

# Queenstown Lakes District Council: Managing a conflict of interest in a proposed special housing area

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# Auditor-General's overview

This report sets out my Office's findings from our inquiry into how the Queenstown Lakes District Council (the Council) and its chief executive managed the chief executive's conflict of interest in a proposal for land owned by his family to become a special housing area. Becoming a special housing area allows some streamlining of resource consent processes for property development and can save landowners time and money.

In May 2015, we decided to carry out the inquiry in response to concerns that some people in Queenstown had raised. In our view, the concerns raised matters of trust and confidence in the Council's processes and about how a chief executive could participate in one of those processes.

This report sets out my Office's findings and comments.

We concluded that:

- The chief executive supported the Council having a process to consider the need for special housing areas in the Queenstown Lakes district and had some involvement in that process. However, his involvement did not influence or contribute to any substantive aspects of the Council's policy, such as the targets for the number of special housing areas, their location, the decision to seek expressions of interest, or the criteria for evaluating the expressions of interest. Others dealt with these matters.
- The Mayor and Council officers took appropriate mitigation steps to manage the conflict of interest after the chief executive declared it. The chief executive was not involved in evaluating the expressions of interest and took no part in Council decisions about them or Council officers' related recommendations.
- The Council, the chief executive, and the senior staff involved acted responsibly and endeavoured to manage the conflict appropriately.

The chief executive acted appropriately by disclosing his conflict of interest to the Mayor and senior council officers. The Mayor took appropriate steps to tell councillors and my Office, including seeking our views on the proposed approach for managing the conflict of interest.

The Mayor and the chief executive relied on our general comments about being comfortable with the proposed approach for managing the conflict. We accept that it was reasonable for them to rely on our broad support of the steps they proposed to take to manage the conflict. However, we found that the Mayor and the chief executive could have done some things better. In particular, they should have considered more the likely effects of the conflict on the chief executive's ability to meet his responsibilities under section 42 of the Local Government Act 2002. Legal advice could have helped them to consider whether there were

likely to be any impediments to the chief executive's ability to meet all those responsibilities, particularly advising members and leading staff.

In our view, the conflict has affected the chief executive's ability to meet his responsibilities. He has not been able to advise the Council about special housing areas and has not been able to provide leadership to Council staff in this area. However, the Council has worked around this to fill the gaps.

Through family and friends, elected members and local authority officers will often have many connections in their communities. From time to time, they will be conflicted when matters come before their local authority for decision. Conflicts are inevitable in a small country and are not necessarily a problem if they are declared and properly managed.

Perception is of vital importance. Most often, what needs to be managed (and seen to be managed) is the risk of adverse public perception that could arise from overlapping interests. A conflict between a private interest and public duty can look wrong in the public's mind, even if properly managed.

Any senior local authority employee should carefully consider the effect of choosing to pursue a private interest, where that interest creates a conflict with their ability to perform their job. This requires judgement and thinking through possible scenarios, including whether the conflict might affect other spheres of responsibility in the future. This is particularly so for a chief executive, because of statutory responsibilities to advise councillors and lead staff.

The employee's manager – for a chief executive, the Mayor – should also think through the implications and be comfortable with the plan to manage those implications. They should consider the employment contract and any applicable rules and policies the local authority has.

Although all employees of local authorities have the same rights and privileges as private individuals, those rights and privileges must be considered in the light of their responsibilities to the local authority. In some instances, a choice might have to be made.

I thank the chief executive, the Mayor, the elected members, and Council officers who helped with our inquiry.



Lyn Provost  
Controller and Auditor-General

16 October 2015

# Introduction

- 1.1 In this Part, we discuss:
- the background to our inquiry;
  - the type of conflict of interest involved;
  - why we decided to inquire; and
  - how we carried out our inquiry.

## Background

- 1.2 On 3 June 2015, Queenstown Lakes District Council (the Council) met to consider 13 expressions of interest for areas of land in the Wakatipu Basin to become special housing areas under the Housing Accords and Special Housing Areas Act 2013 (the Act). Becoming a special housing area under the Act allows some streamlining of resource consent processes and can save landowners time and money.
- 1.3 The matter aroused considerable local interest. The Council considered comments on the expressions of interest from people in the Queenstown Lakes District at and before the Council meeting on 3 June 2015.
- 1.4 Four of the expressions of interest were for sites in or near Arrowtown. One of the expressions of interest was from the Rafa Trust for a residential development of 20 dwellings on the southern side of McDonnell Road, Arrowtown, on land owned by the family of the Council's chief executive.
- 1.5 The chief executive's family bought the land shortly before he took up his role with the Council in October 2012.
- 1.6 In November 2014, the chief executive told the Mayor of his family's intention to submit an expression of interest and how he proposed the Council could manage his interest in the matter. The Mayor informed councillors and us of this at the time. The Mayor sought our views on what additional steps were needed to manage the conflict. The chief executive provided further information in response to our comments, and, in late December 2014, we said that we were comfortable with the proposed approach.
- 1.7 In May 2015, when the Council got closer to deciding on the expressions of interest for special housing areas, we received several requests from people living in the Queenstown Lakes District to inquire into the chief executive's interest in this matter.
- 1.8 Some of those people had seen our November and December 2014 correspondence with the Mayor and the chief executive about the chief executive's disclosure of interest and proposed mitigation steps. In that correspondence, we focused on how the conflict of interest would be managed.

- 1.9 The people who had seen our correspondence suggested that we needed to look at whether the chief executive was involved in preparing the housing accord and the Council's related policy before he declared an interest, to see whether he had influenced the process to his advantage.

### **Type of conflict of interest**

- 1.10 The type of interest involved is a private financial interest. People who contacted us were concerned that the chief executive's private financial interest in his family land becoming a special housing area conflicted with his role as the local authority's chief executive. They said it was inappropriate for a local authority chief executive to seek a property development opportunity, because this created an inherent conflict between a private interest and the chief executive's obligations to the Council.

### **Why we decided to inquire**

- 1.11 On 28 May 2015, we said we would inquire into how the Council and its chief executive had managed the chief executive's interest in land owned by his family being considered for a special housing area and whether the chief executive had been involved in developing the related policy.
- 1.12 We said we would carry out an inquiry because the requests raised matters of trust and confidence in the Council's processes and about how a chief executive can participate in one of those processes. Some of those who contacted us hoped that we would intervene in the process and prevent the Council from considering the chief executive's expression of interest. The Mayor got legal advice that the Council could proceed to consider the expressions of interest, including the one from the chief executive's family.
- 1.13 When we announced our inquiry on 28 May 2015, we said that we would consider:
- the nature and extent of any involvement of the chief executive in developing the Council's housing accord and related policy for special housing areas;
  - how the Council and chief executive:
    - managed the chief executive's interest in land owned by his family being considered for a special housing area;
    - should manage matters if the land owned by the chief executive's family is approved as a special housing area; and
  - any other matters that we considered it desirable to report on.
- 1.14 The Appendix sets out our terms of reference for this inquiry.

## How we carried out our inquiry

- 1.15 The Council provided us with comprehensive records about how it developed the housing accord and the related “lead policy” for special housing areas (see Part 2). These records included email messages to and from all involved, and minutes and reports of relevant meetings before and after the chief executive’s disclosure of interest.
- 1.16 We considered the Council’s policy on managing conflicts of interest and its interests register. We also got records from the Ministry of Business, Innovation and Employment (the Ministry) about its involvement.
- 1.17 We looked at events that took place between February 2014 and June 2015.
- 1.18 We met:
- the Mayor of the Queenstown Lakes District, Vanessa Van Uden;
  - the chief executive, Adam Feeley;
  - two elected members who were closely involved in the policy development process (Councillor Cath Gilmour, the Council’s portfolio leader for planning, and Councillor Ella Lawton, the deputy portfolio leader for planning);
  - staff members closely involved in the policy development and consideration process for special housing areas (the General Manager, Planning and Development,<sup>1</sup> and the District Plan Manager);
  - officials from the Ministry who worked with the Council to prepare the housing accord;
  - other Council staff members involved in managing the Council’s information systems, the chief executive’s office, and legal matters;
  - the former General Manager, Legal and Regulatory;
  - the environmental consulting firm that prepared the chief executive’s expression of interest, Mitchell Partnerships; and
  - the acting chairperson of the Arrowtown Village Association.
- 1.19 We also met or spoke with some of the people who had contacted us with concerns and information.

## We have not considered how the chief executive’s interest should be managed in the future

- 1.20 At its meeting on 3 June 2015, the Council instructed Council officers to do some more work on four of the expressions of interest so that the Council could recommend them to the Minister for Building and Housing. None of the

<sup>1</sup> The General Manager, Planning and Development resigned from the Council in September 2015. This was outside the period of our inquiry.

Arrowtown proposals, including for the land owned by the chief executive's family, were recommended for further consideration.

- 1.21 Because the Council did not recommend the chief executive's expression of interest for further consideration, we did not need to consider how the Council should manage matters if it had approved the land owned by the chief executive's family as a special housing area. However, we briefly comment on this matter in Part 5.



# Preparing the housing accord and policy for special housing areas

# 2

- 2.1 In this Part, we discuss:
- the Council’s housing accord and the Act;
  - why the Council and the Minister for Building and Housing entered into a housing accord; and
  - how the Council developed its housing accord and lead policy for special housing areas.
- 2.2 This Part covers the period from February 2014 – the start of the process for preparing a housing accord – to early November 2014, when the Council called for expressions of interest for special housing areas to assess against the policy approved at the end of October 2014.
- 2.3 We describe how the Council developed its housing accord and lead policy for special housing areas and who was most closely involved in some detail to explain and assess the nature and extent of the chief executive’s involvement.

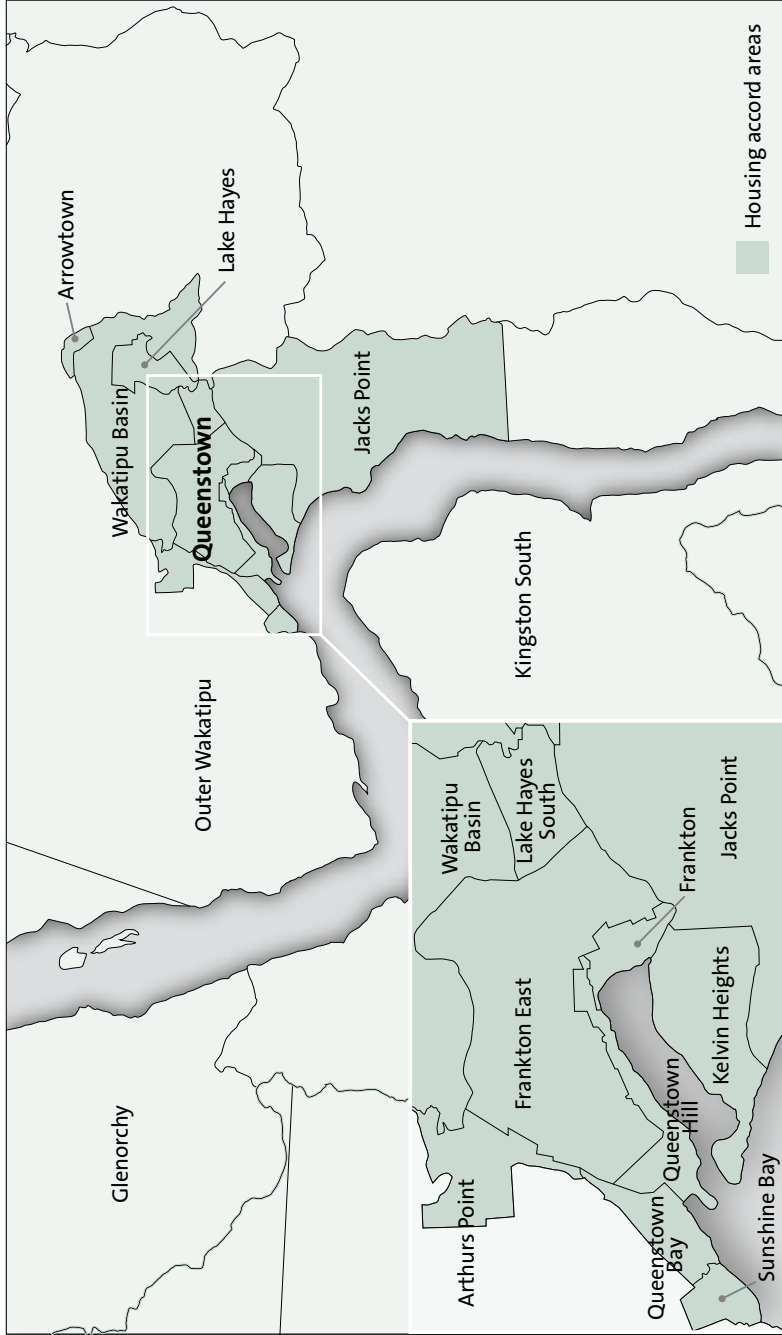
## What the housing accord is

- 2.4 The Queenstown Mayor and the Minister for Building and Housing signed a housing accord on 23 October 2014. The accord is intended to increase the supply of land for housing and to improve housing affordability in the Queenstown Lakes District.<sup>2</sup> The agreement involves the Council and the Government working together, and with developers and landowners, to achieve this.
- 2.5 Under the accord, the Council can identify areas to recommend to the Government for approval as special housing areas. Qualifying developments in these areas benefit from shorter times for getting consents and plan changes, fewer grounds for appeals, and more permissive consenting rules.
- 2.6 A qualifying development in a special housing area is a mainly residential development in which the dwellings and other buildings will be no higher than six storeys.<sup>3</sup>
- 2.7 The accord, which has a particular focus on the Wakatipu Basin, lasts for three years and sets targets of 350 new sections and dwellings consented in the Wakatipu Basin for its first year, 450 in its second, and 500 in its third. Special housing areas are intended to contribute to the targets, but new consents from other developments also contribute.
- 2.8 Figure 1 shows the Housing Accord Areas in the Wakatipu Basin, as defined for the purposes of the accord.

