say on these matters and that the community would like them to. They have also shown that the CE has at times needed significant input from his employer (the Council). This input has always been welcomed, and at times required, by councillors. However, it can also remove clarity about who is making the decision and it does raise concerns about whether legal requirements (under the Local Government Act 2002 and Local Government Official Information and Meetings Act 1987) are being met.*
25. *Mr Robertson's Report did record, as a disadvantage of the current delegation, that: Any consultation with Elected Members over decisions may confuse who is making the decision without clarity of the purpose of the consultation.*
26. *The 'principles relating to local authorities', set out in section 14 of the Local Government Act, are as relevant to commercial deals as any other work of the council. Relevantly, a local authority should undertake any commercial transactions in accordance with sound business practices. However, all principles apply and where any principles are in conflict, that conflict should be resolved in accordance with the overriding principle in s14(1)(a)(i): that a local authority should conduct its business in an open, transparent, and democratically accountable manner.*
27. *Therefore, if councillors intend to continue influencing the outcomes of Modification decisions and wish to ensure Design Documentation will deliver on the Project Outcomes and Material Outcomes, then it is councillors who should be making those decisions. In that case, decisions should be made within formal meetings where their comments and votes will be recorded. Alternatively, if councillors are happy to work on a high trust model, then the existing delegation is appropriate - but councillors should not expect to influence the CE's decision.*
28. *Both options are open to councillors to consider and agree. There is nothing in the DA that prevents either option. Both options have their advantages and disadvantages in terms of councillor workload, the extent to which councillors are informed, democratic accountability, and public perception and trust.*
29. *Finally, it is important to note that:*
- a. The Chief Executive can currently sub-delegate decisions under the existing delegation;*
 - b. Decisions made under delegation can not be revoked; and*
 - c. The existing delegation does not relieve elected members of the liability or legal responsibility to perform or ensure performance of any function or duty¹⁴*

¹⁴ See Schedule 7, Part One, Clause 32(7) LGA 2002