2 In announcing the accord, the Minister for Building and Housing said that the Queenstown Lakes District is one of the five least affordable housing areas in New Zealand. A high number of homes are owned by non-residents for holiday purposes, and people who work in the tourism and hospitality industries on lower incomes can have trouble affording houses.

3 Section 14 of the Act.

**Figure 1**  
Housing accord areas



Source: Adapted from Ministry of Business, Innovation and Employment.

### **The Housing Accords and Special Housing Areas Act 2013**

- 2.9 The accord was made under the Act, which became law in September 2013. The Act was designed as a temporary measure to improve housing supply. The Government's proposed changes to the Resource Management Act 1991 were intended to provide a more permanent solution.
- 2.10 The stated purpose of the Act is to enhance housing affordability by helping to increase land and housing supply in regions or districts that the Government identifies as having housing and affordability issues.<sup>4</sup> These regions and districts are listed in Schedule 1 of the Act. Auckland was included in Schedule 1 when the Act was passed. Other districts have been added by Order in Council, including the Queenstown Lakes District in June 2014.
- 2.11 Under the Act, special housing areas last until September 2016. There is then a two-year period for consents to be issued. Therefore, there is pressure to set up housing accords and special housing areas under the Act.

### **Why Queenstown Lakes District Council and the Minister for Building and Housing entered into a housing accord**

- 2.12 In early February 2014, officials from the Ministry approached the Council about adding the Queenstown Lakes District to Schedule 1 of the Act. One of the criteria for inclusion is whether land available for residential development is likely to meet housing demand, based on predicted population growth.<sup>5</sup>
- 2.13 The General Manager, Planning and Development told the Mayor and the chief executive about the Ministry's approach. The General Manager, Planning and Development's initial reaction was to decline, saying that Queenstown did not have a supply problem (a shortage of available land for housing) and that his staff had more pressing priorities.
- 2.14 The chief executive agreed about the supply matter, but said that Queenstown did have an affordability problem and that "I think we need to stay part of this". He said that he would attend a meeting on housing affordability in Auckland a couple of weeks later and suggested sending the Ministry a holding reply saying that the Council was "interested but [had] limited resource availability".
- 2.15 The meeting in Auckland that the chief executive referred to was a Local Government New Zealand seminar on housing accords and housing affordability on 25 February 2014. The seminar included a session where Auckland Council spoke about its experience of developing a housing accord with the Government.

4 Section 4 of the Act.

5 The Minister for Building and Housing had asked officials for advice on adding three districts, including the Queenstown Lakes District, to Schedule 1 of the Act.

- 2.16 The invitation listed the other local authorities that were considered to have housing affordability problems and were then listed in Schedule 1 of the Act. The chief executive asked Local Government New Zealand why Queenstown Lakes District – specifically, the Wakatipu Basin – was not considered to have housing affordability problems (see paragraphs 3.2-3.4).

## **Preparing the housing accord and the lead policy for special housing areas**

### **Council officers begin discussions with Ministry officials**

- 2.17 After the chief executive said that the Council should “stay part of this”, Council officers provided Ministry officials with some information about housing supply and affordability issues, the review of the District Plan that was under way, and development restrictions.
- 2.18 The main Council officers involved throughout the process were the District Plan Manager and the General Manager, Planning and Development.

### **Meeting the Minister for Building and Housing in Queenstown**

- 2.19 On 9 May 2014, the Minister for Building and Housing met the Mayor and the chief executive in Queenstown to discuss adding the Queenstown Lakes District to Schedule 1 of the Act and the potential for a housing accord for Queenstown.
- 2.20 Before the meeting, the chief executive emailed the Mayor saying that he assumed that she had an open mind on the need for a housing accord. The chief executive commented that a housing accord would be unlikely to have any adverse effects and would streamline current processes.
- 2.21 The chief executive offered to attend the meeting with the Minister if the Mayor wished. The Mayor said she was not sure what a housing accord would offer Queenstown but was happy to hear from the Minister to find out. She was also happy for the chief executive to attend the meeting.
- 2.22 After they met, the Mayor issued a media statement welcoming the Minister’s approach, saying that the Council looked forward to working further with the Government on the proposal. The chief executive drafted the media statement for the Mayor. He suggested that the Mayor be the first contact and that he be the second contact for any technical questions about the housing accord process and how it might apply to Queenstown.
- 2.23 The Mayor sent the media statement to councillors, advising them that Queenstown Lakes District would be added to Schedule 1 of the Act and that a

housing accord would be negotiated with the Government if the Council agreed. The Mayor told councillors that they would have the chance to give their views on the proposed housing accord and have input in developing it.

### Council officers consider possible locations for special housing areas

- 2.24 The District Plan Manager briefed the chief executive on the possibility of a housing accord before the Mayor's meeting with the Minister on 9 May 2014. The District Plan Manager said that, in his view, rural areas needed no special housing areas because plenty of land there was zoned for low-density housing. Instead, he suggested setting up special housing areas in some urban locations and attached information about a possible site (land zoned for high-density housing west of Gorge Road).
- 2.25 The District Plan Manager said that, despite being zoned for high-density housing, planning rules essentially limited the land west of Gorge Road to low-medium density and that the area was highlighted for possible "up-zoning" in the District Plan review. He said that designating the land as a special housing area would substantially speed up its rezoning.
- 2.26 The chief executive replied to the District Plan Manager by email on 9 May 2014, saying the proposal made sense. The chief executive then asked:
- However, why are we limiting ourselves to [Queenstown]?*
- Acknowledging that I am slightly conflicted, Arrowtown is also in need of greater high density housing (hence the efforts of the [Community Housing Trust] at Suffolk St). It offers infrastructure (pre-schools, schools, retail and transport) that Lake Hayes etc lacks; has significant space for development, but has a group of generational NIMBY's driving the house prices through the roof.*
- 2.27 The District Plan Manager replied:
- I see the greatest need in Queenstown, but you are dead right about Arrowtown. Indeed it is highlighted as a key area in the RFP [Request for Proposals]. Again my thinking is the possibility of some upzoning there in the District Plan review, potentially in areas such as Adamson Drive. However, Arrowtown is likely to be more sensitive politically given its character.*
- I'm not suggesting that we should not think about Special Housing Areas there, just that we need to consider the possible "uproar".*
- 2.28 The Request for Proposals that the District Plan Manager referred to was for work analysing housing demand in Queenstown, Arrowtown, and Wanaka to help the Council with its review of the District Plan. The District Plan Manager attached the Request for Proposals to his 9 May 2014 email message to the chief executive, mentioning that it had been sent to three economic consultancies.

2.29 In Part 3, we comment on this email exchange.

### **Meeting with Ministry officials on 21-22 May 2014**

2.30 After the meeting between the Mayor and the chief executive and the Minister for Building and Housing on 9 May 2014, Ministry officials and Council officers continued to discuss potential sites for special housing areas, including in Arthurs Point and Frankton. Ministry officials finalised a paper to Cabinet recommending that Queenstown Lakes District be added to Schedule 1 of the Act.

2.31 Ministry officials went to Queenstown on 21 May 2014 to meet the District Plan Manager and the General Manager, Planning and Development, and talk to developers. The General Manager, Planning and Development asked the chief executive if he wanted to attend the meeting. The chief executive said that he could attend for 15 to 30 minutes at the start to discuss time frames and other matters. The chief executive attended the first part of the meeting with the Ministry officials.

2.32 On 19 June 2014, Ministry officials told the Council that the Gazette notice adding Queenstown to Schedule 1 of the Act would be issued soon. The chief executive suggested to the Mayor that this could be seen as a positive step for affordable housing in the district. The chief executive drafted a statement for the Mayor as a proposed joint media statement with the Minister for Building and Housing. The chief executive suggested that he be the first point of contact for any media questions so he could explain any technical matters and that he would pass on anything political to the Mayor.

2.33 On 23 June 2014, the Minister and the Council issued their media statements.

### **Housing accord included on the Council's business plan for 2014/15**

2.34 In early June 2014, the Council considered a draft business plan for 2014/15 that the chief executive had prepared. The Mayor told councillors that the main projects in the business plan would form part of the chief executive's key performance indicators for that year. A councillor suggested that achieving progress on affordable housing should be a focus. The chief executive told the Mayor that "surely the housing accord is the priority on this front".

2.35 On 1 July 2014, the chief executive asked his general managers to list their significant projects for the 2014/15 business plan. He said that "the rule for 14/15 with Council will be not on the business plan [my performance agreement], then not a priority". He suggested to the General Manager, Planning and Development that his list of projects include the housing accord.

- 2.36 The effect of this was that, from September 2014, the housing accord became one of the items in the chief executive's monthly report to the Council on progress achieving the 2014/15 business plan.
- 2.37 The General Manager, Planning and Development, not the chief executive, wrote the updates on the housing accord for the chief executive's monthly reports. Other general managers provided similar updates for their areas of responsibility. The updates on the housing accord focused on matters of process rather than substance. These reports continued after the chief executive told the Mayor that he intended to submit an expression of interest for a special housing area.
- 2.38 The General Manager, Planning and Development also reported to the chief executive on housing accord matters at their fortnightly catch-up meetings. From November 2014, the General Manager, Planning and Development sometimes used a reporting template that had been prepared for the purpose and that included special housing areas. The reports we saw were written after the chief executive had submitted his expression of interest. In Part 6, we comment on this reporting and the chief executive's monthly reports continuing after his expression of interest.

### **Meeting with Ministry officials on 3 July 2014 to discuss the draft accord and targets**

- 2.39 By late June, the District Plan Manager had identified five potential areas in the Wakatipu Basin to be considered for special housing areas:
- medium density zone (parts of Marina Heights, Goldfield Heights, Sunshine Bay, and Fernhill);
  - high residential zone (Gorge Road);
  - Arthurs Point;
  - Henley Downs (next to Jacks Point); and
  - Arrowtown.
- 2.40 The District Plan Manager mentioned that there was potential support for allowing more diverse housing options in Arrowtown but that this might be controversial.
- 2.41 The Mayor and the chief executive were given the information about the five potential sites as part of background for a meeting with Ministry officials on 3 July 2014. The General Manager, Planning and Development said that he preferred to target the medium-density subzone for special housing areas.
- 2.42 In response, the Mayor said that she would prefer to use an open process for seeking expressions of interest for special housing areas rather than for the

Council to select particular areas. This was because areas that the Council had not thought about might be put forward through an open process. The Council did use the expressions of interest approach later (see Part 6).

- 2.43 On 3 July 2014, officials from the Ministry met with Council officers and the Mayor in Queenstown. The meeting's purpose was to discuss a draft housing accord that the Ministry had prepared, including possible sites for special housing areas and targets. The General Manager, Planning and Development and the District Plan Manager attended the meeting. The Mayor joined the meeting briefly to get an update but did not take part in the more detailed discussions.
- 2.44 The Mayor and the chief executive were given a copy of the draft accord that the Ministry had prepared before the 3 July meeting.
- 2.45 Ministry officials had been considering suitable targets for the accord. Using available district-wide data, the first draft of the accord proposed district-wide targets of approving consent applications for between 500 and 650 sections or dwellings each year for five years. At the 3 July meeting, they discussed removing the Wanaka information from the calculations because Wanaka had a lot of land available for development and because the accord targets would probably be focused on specific areas rather than covering the whole district.
- 2.46 In mid-July 2014, the District Plan Manager prepared some consent data for the Wakatipu Basin, rather than the whole district. The District Plan Manager suggested lower targets than those that the Ministry had proposed. The District Plan Manager said that he and the General Manager, Planning and Development would need to discuss his proposed targets with "the Mayor, and senior engineering and consents staff" before confirming them.
- 2.47 At this stage, the Ministry officials were keen for the accord to be finalised by the end of July. However, the General Manager, Planning and Development and the District Plan Manager told the Ministry that they thought that events were moving too quickly for the Council's processes.
- 2.48 On 21 July 2014, the District Plan Manager told the Ministry that he needed to get "the Mayor's thoughts" on the draft accord and her buy-in to the proposed targets. The District Plan Manager said that he would meet with the Mayor and the chief executive on 22 July 2014 to discuss this.
- 2.49 At this time, the Ministry official who had most contact with the Council said that she had not seen or spoken with the Council's chief executive about the housing accord since the first meeting (on 21 May 2014).



### Who proposed that the targets focus on the Wakatipu Basin?

- 2.50 On 22 July 2014, the District Plan Manager; the General Manager, Planning and Development; the Mayor; and the chief executive discussed the accord and the targets.<sup>6</sup> The District Plan Manager had prepared a briefing paper that recommended focusing the housing accord targets on the Wakatipu Basin. The General Manager, Planning and Development gave the Mayor and the chief executive the briefing paper before their discussion on 22 July 2014.
- 2.51 The Mayor and the chief executive also received two reports by consultants that set out some modelling and projections of supply and demand.<sup>7</sup> In the briefing paper, the District Plan Manager said:
- Arguably the most important consideration for the Accord is the setting of housing supply targets over a 5 year period. Staff consider the housing issue to be most acute in the Wakatipu Basin (relative to Wanaka), where there is less potential housing supply, stronger constraints, stronger employment growth and strong demand.*
- Therefore it is recommended that the focus on targets should be on the Wakatipu Basin ...*
- 2.52 After the discussion with the Mayor and the chief executive on 22 July 2014, the District Plan Manager sent the Ministry the Council's feedback on the draft accord. This feedback included proposed changes to the accord to focus the targets on the Wakatipu Basin.
- 2.53 The District Plan Manager also told the Ministry that the Council could not meet the end of July deadline for adopting the accord. He said that the Mayor or the chief executive would contact the Minister for Building and Housing to discuss time frames.
- 2.54 The District Plan Manager prepared a letter to the Minister explaining that the full Council needed to ratify the draft accord. He said that this could be done by the end of August 2014. The chief executive gave the letter to the Mayor to sign and send on 6 August 2014 after reviewing it.
- 2.55 On 4 August 2014, the District Plan Manager sent the chief executive and the General Manager, Planning and Development the latest version of the accord received from the Ministry. The District Plan Manager said to the General Manager, Planning and Development that "in the end it looks like they've maintained the Wakatipu focus, as per our suggestion, rather than broadening to District-wide as they were suggesting they might do".

<sup>6</sup> The chief executive was at a conference but joined the discussion by phone.

<sup>7</sup> Insight Economics (2014) *Medium to High Density Housing Study: Stage 1a – Review of Background Data*; and *Stage 1b – Dwelling Capacity Model Review*. These reports were prepared in response to the Request for Proposals mentioned in paragraph 2.28.

- 2.56 The District Plan Manager said that the time period for the targets had changed from five to three years. He also asked whether the Council had enough resources to deal with the likely “gold rush” of consent applications.
- 2.57 The District Plan Manager sought guidance from the Mayor and the chief executive about whether:
- to give the draft housing accord to all councillors before a workshop for councillors on residential policy, saying that he and the Ministry preferred not to;
  - they had any thoughts on how to deal with any objections from councillors to the proposed focus on the Wakatipu Basin; and
  - to mention the likely make-up of the proposed joint steering group for monitoring the accord.
- 2.58 The Mayor commented on these matters.
- 2.59 The chief executive’s “to do” list prepared by his executive assistant on 5 August 2014 included the tasks of reviewing the latest draft of the housing accord and a draft economic development strategy. The chief executive commented on the economic development strategy but does not appear to have commented on the draft housing accord.

### **Council workshop on 7 August 2014**

- 2.60 Council officers sought feedback from councillors on the accord at a workshop on residential policy on 7 August 2014.<sup>8</sup> This was the first time the accord had been discussed with councillors in any detail.
- 2.61 Before the workshop, the District Plan Manager asked the General Manager, Planning and Development to discuss with the chief executive the possibility of giving councillors some information about possible financial incentives for special housing areas at the Council workshop. The possible financial incentives were deferred development contributions (to help developers by taking away some upfront financing costs) and rates holidays for qualifying developments.
- 2.62 The General Manager, Planning and Development forwarded the District Plan Manager’s suggestion about financial incentives to the chief executive as a “heads up”. The chief executive did not recall the email, and the General Manager, Planning and Development does not recall a response or a discussion about it. The District Plan Manager commissioned some advice from a consultant on these matters to help him prepare for the workshop.

<sup>8</sup> The workshop considered reports from a consultant on demographic trends and projections and dwelling capacity in the Queenstown Lakes District, as well as the housing accord and visitor accommodation issues.

- 2.63 To help councillors prepare for the workshop, the chief executive suggested that staff define the problem, then set out principles councillors could use to assess a range of solutions. He commented about housing affordability matters, including that councillors needed to consider the housing accord with other possible solutions to housing affordability problems.
- 2.64 The District Plan Manager updated the Ministry on 8 August 2014 on the outcome of the workshop. He said that there was unanimous support from councillors for the targets to be focused on the Wakatipu Basin, because of the pressing housing issues there. He gave the Ministry some final suggested amendments to the draft accord to reflect the focus on the Wakatipu Basin.
- 2.65 He also told the chief executive, who did not attend,<sup>9</sup> that the workshop went well.
- 2.66 The targets eventually included in the accord are noted in paragraph 2.7 above. They are described as aspirational and are for 1300 consented sections and dwellings over three years. The targets focus on the Wakatipu Basin rather than the whole district. Council officers and councillors who we spoke with about this explained that Wanaka did not have the supply and affordability problems that the Wakatipu Basin had.

### **Council adopts the accord**

- 2.67 After the workshop, Council officers drafted a report for a Council meeting on 28 August 2014. The report recommended that the Council approve the housing accord.
- 2.68 Council officers gave the draft report to the chief executive for comment. The chief executive made some changes. His most significant comment was to suggest that the part of the meeting to approve the accord should be open to the public. Council officers also sought the Mayor's views, and the chief executive said he was happy for the Mayor to decide this. It was later agreed that the meeting would be open to the public.
- 2.69 The officers gave the housing accord and the draft report to Councillor Gilmour, portfolio leader for planning matters, and Councillor Lawton, deputy portfolio leader for planning, on 12 August 2014, with the draft paper for the 28 August 2014 Council meeting.
- 2.70 Councillors Gilmour and Lawton were concerned about the timing of adopting the housing accord and whether there would be enough local input into special housing areas. In their view, adopting the housing accord before notifying the Council's proposed District Plan (then timed for May 2015) meant that the Council

<sup>9</sup> The chief executive has a standing invitation to attend council workshops, but told us that he does not usually attend planning-related workshops.

and community would not have enough say in the location of special housing areas.

- 2.71 Councillors Gilmour and Lawton thought that the housing accord should refer to the proposed District Plan to give that plan greater weight in decision-making about special housing areas. Council officers put this to Ministry officials, who did not agree that this was needed, because the Act already covered the point.<sup>10</sup>
- 2.72 The chief executive was not part of these discussions, but the Mayor told him of them. The Mayor asked for the report to the Council to be amended to reflect Councillor Gilmour's concern.
- 2.73 On 27 August 2014, Councillor Gilmour told councillors that she intended to propose an alternative recommendation to the one in the officers' report. Her alternative recommendation included:
- that Council staff prepare a "lead policy" to be considered at the Council's October 2014 meeting, setting out criteria for considering proposed special housing areas in the district;
  - that the Council call for expressions of interest for special housing areas after adopting the lead policy; and
  - that the Council consult the community about any proposed special housing areas.
- 2.74 At its meeting on 28 August 2014, the Council approved the housing accord for submission to the Minister for Building and Housing, subject to the alternative recommendation that Councillor Gilmour had proposed.

#### **The lead policy**

- 2.75 The District Plan Manager worked on the lead policy, consulting with the General Manager, Planning and Development and, to a lesser extent, with Councillors Gilmour and Lawton. The District Plan Manager also got comments from Ministry officials. The chief executive asked to see the officers' report that contained the lead policy that was prepared for the Council's 30 October 2014 meeting. However, the chief executive does not appear to have commented on the policy or been involved in preparing it.
- 2.76 On 23 October 2014, the Mayor and the Minister for Building and Housing signed the accord. The Council adopted the lead policy on 30 October 2014. The chief executive; the General Manager, Planning and Development; and the District Plan Manager also attended the signing. They were also present for the discussion about the lead policy at the Council meeting on 30 October 2014.

- 2.77 The lead policy stated that the Council would:
- in November 2014, seek expressions of interest from landowners and property developers for land that might be suitable as a special housing area; and
  - seek views from the community on housing matters, focusing on the location and type of new housing that should be built in the district.
- 2.78 The lead policy set out criteria that the Council would use to assess expressions of interest, including matters such as proximity to existing urban areas and infrastructure, and demand for residential housing.
- 2.79 On 7 November 2014, the Council called for expressions of interest in special housing areas, with a closing date of 5 December 2014. The criteria in the lead policy would be used to assess the expressions of interest.<sup>11</sup>

11 The lead policy was amended in April 2015 to include more content about affordable housing, and those who submitted expressions of interest were invited to amend their expressions of interest to reflect the changed policy.

# 3

## Our observations on how the housing accord was prepared

- 3.1 In this Part, we give our views on whether the chief executive influenced the Council's housing accord and lead policy. We discuss:
- the chief executive's first reaction to the contact from the Ministry about the housing accord process;
  - who was most closely involved when the process got under way;
  - the chief executive's comment about Arrowtown;
  - what the chief executive told us about his involvement;
  - the main aspects of developing the policy for special housing areas for the Queenstown Lakes District; and
  - our conclusions about how the housing accord was prepared.

### How the chief executive reacted to the Ministry of Business, Innovation and Employment approach

- 3.2 In Part 2, we said that the chief executive asked Local Government New Zealand why Queenstown (particularly the Wakatipu Basin) was not considered to have housing affordability issues at the same time that the Ministry approached the Council about the possibility of Queenstown being added to Schedule 1 of the Act. This timing was coincidental.
- 3.3 The chief executive said at that time that: "I think we need to stay part of this." In contrast, the General Manager, Planning and Development's initial reaction was to decline to be involved. The chief executive checked that the Mayor had an open mind about a housing accord and made positive remarks about it.
- 3.4 These exchanges show us that the chief executive was generally aware and interested in the Act from early on and thought that it might help address housing affordability issues in the Wakatipu Basin.

### Who was involved when the process got under way?

- 3.5 Ministry officials were keen to progress a housing accord for Queenstown and drove the process strongly. Early on, Ministry officials told the Council that, usually, the Mayor, the chief executive, and senior technical staff would begin negotiating a housing accord before the full council becomes involved.
- 3.6 Those from the Council most involved in the process were:
- the District Plan Manager;
  - the General Manager, Planning and Development;
  - the Mayor; and
  - Councillors Gilmour and Lawton (from August 2014).

- 3.7 At first, the District Plan Manager and the General Manager, Planning and Development looked after the process, with guidance from the Mayor as required, and information was mostly kept within this small group. After a Council workshop on 7 August 2014, Councillors Gilmour and Lawton became more involved. Most of the correspondence was between these people. The chief executive also received much of the written information that this group considered.
- 3.8 The decision to enter into a housing accord with the Government was a political decision for the elected members, with advice from Council officers with planning expertise. The Mayor had told councillors early on that an accord would be prepared if they agreed, and that they could contribute to the process (see paragraph 2.23). Ministry officials, the District Plan Manager, and the General Manager, Planning and Development did the detailed work on the draft housing accord as they prepared a draft accord for the Council to consider.
- 3.9 Council officers sometimes sought guidance on matters of substance, such as the housing accord targets, from the Mayor and other senior staff, rather than from the chief executive (see paragraphs 2.46 and 2.48). At other times, they sought guidance from both the Mayor and the chief executive. However, this tended to be on procedural matters or those involving the Minister for Building and Housing and the Ministry.
- 3.10 Early in the process, the Mayor decided that the Council should seek expressions of interest for special housing areas rather than target particular sites. We saw no indication that the chief executive was involved in that decision.
- 3.11 Councillor Gilmour was the main driver behind the Council adopting the lead policy to help put the housing accord into effect. The lead policy included the approach of seeking public engagement and expressions of interest, and the criteria used to evaluate the expressions of interest. Again, there is no sign that the chief executive was involved in that part of the process.
- 3.12 The meetings that the chief executive attended (with the Minister on 9 May 2014 and with Ministry officials on 21 May 2014) were near the start of the process and had a reasonably broad focus. At that time, the chief executive indicated that his interest in meeting with the Ministry officials was to discuss issues and time frames.
- 3.13 The chief executive supported the Mayor on procedural matters rather than matters that affected the content of the accord. These procedural matters included:
- drafting the Council's media statements on 9 May 2014 and 23 June 2014, and offering to deal with technical questions on the housing accord process;

- reviewing the 6 August 2014 letter from the Mayor to the Minister on process and timing;
  - advising whether councillors should see the draft accord before the workshop on 7 August 2014 and whether the Council meeting to approve the accord on 28 August 2014 should exclude the public; and
  - attending the event where the Minister and the Mayor signed the housing accord on 23 October 2014.
- 3.14 These are normal matters that a chief executive would be involved in. They are not significant to the content of the housing accord or lead policy.
- 3.15 The General Manager, Planning and Development prepared the updates on the housing accord that were included as part of the chief executive's monthly reports to the Council from September 2014. These updates were on matters of process rather than substance.
- 3.16 The chief executive received copies of the draft accord during the negotiations with the Ministry but does not appear to have made any comments. He also received briefing material from the planning staff about possible sites for special housing areas and their recommendation to focus on the Wakatipu Basin and their recommended targets.
- 3.17 The chief executive took part in a discussion with the Mayor and the planning staff on 22 July 2014 about these matters, and whether the Council could meet the Government's timing for approving the accord. At that point, the planning staff had told the Ministry officials that they needed to discuss the timing problem with the Mayor and the chief executive.
- 3.18 The chief executive advised the planning staff how to approach the 7 August 2014 workshop with councillors but did not appear to comment on financial incentives for special housing areas, on which planning staff sought his views.
- 3.19 The chief executive was not closely involved in some of the more significant matters such as whether the accord should be in line with the proposed District Plan or whether the Council should adopt a lead policy for assessing expressions of interest. The chief executive did not attend the workshop on 7 August 2014, where officers sought councillors' views on important matters such as the proposed focus on the Wakatipu Basin.
- 3.20 The Ministry officials we talked with confirmed that the chief executive was not closely involved in their dealings with the Council. The Mayor said that her main contact was with the General Manager, Planning and Development; the District Plan Manager; and the two councillors, rather than the chief executive.



### The chief executive's comment about Arrowtown

- 3.21 The chief executive suggested to the District Plan Manager that Arrowtown (also in the Wakatipu Basin), not just Queenstown, should be considered for special housing areas (see paragraph 2.26). This was at the time of the meeting with the Minister for Building and Housing on 9 May 2014. It was near the start of the process and before staff had recommended that the special housing areas focus on the Wakatipu Basin.
- 3.22 We asked the chief executive what he meant by telling his staff member that he was “slightly conflicted” when suggesting that Arrowtown should also be considered for special housing areas.
- 3.23 The chief executive told us that everyone in the Arrowtown area has views on whether there should be higher density housing there. He also said that people who had lived there a long time had different views than people who would like to move into the area. He described his remark to the District Plan Manager as a “throw-away line”. He said that, if he had intended to offer the land owned by his family for a special housing area then, he would not have made the comment. We discuss in Part 4 when the chief executive began thinking about development opportunities for the land owned by his family.
- 3.24 We asked the District Plan Manager whether the chief executive's comment to him about Arrowtown affected his thinking or contributed to his recommended focus on the Wakatipu Basin. The District Plan Manager did not recall the chief executive's comment. However, his reply to the chief executive shows that he was already well aware of housing issues in Arrowtown. The chief executive was not suggesting something new.
- 3.25 At first, Council officers looked to urban sites rather than greenfield sites as potential special housing areas. Ministry officials favoured district-wide targets, so the options from early on were either for the entire district or for the Wakatipu Basin. It appears that accord targets for Queenstown only were never considered.

### The chief executive's involvement in preparing the policy

- 3.26 The chief executive told us that he did not recall considering the housing accord in any detail when Council officers were preparing it with the Ministry. He also did not recall being involved in matters such as targets. This is consistent with the recollections of those who were closely involved, including the Mayor and a Ministry official (see paragraph 2.49). The chief executive told us that he did not get involved in detailed planning matters and left that to those with relevant expertise.

- 3.27 The chief executive considered the lead policy when he decided to put in an expression of interest, because it contained the evaluation criteria, but we have not seen any information suggesting that the chief executive was involved in preparing those criteria.

### **Main aspects of preparing the policy for special housing areas**

- 3.28 The main aspects of the policy development process for special housing areas for the Queenstown Lakes District were:
- the Government’s decision to add the Queenstown Lakes District to Schedule 1 of the Act;
  - the Council’s decisions:
    - to enter into a housing accord with the Government;
    - about suitable targets;
    - to focus on the Wakatipu Basin;
    - to have an open expression of interest process for proposed special housing areas; and
    - to adopt a lead policy to help put the housing accord into effect, with criteria to evaluate expressions of interest.

### **Our conclusions about how the policy for special housing areas was prepared**

- 3.29 The chief executive was open to the idea of a housing accord for the district and played a part in the policy development process. However, our assessment is that his involvement had no significant effect on the main aspects of the policy for special housing areas.
- 3.30 The Council decided to enter into a housing accord with the Government. The elected members, led by the Mayor, with help from Councillors Gilmour and Lawton, made the decision. Council officers advised and supported the elected members in their decision-making and worked with Ministry officials. Understandably, the main advisors to the Council and in the negotiations with the Ministry were those with planning responsibilities and expertise. Those officers’ work led to the recommended focus on the Wakatipu Basin.
- 3.31 The Mayor suggested having an open process to seek expressions of interest. Councillor Gilmour was the driving force behind the need for a lead policy to help to put the accord into effect. The lead policy contained the criteria to evaluate the expressions of interest, and the chief executive was not involved in preparing the criteria.

- 3.32 The Council's agreement to run an open process ensured that proposals for special housing areas in the Wakatipu Basin would need to be considered on their merits against the criteria in the lead policy.
- 3.33 The chief executive received information about, and had the opportunity to be involved in, these main aspects, but largely left them to others. There appears to have been no need for him to take a more active role.
- 3.34 Overall, we consider that the chief executive's involvement did not have any significant influence on the Council's policy development process for the housing accord or lead policy after the idea of a housing accord for the district was accepted.

# 4

## The chief executive's disclosure of interest

- 4.1 In this Part, we discuss:
- the chief executive's decision to put in an expression of interest for a special housing area;
  - the chief executive's disclosure of his intention to submit an expression of interest;
  - the steps that Council staff and the Mayor took in response to the chief executive's disclosure;
  - the Council's system for recording and managing conflicts of interest;
  - how the chief executive's interest was recorded; and
  - our contact with the Mayor and the chief executive about his disclosure, and our role when we receive such requests.

### **The chief executive decides to submit an expression of interest for a special housing area**

- 4.2 The chief executive's family bought a property (about six hectares of land and a dwelling) in Arrowtown shortly before he took up his role with the Council in October 2012. The land is zoned "Rural General" under the Council's District Plan. However, its north-eastern boundary on McDonnell Road is next to the residential boundary of Arrowtown.<sup>12</sup> The chief executive's expression of interest proposed a special housing area of 20 residential dwellings on the southern side of McDonnell Road facing the residential area on the other side of the road.
- 4.3 We asked the chief executive when he first thought about the land's development potential, including for part of the land to be considered for a special housing area. The chief executive told us that, when he bought the land, its size and lack of neighbours appealed. However, after his family bought the land, a family member of a previous owner raised the possibility of developing a strip of the land on the north-east boundary of the property opposite the houses on McDonnell Road.
- 4.4 The chief executive told us that he had talked with people about the likelihood of getting consent for the development under the Resource Management Act 1991. This would require a discretionary activity resource consent, which would be assessed under the Council's District Plan and the Resource Management Act 1991. Our understanding is that there would be no guarantee of success.
- 4.5 We were told that, sometimes, the chief executive had made light-hearted remarks to planning staff about the possibility of the chief executive's land being eligible for a special housing area. This was during the months before the Council adopted the housing accord and called for expressions of interest.

<sup>12</sup> The residential boundary on McDonnell Road is recognised in the Council's district plan as part of the Arrowtown Urban Growth Boundary.

- 4.6 Although the chief executive had considered the possibility, he told us that he did not start thinking about it seriously until after the Council called for expressions of interest on 7 November 2014. By 20 November, the chief executive had decided to submit an expression of interest and contacted Mitchell Partnerships that day to ask them to prepare an expression of interest for his family.
- 4.7 On 22 November (a Saturday), the chief executive confirmed this engagement by email and provided a draft outline for the expression of interest. He asked for an indication of the cost of preparing the application. He also said that he had discussed the matter briefly with the General Manager, Planning and Development, who confirmed that the chief executive's proposal generally met the expression of interest criteria.
- 4.8 The deadline to submit expressions of interest was 5 December 2014, so Mitchell Partnerships had about two weeks to complete it. Mitchell Partnerships told us that this was enough time.

#### **The chief executive received another expression of interest before disclosing his interest**

- 4.9 On Friday 21 November 2014, the General Manager, Planning and Development sent the chief executive a copy of an expression of interest for another special housing area that the Council had received.
- 4.10 The General Manager, Planning and Development commented on this expression of interest, and whether the Council could consider it at its meeting in December. The General Manager, Planning and Development asked for the chief executive's views on whether that should be done without the public present. The General Manager, Planning and Development told us that he would not have sent the chief executive the other expression of interest if he had known that the chief executive intended to submit an expression of interest. We comment on this in Part 5.

#### **The chief executive's disclosure of his intention to submit an expression of interest**

- 4.11 On Tuesday 25 November 2014, the chief executive told the Mayor that he intended to submit an expression of interest.
- 4.12 On 26 November 2014, the chief executive emailed the Mayor and copied the email message to the General Manager, Planning and Development. This email message said:

*Further to our conversation yesterday, I confirm that our family proposes to make an expression of interest for designation as a [special housing area] for a strip of land on my property parallel to 1-43 McDonnell Rd.*

*All communications on the matter with Council will be handled on our behalf by Mitchell Partnership.*

*I suggest that [the General Manager, Planning and Development] and his team brief you directly on all matters relating to the [special housing area expression of interest], and ask that I am excused from any meetings involving the Housing Accord process.*

*In the event there is any media inquiry on the matter, you will presumably discuss the matter with [the General Manager, Corporate Services].*

*For my part, I propose saying something along the lines of "I have not, and will not, be participating in any discussions relating to the Special Housing Areas with Council staff or elected members. I have previously advised the Mayor of my intention to make an expression of interest and put in place arrangements to manage any conflict, including engaging a planning firm to manage my interest in the matter."*

*With your agreement, I also think it appropriate that we advise [the Office of the Auditor-General] so that there are no surprises for them.*

## **Council officers and the Mayor respond to the chief executive's disclosure**

- 4.13 On 26 November 2014, soon after receiving the chief executive's email message, the General Manager, Planning and Development forwarded it to the District Plan Manager asking him to ensure that all communication on the matter was strictly professional because of "the political sensitivities/perception issues".
- 4.14 On 27 November, the Mayor asked the chief executive whether he was prepared, as part of his update to the Council meeting to be held later that day, to tell councillors about his expression of interest. The chief executive said that, like others who had put in expressions of interest, he should be entitled to confidentiality until they were made public. He said that it would be appropriate for the Mayor to forward his email message of 26 November to councillors in confidence with whatever comment the Mayor wished to make.
- 4.15 At the end of the Council meeting on 27 November, the Mayor told councillors of the chief executive's intention to put in an expression of interest. No staff were present.

- 4.16 On 30 November 2014, the Mayor sent the chief executive's 26 November email message about his intention to put in an expression of interest to councillors, as a follow-up to her telling them about it at the meeting on 27 November, and the Assistant Auditor-General, Local Government at the Office of the Auditor-General.
- 4.17 In her email message to the Assistant Auditor-General, Local Government, copied to the chief executive, the Mayor said:
- It was good to catch up with you and [Senior Solicitor] last week.<sup>13</sup> Hope the rest of your meetings went well.*
- I am forwarding you this email from Adam for two reasons:*
- a) So that you are aware*
- b) To see if there are any other actions we should take (other than those already identified in the email).*
- 4.18 We provided a first response on 30 November 2014, then further responses on 16 and 18 December 2014. We discuss our responses, and the further information the chief executive provided, in paragraphs 4.32 to 4.38.

## Recording and managing conflicts of interest

- 4.19 The Council has a conflict of interest policy for employees that provides guidance to help decide whether a conflict exists. The policy gives examples and recommended mitigation actions. It sets out the procedures for reporting conflicts when they arise and applies to all employees.
- 4.20 The policy has a "Confidential Conflict of Interest Disclosure Form" as an attachment, for an employee with an actual or potential or perceived conflict of interest to use. The form requires employees to answer questions to assess whether the conflict is an actual or potential or perceived conflict.
- 4.21 The questions include:
- *Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?*
  - *Do I, a relative, friend or associate stand to gain financially or in any other way from QLDC's decision or action on this matter?*
  - *Am I in a position to influence decision making about a matter related to a potential personal financial interest?*
  - *Could there be benefits for me in the future that could cast doubt on my objectivity?*

<sup>13</sup> The Assistant Auditor-General, Local Government and a Senior Solicitor met the Mayor and the chief executive on 26 November 2014 as part of a series of meetings with local authorities in Otago and Southland about their long-term plan preparation.

- *Am I in a position to influence development of a particular strategy or policy that will guide future decisions from which I may benefit personally?*
- 4.22 The form then requires the employee to:
- declare the conflict of interest; state whether it is an actual, potential, or perceived conflict; and provide details; and
  - confirm that they have discussed the conflict with their manager.
- 4.23 The form also records the agreed plan to manage the conflict of interest, based on the discussion with the manager. The employee and manager need to sign the form.
- 4.24 When the form has been completed, the conflict is entered on the register spreadsheet, which records the employee's answers to the questions and is used to manage and monitor conflicts.
- 4.25 The employee and manager are required to review, from time to time, the conflict and how it is being managed and update the management procedure as needed.

### Recording the chief executive's interest

- 4.26 On 3 December 2014, at the Mayor's request, a staff member forwarded the chief executive's 26 November 2014 email message to the Council's General Manager, Legal and Regulatory, asking him to record the matter as a conflict of interest declaration.
- 4.27 On 4 December, the General Manager, Legal and Regulatory replied directly to the chief executive, attaching the Council's "Confidential Conflict of Interest Disclosure Form". The General Manager, Legal and Regulatory said:
- ... probably best to fill out the official conflicts of interest form and get it on the register. We normally get the person's manager to sign off the proposed resolution. I guess this is the Mayor for you.*
- 4.28 On 5 December, a staff member from the chief executive's office emailed the General Manager, Legal and Regulatory, saying:
- Not sure if Adam has mentioned this to you, but he didn't like the form so has opted to send the email below instead. If you could add it one way or another to your register that would be great!*
- 4.29 The "email below" referred to was one that the chief executive sent to the General Manager, Legal and Regulatory earlier on 5 December, saying:
- Below is a self-explanatory email to the Mayor.<sup>14</sup>*
- While the decisions to be made on [special housing areas] are undertaken by the Council, not me, the perception for conflict exists.*



[The General Manager, Planning and Development's] team are reviewing the [expressions of interest] as they come in. (Mitchell Partnerships will be sending in an [expression of interest] on behalf of our family trust.) They are not having any discussions with me about this.

*FYI, we have also advised the Office of the Auditor-General.*

- 4.30 In Part 5, we comment on the chief executive not completing the conflict of interest form.

### Chief executive's family expression of interest

- 4.31 The closing date for expressions of interest was 5 December 2014. Mitchell Partnerships submitted an expression of interest on behalf of the chief executive's family trust on that date. On 4 December, the chief executive commented on a draft that Mitchell Partnerships prepared.

### Our communication with the Mayor and the chief executive about the chief executive's disclosure

- 4.32 On 30 November 2014, the Mayor contacted the Assistant Auditor-General, Local Government. He replied a couple of hours later, to the Mayor and the chief executive, saying:<sup>15</sup>

*Thanks to you both for first making the time to see me and [the Senior Solicitor] last week. I appreciate the keeping up of contact ....*

*Adam, I think your approach makes complete sense and the messaging logical.*

*Vanessa – I will ask [the Senior Solicitor] and his legal colleagues to just consider the matter in case there is any heads up issues we should suggest you be aware/ take legal advice on. I presume both of you are well aware of our published advice on managing conflicts.*

*One matter which I will test with [the Senior Solicitor] is what alternate arrangements it may be wise for council to make given this matter involves its "chief advisor of free and frank advice". And I suspect, as in any applications, you/ Council will need "free and frank" advice. Designating one of Adam's staff has perception issues in its own right (the employer/employee relationship).*

*Possibly the other matter that comes to mind is what sort of decisions may come before Council, and not just over this particular application, that the interest should be noted for. [The Senior Solicitor] may need to understand the decisions which have been reached already.*

<sup>15</sup> We have corrected some minor typographical errors in the correspondence, and used our position titles rather than personal names.

- 4.33 On 16 December 2014, the Senior Solicitor sent further comments to the Mayor and the chief executive:

*I am sorry it has taken a while to respond to your email to [the Assistant Auditor-General, Local Government] of 30 November 2014.*

*I attach an extract from a letter we wrote to the Mayor of a small council in 2007 when asked to investigate a complaint about the Chief Executive and senior planner getting involved in property development in the district. The circumstances were not quite the same as here, but some of the general comments might be helpful as should our general guidance on conflicts of interest (link attached in the subject line of this email).*

*In that case, we considered the chief executive's employment contract to see if there was anything relevant to private interests conflicting with the CE role. That is one thing you should check here.*

*Another issue in that case was that the staff interests were not widely known among councillors and other staff. More widespread knowledge within the Council would have made managing the conflicts easier.*

*As [the Assistant Auditor-General, Local Government] notes, you will also need to consider whether Adam's ability to act as the Council's main adviser would be affected by a private interest in a [special housing area] and whether any gap can be met by other staff. This would depend on the nature of decisions required in respect of [special housing areas] in the district, and is not something we can advise you on.*

*You could consider getting legal advice on how to best manage these issues, and think about the level of disclosure required to the Council and staff.*

*I'm copying this to [our Appointed Auditor for the Council] for his information.*

- 4.34 The link was to our 2007 publication *Managing conflicts of interest: Guidance for public entities*.

- 4.35 The extract attached to our 16 December 2014 email message was from a confidential letter to another local authority in 2007. The letter was the outcome of an inquiry arising from a complaint. We did not make the letter public at the time, so have removed any identifying details. We include it here to record our full correspondence with the Mayor and the chief executive about the chief executive's expression of interest:

***Managing potential conflicts of interest in the future***

*We appreciate that Council staff will often be engaged in transactions with their Council in a personal capacity, for example, applying for a building consent or resource consent. It is inevitable therefore that conflicts of interest will*

arise regularly. Although these situations will always create some risk for the organisation, most conflicts should be able to be managed satisfactorily and with minimal disruption simply by noting the connection, ensuring that people do not process their own applications, and documenting that for the public record. The risks attaching to the conflict of interest in this case, however, were heightened because:

- the chief executive was involved in the application, and the staff processing the request report to the chief executive;
- one of the staff involved in the application works directly on assessing and processing such applications; and
- there was a more significant financial interest in these applications than others from staff, given that they related to a development project undertaken for profit rather than personal or domestic renovations.

Our understanding of consent processes at the Council suggests that the risk of the decision making process actually being distorted on applications of this kind is low, as the applications are straightforward, and under the plan the processing of them is reasonably mechanical with little room for discretion. The organisation must take a broader view of risk than this, however, and must consider the risk of a perception that Council processes are enabling unduly favourable treatment for applications by staff. The risk of a perception of unfair treatment arising may be heightened by the small number of staff in the Council and the reasonably small size of the [district] community.

In our view, a public entity should require its staff to declare any personal interest that may affect, or could be perceived to affect, their impartiality in any aspect of their work. Declarations then provide the basis for deciding the steps needed to manage any actual or potential conflict of interest. Chapter four of our guidance on conflicts of interest discusses possible mitigation options for managing conflicts of interest once declared. The guidance notes that the appropriate options depend on the seriousness of the conflict. The most typical mitigation options involve exclusion from involvement in the public entity's work on a particular matter. It is important to complete the process by documenting it, as this is the step that responds to the risk of an adverse public perception. If the record shows only that a conflict existed, but not that any steps were taken to manage it, then the organisation risks criticism, and public trust in its processes is likely to be undermined.

Clearly, in this case those steps were not taken. There was partial declaration of interests by some staff, part way through the process, and no documentation of how the conflict was being managed. Staff did not appear to be aware of how they should respond to a conflict of interest at the start of the process. The

*risk that was created is shown by the fact that complaints were made and this inquiry resulted. Members of the public saw the apparently unmanaged conflict and were concerned.*

*For the future, we encourage the Council to develop clear policies and procedures for staff on how conflicts of interest should be managed, and to train staff on the topic. Those policies and procedures should require all staff to declare conflicts of interest as soon as they arise or seem likely, and for the decision on the appropriate response to be recorded in writing.*

*As in all areas involving questions of probity and appropriate conduct, it is important that senior staff provide leadership. If the chief executive intends to pursue other development opportunities in the district we recommend that he seek approval from the Council. This would accord with good practice and the spirit of his employment contract, even if it is arguable whether this situation is covered by the precise terms of that contract. If the other staff members wish to continue the activity and if the chief executive is involved in the activity they should discuss the matter with the Mayor, have their interest recorded in writing, and agree any mitigation steps required.*

*We should make clear that in general we think that any conflicts that could arise from involvement in a company seeking resource consent from the Council should be able to be managed with reasonably straight forward mitigation measures. Identifying and managing conflicts of interest of this kind should be routine business for a Council and the current concerns arise from the failure to manage the conflicts adequately rather than from the conflicts themselves. However, these judgements must always be made in the context of the particular issue, the organisation and the community. If there is a significant level of discomfort among councillors or Council staff or the [district] community about the activity then stronger responses may be needed.*

### The chief executive's response to us

- 4.36 The chief executive responded on 18 December 2014 with some further comments about the matter and copied his response to the Mayor, saying:

*Thank you for your email. The Mayor may make some comments, but I would like to make the following observations.*

***Reporting lines and involvement in the process:** I have absolutely no involvement in the [special housing area] project – either in the assessment/recommendation phase or the decision-making stage. There is the obvious fact that I am not a planner and would not therefore in the ordinary course of business be involved in this work. The relevant skills for assessing and making recommendations to Council resides within the Planning and Development team. The General*

*Manager of that team is reporting directly to the Mayor and planning portfolio leaders on the [special housing area] matters. He has a small team of approximately 4 staff who are working on the [special housing area expressions of interest] and all applications are being treated confidentially until presented to Council.*

*I should also state the obvious – the decision on [special housing areas] will be made by elected members, not staff. My sole focus has been to remove myself from the assessment/recommendation process, and establish clear lines of accountability as between staff and the elected members.*

**Disclosure/Knowledge of the conflict:** *As mentioned above, I advised the Mayor at the earliest opportunity (i.e. prior to submitting an [expression of interest] and only when our family made a decision to respond to it). She has in turn advised councillors. Thus, while I am not a decision maker in this matter, the decision makers (i.e. councillors) are aware of the interest long before considering the [expressions of interest].*

*Similarly, the relevant planning staff are also aware of the interest. They are not reporting to me on any of the [special housing areas]. However, none of the [expressions of interest] are either generally known by staff nor are public knowledge. All those making an [expression of interest] will have confidentiality until such time as they are submitted to Council and decisions made. (I have no knowledge of the details or timing of that process as it is a matter the GM Planning will discuss with the Mayor.)*

*I have also advised our General Manager, Legal.*

**Personal interests:** *You will appreciate that while any conflicting personal and professional [interests] must be managed in a transparent and appropriate manner, a person should not be excluded from a right accorded the general public solely by virtue of a conflict where that conflict can be reasonably managed/mitigated. As the OAG guidelines state: “.....mitigation means that the member or official withdraws or is excluded from being involved in the public entity’s work on the particular matter.” This is the process which has been adopted here.*

*Specifically, and again with reference to OAG guidelines (para. 4.29), I have/will:*

- *withdraw from any discussions on that item of business at any Council meeting;*
- *be excluded from any working group dealing with the issue;*
- *re-assign duties on this matter to another person (the GM, Planning);*
- *have no access to information/assessments which will go up to Council on the [expressions of interest].*

*As the guidelines note: "Taking one of those steps [in my case, four of the recommended steps] will usually be enough to adequately manage a conflict of interest." (And I also draw your attention to your illustrative Case Study 5, which has many parallels to this matter.)*

*I am confident we have acted entirely appropriately on this matter – hence our desire to raise it with the Auditor General at the earliest opportunity. You may, of course, also wish to discuss the matter directly, and solely, with the Mayor.*

*I am very happy to respond to any additional questions you may have.*

- 4.37 Case study 5, from our 2007 guidance on managing conflicts of interest, was about an employee of a State-owned enterprise who owned land that could be affected by a gas pipeline that the State-owned enterprise intended to build.

### **Our further response**

- 4.38 On 18 December 2014, the Senior Solicitor emailed the chief executive and copied the Mayor and the Assistant Auditor-General, Local Government, saying:

*Thanks Adam.*

*It certainly sounds like you are doing all the right things and we are comfortable with the approach.*

*I didn't intend to suggest otherwise in my email, just to let you know about another council that didn't manage a similar issue well, and some things to think about – which you have clearly done.*

# Our observations on the chief executive's disclosure of interest

- 5.1 In this Part, we set out our observations on how the Council managed the chief executive's disclosure of his interest. We discuss:
- the timing of the chief executive's disclosure of interest;
  - our role in the chief executive's conflict of interest;
  - the Council not getting legal advice or checking the chief executive's contract;
  - how the conflict of interest affected the public perception of the Council;
  - whether the conflict affected the chief executive's ability to meet his responsibilities;
  - what should have happened if the chief executive's expression of interest had been considered further;
  - the chief executive not fully complying with the Council's disclosure requirements;
  - the chief executive's initial wish for confidentiality for his expression of interest; and
  - our conclusions about the chief executive's disclosure of interest.

## Timing of the chief executive's disclosure of interest

- 5.2 On 20 November 2014, the chief executive decided to submit an expression of interest. On 21 or 22 November 2014, the chief executive confirmed with the General Manager, Planning and Development that his family land was eligible. On 25 November 2014, after working out a proposed approach for the Mayor and others to manage the conflict, he told the Mayor of his intention to submit an expression of interest. This was eight working days before the closing date for expressions of interest.
- 5.3 The chief executive received a copy of another expression of interest in the short time between deciding to submit an expression of interest and his disclosures to the General Manager, Planning and Development and the Mayor.
- 5.4 This situation could have been avoided if the chief executive had told the General Manager, Planning and Development about his intention on 20 November 2014, after his first approach to Mitchell Partnerships, or that he was considering the possibility after the call for expressions of interest on 7 November 2014.
- 5.5 The General Manager, Planning and Development told us that he would not have sent the chief executive the other expression of interest if he had known of the chief executive's intention. The expressions of interest were considered confidential, and, at first, only a small group in the Council had access to them.

- 5.6 We confirmed with the chief executive and Mitchell Partnerships that the chief executive did not pass on the other expression of interest when instructing that firm to prepare his expression of interest.
- 5.7 We asked the chief executive whether he told the Mayor he had received another expression of interest when he told her that his family intended to submit one. He told us that he had not because he did not think it material. He did not see his expression of interest as competing with the other one because the other one was in a different area and for a significantly larger development.
- 5.8 We do not consider that seeing the other expression of interest gave the chief executive an advantage in the process or was disadvantageous to the other submitter. However, in the interests of full disclosure and transparency, it would have been better had the chief executive told the Mayor that he had seen the expression of interest.

## Our role relating to the chief executive's conflict of interest

### The Mayor and the chief executive relied on our correspondence

- 5.9 When we spoke to the Mayor and the chief executive during this inquiry, both pointed out that they had relied on, and taken comfort from, their correspondence with us. The chief executive considered that he had done the right thing by disclosing his interest and proposing steps for how the Mayor and Council officers could manage the expression of interest process and address any media questions.
- 5.10 The chief executive asked to be excused from being involved in the expression of interest process and suggested that we be told so that we would not be surprised. He told us that he had considered our guidance on managing conflicts of interest and thought that it would be good to advise us of the situation. He said that this was preferable to getting legal advice.
- 5.11 The Mayor went a step further. She asked us whether the Council should take any other actions than those identified in the chief executive's email message of 26 November 2014.
- 5.12 During our inquiry, the chief executive highlighted two of our comments that he and the Mayor had relied on:
- "The approach makes complete sense and the messaging logical";<sup>16</sup> and
  - "It certainly sounds like you are doing all the right things and we are comfortable with the approach."<sup>17</sup>

<sup>16</sup> Initial response on 30 November 2014.

<sup>17</sup> Response on 18 December 2014.



- 5.13 We include the whole correspondence in Part 4 so that these comments can be seen in context. Our responses show how we engaged with the matter. They indicate our broad comfort with the proposed management approach and our suggestions of things to think about.
- 5.14 The chief executive suggested that our inquiry needed to consider our Office's involvement, because he and the Mayor had relied on what we told them and would be concerned to be criticised now for things that we did not say at the time.
- 5.15 The chief executive is also concerned about the delay between our first and second responses, and that we did not consider the decisions that had already been made about the Council's involvement in special housing areas. The chief executive suggested that, had we done so when first told about the matter in November 2014, we would not need to be inquiring into his involvement in those earlier decisions now.
- 5.16 We next comment on these matters, then on the steps the Mayor and the chief executive took in response to our correspondence. In Part 7, we explain our role when contacted with questions about conflicts of interest.

### Timing of our response

- 5.17 We aim to respond to requests about conflicts of interest promptly. In this instance, our first response was on the same day as the request, and our next response was in 12 working days. The chief executive submitted his expression of interest on the closing date of 5 December 2014. This was after our first response and before our second response.
- 5.18 We were not advised of any particular urgency when approached by the Mayor. We were not told that the closing date for expressions of interest was imminent or that the chief executive's intention to submit an expression of interest depended in any way on our views.
- 5.19 Rather, the chief executive suggested that the Mayor tell us of his disclosure of his conflict of interest so that we were not surprised.
- 5.20 The Mayor asked us whether we could suggest actions that the Council should take to manage the conflict of interest in addition to those the chief executive had proposed. The Mayor's focus was on future management steps, not the chief executive's intention.

### **We did not try to understand previous decisions**

- 5.21 Our first response to the Mayor and the chief executive on 30 November 2014 included that:
- they might need to consider whether the interest should be noted for other matters in the future, not just for the chief executive's expression of interest; and
  - we might need to understand decisions already made.
- 5.22 We acknowledge that our 16 December 2014 email did not seek any further information about the previous decisions and that we did not actively consider this when we prepared our response. However, we note that:
- The chief executive submitted his expression of interest on 5 December 2014, after our preliminary response indicating that we might need to understand previous decisions.
  - The Council did not offer any additional information or context about previous decisions in response to our first comment.
  - The chief executive said in his 26 November 2014 email message to the Mayor that he had not taken part in any discussions about special housing areas with Council staff or elected members.
- 5.23 It has taken us some time to understand the policy development process and assess the chief executive's involvement in it. We accept that it might have been helpful for us to have a better understanding of the context when we gave our 16 December 2014 comments. However, we would not have been able to get the understanding we have gained through this inquiry in that short time and certainly not before the deadline for expressions of interest.

### **Summary of our comments about chief executive's disclosure of interest**

- 5.24 In this instance, we offered some comments that we intended to be helpful. Our suggestions in our first and later response included that the Council consider:
- our guidance on conflicts of interest;
  - the chief executive's employment contract, for anything relevant to private interests conflicting with the chief executive's role;
  - whether the Council should make alternative arrangements because the matter involved its chief advisor and some might perceive designating one of the chief executive's staff to do this as being problematic (because of the employer-employee relationship);

- what sort of decisions might come before the Council that the interest should be noted for; and
  - how much disclosure to the Council and staff was required.
- 5.25 We gave the Mayor and the chief executive an extract of a confidential letter we wrote in 2007 to the Mayor of a small local authority,<sup>18</sup> where the chief executive and a senior planner had been involved in property development. This letter included comments about:
- the importance of recording the process for managing the conflicts of interest;
  - how more widespread knowledge within the local authority would have made managing the conflicts easier; and
  - the relevance of the chief executive's employment contract.
- 5.26 We then said that we could not advise the Council on whether the chief executive's role as the Council's main advisor would be affected by a private interest and whether other staff could meet any gap. However, we said that this was something they should consider.
- 5.27 We ended by saying that the Mayor and the chief executive should consider getting legal advice on how to best manage these matters and think about the level of disclosure required to the Council and staff.
- 5.28 The chief executive then provided further and more comprehensive comments about how he and the Council would manage the conflict of interest. We said that we were comfortable with their approach.

### Relying on our comments

- 5.29 When contacted about conflicts of interest of this kind,<sup>19</sup> we try to be helpful and to suggest aspects to think about. We are not the enquirer's legal advisor. The chief executive has noted that he would not have proceeded if either the Mayor or we had raised objections to his proposed expression of interest. However, we did not see our comments as part of the chief executive's decision-making process about whether to submit an expression of interest, and he did not seek this. Our focus, and the focus of the Mayor's request to us, was on how to manage the conflict of interest in the future. We gave our main comments on the proposed management approach after the chief executive had submitted his expression of interest, so they were not relied on for that decision.
- 5.30 The chief executive and the Mayor have emphasised that they relied on, and took considerable comfort from, our saying in our first and later responses that they

<sup>18</sup> We removed identifying details from the extract before sending it to the Mayor and the chief executive.

<sup>19</sup> By this, we mean conflicts that are not covered by our statutory role under the Local Authorities (Members' Interests) Act 1968.

were doing the right things and that we were comfortable with the proposed approach.

- 5.31 We can understand why the Mayor and the chief executive would be concerned if we now raised new matters or concerns that we did not suggest when first told of the chief executive's conflict. We have not done so, and we are comfortable with the comments we gave at the time. We accept that it was reasonable for them to rely on our broad support of the steps they proposed to take to manage the conflict of interest. As we explain in Part 6, those steps largely worked in practice. However, the Mayor and the chief executive did not take all the steps that we suggested. We discuss this more in paragraphs 5.32 to 5.36.

### **The Council did not get legal advice or check the chief executive's employment contract**

- 5.32 We asked the Mayor whether she had considered getting legal advice on the matters we raised in our first and later responses about managing the conflict of interest. The Mayor said she did not think she needed to do so. She thought that the chief executive's proposed approach to mitigate the conflict was adequate and did not see the need to get legal advice to confirm that.
- 5.33 We also suggested that the Mayor and the chief executive could check the chief executive's employment contract to see whether there was anything relevant to private interests conflicting with the chief executive role. They did not do so.
- 5.34 We have considered the chief executive's employment contract as part of the inquiry. The contract has requirements about conflicts of interest, including an agreement not to enter into contracts, relationships, business interests, or activities that might conflict in any way with the interests of the Council or the chief executive's responsibilities to it, or that could reflect adversely on the Council's business or its public perception.
- 5.35 In our view, the chief executive and the Council should have at least considered how the chief executive's intended expression of interest fitted with this prohibition in the contract. The prohibition requires an exercise of judgement about whether pursuing private activities might affect the chief executive's ability to meet his responsibilities to the Council or its public perception. It requires some thinking ahead and judgement about how actions might be perceived. It is not clear that either the Mayor or chief executive exercised that judgement here.
- 5.36 This is one aspect where getting legal advice would have helped. Legal advice would have helped the Mayor to manage a situation where her usual main advisor was conflicted. Any legal uncertainty about whether the chief executive's contract

allowed him to submit an expression of interest could have been discussed and addressed at the time. If the Council and chief executive had different views, this could have been worked through.

### **Effect on public perception of Queenstown Lakes District Council**

- 5.37 The Mayor considers that this matter has adversely affected the public's perception of the Council. The Mayor believes that the chief executive's conflict of interest was more controversial because of the significant local interest in Arrowtown and opposition to all expressions of interest there.
- 5.38 Councillor Gilmour also thinks that the chief executive's conflict reflected adversely on the Council and public perception of it. She considers that this became evident during the public submission process on the expressions of interest, where all councillors had their integrity questioned because of the chief executive's conflict. She believes, too, that this reduced public confidence in the Council's process for considering special housing area proposals, and that this, in turn, made sensitivities about Arrowtown worse.
- 5.39 The Mayor does not think the adverse perception of the Council will be significant in the long term.

### **Effect on the chief executive's ability to meet his responsibilities**

- 5.40 The expression of interest process for special housing areas was a significant exercise for the Council and the planning staff. It was of significant local interest and to the Minister for Building and Housing and the Ministry officials. It placed significant demands on a busy planning team, and the chief executive could not support them or councillors after submitting his expression of interest.
- 5.41 One of the ratepayers who contacted us was concerned that the chief executive's conflict had affected the Council's capacity to deal with a significant matter. The planning officers that we spoke with did not share that view, and the General Manager, Planning and Development had no problems taking responsibility for special housing areas and reporting to the Mayor. He considered that he could still discuss resourcing issues affecting his team with the chief executive, despite the chief executive's conflict. We accept that this was a reasonable approach.
- 5.42 We asked the Mayor and the chief executive whether they thought that the matter had affected the chief executive's ability to meet his responsibilities to the Council.

- 5.43 The Mayor agreed that it had affected the chief executive's ability to meet his responsibilities. She took over those responsibilities by working directly with the senior planning staff involved. She told us that, at times, she has felt like both Mayor and chief executive.
- 5.44 The Mayor did not have any particular problem with doing so. However, she gave one example where she thought the chief executive's involvement might have made a difference. This was the officers' report on the expressions of interest that went to the 3 June 2015 Council meeting. The Mayor said that the report might have had more decisive recommendations about Arrowtown special housing areas if the chief executive had not been conflicted and had overseen it.
- 5.45 The General Manager, Planning and Development noted that the chief executive's conflict did not change the way the officers advised councillors on the Arrowtown expressions of interest, and that the officers' report addressed the positives and negatives of those expressions of interest and the overall approach was supported by legal advice.
- 5.46 The officers had discussed the draft report with the Mayor before the meeting, and the Mayor had sought the views of Councillors Gilmour and Lawton.
- 5.47 One focus was on how the report should reflect community views. There was some time pressure, and the Mayor and the two councillors could not comment on the recommendations before the agenda became public.
- 5.48 The chief executive does not consider that his conflict of interest affected his responsibilities. He considers that the Council often relies on senior employees with relevant expertise rather than the chief executive. He sees himself as a capable advisor on legal matters – because that is his background and expertise – but not the main advisor in all Council matters.
- 5.49 In our view, the conflict has affected the chief executive's ability to meet his responsibilities. He has not been able to advise the Council about special housing areas and has not been able to provide leadership to Council staff in this area. Advising the Council and providing leadership to staff are core parts of the role of a chief executive under section 42 of the Local Government Act 2002.
- 5.50 In our view, the chief executive and the Mayor did not think this through at the start, despite our suggestion that they should. However, the chief executive's proposed approach of the General Manager, Planning and Development taking responsibility for special housing areas appeared to work well, and the Mayor was largely satisfied with the arrangement.

- 5.51 The chief executive and the Mayor could have thought about whether they needed to make an alternative arrangement to fill the “main advisor” and “leader of staff” gaps that the chief executive’s conflict had created. This would have required them to consider the size and significance of the work involving special housing areas compared to the chief executive’s other responsibilities, and the chief executive’s ability to do that work, had his expression of interest succeeded.

### **If the chief executive’s expression of interest had been considered further**

- 5.52 If the chief executive’s expression of interest had been recommended for further consideration, there would have been further dealings with the Council, including:
- negotiating a “Private Developer Agreement” that would require the chief executive’s family to execute the project as outlined in the proposal;
  - discussions with Council officers about existing infrastructure and, if necessary, agreeing to any upgrade requirements and how they would be funded (such as from development contributions); and
  - seeking consent for the development under the Act or the Resource Management Act 1991.
- 5.53 Such dealings could have been straightforward, but could lead to disagreement or challenge. This could be awkward for the chief executive and the Council.
- 5.54 We asked the chief executive about the possible effect that his expression of interest succeeding would have on his ability to meet his responsibilities in other aspects related to special housing areas. We gave the example of the Council’s policy on the use of development contributions as a funding tool, including for special housing areas.
- 5.55 The extent to which local authorities use development contributions rather than other funding sources is an important policy matter for a local authority, and chief executives need to be involved in such matters from time to time. We understand that the Council has a current project to review its funding sources, including development contributions.
- 5.56 If the chief executive’s expression of interest had succeeded, the conflict could have prevented the chief executive from being able to advise the Council on the amount and use of development contributions in the district, at least until his proposed development had been completed.
- 5.57 The chief executive told us that he is not closely involved in development contributions. He said he had not thought this far ahead because he did not

expect his expression of interest to be recommended for further consideration. He mentioned that the Council could have sought further comment from us or legal advice if his expression of interest had been recommended for further consideration. However, this would have required others to continue to fill the gap created by the chief executive's conflict. The Mayor had not thought about the matter. This is an example of the Mayor and the chief executive not fully thinking through the implications of the conflict.

### **The chief executive did not fully comply with disclosure requirements for employees**

- 5.58 The chief executive asked for his 26 November 2014 email disclosure to the Mayor to be recorded on the Council's interests register. However, he did not complete the form for disclosing conflicts of interest that the General Manager, Legal and Regulatory gave him. The General Manager, Legal and Regulatory suggested that it was "probably best" to complete the form and said that he presumed that the Mayor would need to sign off the "proposed resolution" (the plan to manage the conflict).
- 5.59 The chief executive told us that, because he had already disclosed his interest to the Mayor and two of his general managers, he saw no point in completing the form. He was also aware that the Mayor had told councillors. He thought that filling out the form would just tell people what they already knew.
- 5.60 It is unfortunate that the chief executive did not comply with the process for declaring and recording employee conflicts of interest. A chief executive should lead by example in terms of complying with policies and requirements applying to employees. The form and register is part of the Council's system for managing conflicts of interest and is not discretionary for other employees.

### **The chief executive initially sought confidentiality for his expression of interest**

- 5.61 When the Mayor asked whether the chief executive wanted to disclose that he intended to submit an expression of interest to the 27 November 2014 Council meeting, the chief executive agreed that councillors should be told but said that he should otherwise be entitled to the same confidentiality that other expressions of interest had. The Mayor accepted this approach.
- 5.62 We do not believe that confidentiality should have been the main consideration at that time. Being an employee of the Council puts the chief executive in a different position than others who submit expressions of interest. In our view, it would have been better if the chief executive had advised the elected members



of his intention before putting in his expression of interest and for it to have been public from that point. This would have been more transparent and meant that all elected members and staff were aware of the conflict from the start. It also might have mitigated the risk of speculation and adverse publicity later.

- 5.63 We comment further on some communication matters in Part 6, including when and how the chief executive's expression of interest became more widely known.

### **Our conclusions on the chief executive's disclosure of interest**

- 5.64 The chief executive acted appropriately by disclosing his intention to put in an expression of interest after deciding to do so. The Mayor took appropriate steps to tell councillors and us, including seeking our views on the proposed mitigation steps. Some aspects could have been handled better, such as the chief executive disclosing his intention slightly earlier to avoid receiving another expression of interest and complying with the Council's policy for employee conflicts of interest.
- 5.65 The Mayor and the chief executive relied on our general comments in our first and later responses about being comfortable with the proposed approach for managing the conflict of interest. We accept that it was reasonable for them to rely on our broad support of the steps that they proposed to take to manage the conflict. However, they did not take all the steps that we suggested. Most significantly, they did not check the chief executive's employment contract or get legal advice.
- 5.66 In our view, the Mayor should have got legal advice on the matter, including on the relevance of the chief executive's employment contract. The chief executive and the Mayor should have considered whether the chief executive submitting an expression of interest might affect his ability to meet his responsibilities under that contract and under section 42 of the Local Government Act 2002. We consider that it did affect his ability to meet his responsibilities. However, the Council has worked around this to fill the gaps.

# 6

## Managing the expression of interest evaluation process

- 6.1 In this Part, we set out:
- the steps that Council officers took in response to the chief executive's expression of interest;
  - how the Council considered expressions of interest for special housing areas;
  - how the chief executive and the Council managed the chief executive's conflict in communications about special housing areas;
  - when the chief executive's conflict became public;
  - the Council's decision on the expressions of interest; and
  - our comments about how matters were managed during the expression of interest evaluation process.

- 6.2 This Part covers the period from December 2014 (after the chief executive submitted his expression of interest) to June 2015 (when the Council made decisions about the expressions of interest).

### **Response to the chief executive's expression of interest**

- 6.3 The General Manager, Planning and Development took steps to manage the chief executive's conflict of interest and to ensure the integrity of the expression of interest process.
- 6.4 On 8 December 2014, the General Manager, Planning and Development emailed the General Manager, Corporate Services to advise her that Mitchell Partnerships had submitted an expression of interest on behalf of the chief executive's family. The General Manager, Planning and Development said that:
- he and the chief executive had agreed that they would not discuss the expression of interest process, either about the chief executive's property or more generally;
  - he was comfortable dealing directly with Mitchell Partnerships on the matter; and
  - if he needed to discuss anything to do with the chief executive's application, he would speak with the General Manager, Corporate Services.
- 6.5 The General Manager, Planning and Development told us that, as it turned out, he discussed special housing area matters with the Mayor rather than the General Manager, Corporate Services.
- 6.6 The General Manager, Planning and Development forwarded that email message of 8 December to two staff members in the planning team asking them to be mindful of it. He also limited access to the submitted expressions of interest to members of the planning team.

- 6.7 The District Plan Manager asked how any media questions about the chief executive's expression of interest should be handled. The General Manager, Planning and Development said that all expressions of interest were commercially sensitive, so no comments should be made to the media. The two managers agreed that they would tell enquirers that there had been considerable interest and leave it at that for the time being.

## How the Council considered expressions of interest for special housing areas

### The Bridesdale expression of interest

- 6.8 At its meeting on 18 December 2014, the Council considered an expression of interest for a special housing area at Bridesdale farm. This was the last item considered that day, during the part of the meeting from which the public was excluded. The notes of the meeting record that the chief executive left the meeting before that item was discussed, but not the reason for his leaving. The official minutes do not record what happened in the part of the meeting from which the public was excluded, so do not record that the chief executive left the meeting when the Bridesdale expression of interest was considered.

### The evaluation process

- 6.9 The District Plan Manager and an independent evaluator evaluated the expressions of interest after a contractor did a preliminary analysis of each expression of interest against the assessment criteria.
- 6.10 The General Manager, Planning and Development told us that the reason for using an independent evaluator was partly because the chief executive had submitted one of the expressions of interest and to help the District Plan Manager.
- 6.11 The planning team had legal advice to guide its approach to assessing the expressions of interest, including advice about the Act and the relevance of the Arrowtown Urban Growth Boundary. To help analysis, the planning team commissioned work about housing demand in Arrowtown.
- 6.12 At its meeting on 24 March 2015, the Council considered a proposed amendment to delegations to its Resource Consent Commissioner Appointment Committee to allow it to appoint an Accord Territorial Authority Panel (a body required by the Act). The chief executive did not attend that meeting.

### **The Council amends the lead policy and District Plan**

- 6.13 At its meeting in April 2015, the Council agreed to amend the lead policy to state explicitly that proponents of special housing areas need to commit to retaining allotments for community housing.
- 6.14 At the same meeting, the Council agreed to make fully operative two District Plan changes related to Arrowtown – Plan Change 29 (Arrowtown Urban Growth Boundary) and Plan Change 39 (Arrowtown South Special Zone). Plan Change 29 draws an urban growth boundary around Arrowtown. Plan Change 39 provides for residential development in an area south of Arrowtown.
- 6.15 The minutes record that the chief executive left the meeting for that item, but not the reason for his leaving.
- 6.16 After the April 2015 meeting, those who had submitted expressions of interest were invited to amend them if they wished to reflect the change to the lead policy.
- 6.17 The Council was to have considered the expressions of interest for special housing areas at its May 2015 meeting. However, the Council decided to delay this until its June 2015 meeting to allow a new Arrowtown ward councillor who took office at the end of May 2015 to take part.
- 6.18 The expressions of interest were made available on the Council’s website on 30 April 2015. Councillors were advised that they would be sent all comments from members of the public about the expressions of interest for information.

### **The chief executive’s monthly reports to the Council continue to refer to special housing areas**

- 6.19 As we mentioned in Part 2, the chief executive’s monthly reports to the Council covered matters on the Council’s work programme, including the housing accord and special housing areas.
- 6.20 These updates began in September 2014 and continued until June 2015, which was after the chief executive put in an expression of interest in December 2014.
- 6.21 We have confirmed that the General Manager, Planning and Development provided the updates on special housing areas for the chief executive’s monthly reports and that other general managers provided similar input for their areas of responsibility.
- 6.22 The updates on special housing areas focused on process rather than substance.

### **General Manager, Planning and Development's reports to the chief executive**

- 6.23 At fortnightly meetings, the General Manager, Planning and Development reported to the chief executive on special housing area matters. He gave us copies of his reports to the chief executive from December 2014 to May 2015. These reports used a reporting template prepared in November 2014 that had special housing areas as a heading. The reports using the template had a few words on matters of process, such as the timing of the evaluation of expressions of interest and on how the work on special housing areas affected the planning team's workload.

### **Managing the chief executive's conflict in communications about special housing areas**

- 6.24 From January 2015, the Council began to get questions from members of the public about special housing areas and the expression of interest process. Some of these questions were sent directly to the chief executive. For example, on 22 January 2015, the chief executive received a complaint from a ratepayer about a Council officer's answer to a question about Bridesdale farm.
- 6.25 At first, the chief executive asked a staff member for a few words to use for a response. He said later that it would be better for another staff member to reply because of his conflict of interest. The staff member did so, then sent the ratepayer's further comment on the matter to the chief executive for his information.
- 6.26 On 29 January 2015, the chief executive and several other staff received an email message from another ratepayer expressing concern about the proposed special housing area at Bridesdale Farm. One of the staff offered to respond, and the chief executive said he would discuss this with the staff member.
- 6.27 Later that day, the chief executive emailed the main planning staff involved and his executive assistant to say that, because of his conflict, his assistant should forward any email messages to relevant staff for action, with support from the Mayor as needed. He added a few words of guidance on how they should respond. A staff member drafted a reply and sent it to his manager and the chief executive for comment. The chief executive repeated that, because of his conflict, he would not comment directly on the matter.
- 6.28 The chief executive also received an email message sent to all councillors from a councillor expressing concern on behalf of Arrowtown ratepayers about infrastructure capacity for the Arrowtown expressions of interest. The

chief executive also received the District Plan Manager's response, and then commented to the General Manager, Planning and Development:

*For the record, I discussed this as a private citizen with [the Council's chief engineer]. He was adamant that there would be no issues with the location of the infrastructure on McDonnell Rd and the volumes that I was talking.*

*If I can put my official hat on, we should ensure that we have appropriately qualified people [two Council staff named] at the meeting to ensure Crs do not make decisions on erroneous information.*

- 6.29 A few other times, despite his conflict, the chief executive received copies of email messages from ratepayers. Sometimes, this was because the chief executive was on a global email address list used within the Council for sending information to councillors. In other instances, staff forwarded email messages to the chief executive. In one instance, a councillor sent the chief executive and the Mayor an email message about a special housing area.<sup>20</sup> In some of these instances, the chief executive contributed a few words or a suggested approach to how staff should respond.
- 6.30 Also, despite the chief executive saying he would not be involved, he was sometimes sent a copy of the response. The chief executive also had access to all comments from members of the public on the expressions of interest after they had been published on the Council's website, because staff used the email address for all councillors.

### **The chief executive's expression of interest becomes public**

- 6.31 On 25 February 2015, in response to a media enquiry, the Mayor confirmed that the chief executive had put in an expression of interest and the steps the Council had taken to manage the conflict. At first, the chief executive suggested that the Council should treat the request as it would any other expression of interest and say all expressions of interest were confidential until the Council was ready to make them public.
- 6.32 The General Manager, Corporate Services helped to prepare the Mayor's statement confirming the chief executive's expression of interest. She described the expression of interest as "Arrowtown's worst-kept secret", but said the chief executive was "relaxed about it".

## Requests under the Local Government Official Information and Meetings Act 1987

- 6.33 After the expressions of interest were made public on 30 April 2015, the Council received some requests for comment from media and for information under the Local Government Official Information and Meetings Act 1987.
- 6.34 In response to media requests, the chief executive released the correspondence with us from November and December 2014 about his conflict of interest and confirmed the mitigation steps that had been taken to manage his conflict of interest. The Council gave the same information to the Arrowtown Village Association.
- 6.35 In May 2015, we received several requests to inquire into the matter.
- 6.36 As we noted in Part 1, some of those who contacted us hoped that we would intervene in the process and prevent the Council from considering the chief executive's expression of interest. The Mayor got legal advice that the Council could proceed to consider the expressions of interest, including that from the chief executive's family.

## Deciding on the expressions of interest

- 6.37 At its meeting on 3 June 2015, the Council considered the outcome of the evaluation panel's assessment of the 13 expressions of interest for proposed special housing areas. The Council also considered further information provided by some of the expressions of interest about allocating residential sections for community housing, in the light of the change to the lead policy in April 2015 (see paragraph 6.16). The minutes note that the chief executive had previously declared a conflict of interest and would not attend the relevant part of the meeting.
- 6.38 The officers' report recommended that the Council consider the advantages and disadvantages of the proposed special housing areas in Arrowtown before deciding whether to recommend one or more to the Minister for Building and Housing. The officers' report discussed the Arrowtown Urban Growth Boundary and related planning matters. Two of the Arrowtown proposals, including the chief executive's, were located immediately beside the Urban Growth Boundary. Another was inside it, and one (Ayrburn Farm) was about two kilometres away.
- 6.39 The officers' report for the meeting recommended four of the 13 proposed special housing areas for further consideration. The four proposals were:
- Shotover Country;
  - Arthurs Point North;

- Onslow Road; and
- Highview Terrace.

- 6.40 The Council instructed officers to do more work on the four proposals so that councillors could be comfortable recommending them to the Minister for Building and Housing.
- 6.41 The Council did not recommend any further consideration or work on the remaining proposals. This meant that none of the Arrowtown proposals, including for the chief executive's family land, were recommended for further consideration.
- 6.42 Because the Council did not recommend the chief executive's expression of interest for further consideration, we did not need to consider how the Council should manage matters if the chief executive's expression of interest had been considered further.<sup>21</sup> In Part 5, we comment briefly on this when discussing development contributions.

### **Our comments about managing the expression of interest evaluation process**

- 6.43 The chief executive appropriately removed himself from the relevant parts of meetings when the expressions of interest for special housing areas arose. The reason for doing so was not recorded in the December 2014 or April 2015 meetings, but was for the June 2015 meeting.
- 6.44 In the interests of transparency, the Local Authorities (Members' Interests) Act 1968 requires a councillor with a financial interest in a matter to declare the interest at relevant meetings and for the minutes to record the declaration. There is no similar statutory requirement for council officers, but a Council policy on conflicts of interest could require it.
- 6.45 We asked whether it was common practice for a conflicted staff member to declare the conflict at a council meeting. We were told that, usually, the agreed mitigation step is that the officer is not present for the meeting, so a declaration is not needed. However, this practice would be less easily managed where the officer concerned is the chief executive. The Council's policy on staff conflicts of interest does not cover the situation.
- 6.46 In the chief executive's case, because he was present for other parts of the December 2014 and April 2015 meetings, it would have been better for him to have declared his conflict before leaving the relevant parts of the meeting and for this to be recorded in the minutes – as he did for the June 2015 meeting. This would be more transparent and provide a clearer record. Some people who complained to us did not know that the chief executive did not attend or had not



taken part in relevant meetings, and this contributed to the perception that the conflict was not managed properly.

- 6.47 The chief executive was not involved in the evaluation process or in the report that the officers prepared for Council on the expressions of interest that was considered at the Council meeting on 3 June 2015.

### **The chief executive should have changed some reporting systems after his expression of interest**

- 6.48 After the chief executive disclosed in November 2014 that he had put in an expression of interest, he should have changed the method of reporting to the Council on special housing areas. Although the updates were merely progress reports, an alternative method of reporting should have been put in place after the chief executive disclosed his interest. Not doing so has also contributed to the perception that the conflict was not managed properly.
- 6.49 Similarly, the reporting template for the catch-up meetings between the chief executive and General Manager, Planning and Development should have been amended to remove the reference to special housing areas after the chief executive submitted an expression of interest. This would have helped to keep the topic in which the chief executive was conflicted off the agenda, but not prevented them discussing staff resourcing matters more broadly.

### **No clear procedure to restrict access to all correspondence about expressions of interest**

- 6.50 The chief executive received information about the expression of interest process from within the Council and, sometimes, directly from members of the public. We refer to these instances not because the chief executive had any significant involvement, but because the Council had no clear rule or procedure to prevent him seeing this correspondence.
- 6.51 The instance noted in paragraph 6.28 is an example of the chief executive receiving information not available to other submitters of expressions of interest and making a comment to the General Manager, Planning and Development that appears to support his application.
- 6.52 This is one aspect where a more formal process for managing the conflict of interest, for use by all relevant staff, would have helped. This could have set clear requirements or protocols to ensure that the chief executive received no information about the expression of interest process.

- 6.53 The chief executive's receiving information and commenting on a matter relevant to his own expression of interest is not good practice. The chief executive could have done more to set up a better system for restricting his access to information after disclosing his interest.
- 6.54 It might also have been appropriate for the Council's Audit and Risk Committee to receive a report on the chief executive's conflict and to discuss any potential organisational risks arising from the conflict. Strategic risk management is a core role of an Audit and Risk Committee, and a conflict of interest for the chief executive is a significant organisational risk. The committee might have helped to review and agree the proposed mitigation approach and set formal parameters.

#### **Did the chief executive have any unfair advantage in process?**

- 6.55 We asked the chief executive whether he thought he had an advantage in submitting an expression of interest because of his knowledge of Council systems or of councillors' likely views and preferences, and how they respond to submissions and information.
- 6.56 The chief executive said that it was more likely he was disadvantaged in the process because of his role and the controversy.
- 6.57 The chief executive used an agent to prepare his expression of interest after giving a preliminary outline, reducing any advantage from "inside knowledge".
- 6.58 The chief executive was not substantially involved in preparing the housing accord or lead policy in a way that could benefit his expression of interest. His seeing another expression of interest before submitting his own did not give him any advantage or create any disadvantage for the other expression of interest.

#### **Our conclusion about how the expression of interest evaluation process was managed**

- 6.59 We consider that the chief executive and the Council managed the chief executive's conflict adequately after his expression of interest. The chief executive did the right thing by taking no part in the Council's evaluation process or the officers' recommendations to the Council on the proposed special housing areas.
- 6.60 The General Manager, Planning and Development took appropriate steps to ensure the integrity of the evaluation process, including restricting access to the expressions of interest within the Council, and was comfortable working directly with the Mayor.

6.61 We do not consider that the chief executive's role gave him any particular "inside advantage" in the process. However, some aspects could have been handled better, including clearer requirements to keep all special housing area correspondence from the chief executive and some changes to reporting systems. However, these aspects were minor. In our assessment, they did not affect the evaluation process.

# 7

## Managing employee conflicts of interest generally

- 7.1 We carried out this inquiry because we considered that the complaints raised matters of trust and confidence in the Council's processes and about how a chief executive can participate in one of those processes.
- 7.2 In this Part, we provide some general comments for the Council and for the local government sector about managing employee conflicts of interest generally. We discuss:
- the importance of public perception;
  - rules about conflicts of interest;
  - our role in commenting on employee conflicts of interest; and
  - lessons for local authorities.

### The importance of public perception

- 7.3 Conflicts of interest arise all the time. Usually, they cannot be avoided, so need to be managed. A poorly managed conflict can create legal and reputational risks. Impartiality and transparency are essential in managing these risks. Public officials should be cautious when conflict of interest situations arise that could undermine trust and confidence in the officials or their employer.
- 7.4 Public perceptions are important. It is not enough that the official is honest, they must be seen to be so. Despite careful management, some actions just might look bad.
- 7.5 The risk of negative public perception is more significant when the person concerned is in a senior position. When the person is the chief executive of a local authority – the most senior employee – and responsible for providing advice to elected members and for leading staff, the conflict problem is greater and they need to behave with the utmost integrity.

### Rules about conflicts of interest

- 7.6 Elected members are subject to stringent rules about financial interests in the Local Authorities (Members' Interests) Act 1968. We have a statutory role under that Act. Elected members must also comply with their Council's Code of Conduct, as required by the Local Government Act 2002.
- 7.7 There is no similar statutory rule for local authority employees. However, most local authorities have staff policies and procedures for identifying and managing conflicts that set out expectations for minimum standards of behaviour. Employment agreements and codes of conduct for staff are also likely to address these matters.

- 7.8 It is important for local authorities to have robust policies and procedures to provide employees with clear guidelines on what constitutes a conflict and how to manage it.

### **Our role in commenting on employees' conflicts of interest**

- 7.9 The Auditor-General can consider matters of probity in public entities, which can include conflicts of interest. We issued guidance on managing conflicts of interest for local authorities (in 2010) and for public entities generally (in 2007). The general guidance covered employees as well as members of governing bodies.
- 7.10 Public entities often ask us for advice on how to manage conflicts of interest. We are not a local authority's legal advisor. Our comments should not be taken as legal advice, or relied on instead of getting legal advice. Our approach when asked for advice is to try to be helpful. Often it is enough to refer the enquirer to the relevant part of our published guidance. However, in some instances, we also suggest that the enquirer get legal advice about how to manage the matter. In doing so, we need to make it clear that our comments are not a substitute for getting legal advice.
- 7.11 Many requests are from elected members but, sometimes, we are asked about managing conflicts of interest for chief executives. Most of these requests have been about how to manage conflicting roles, rather than conflicts between private interests and the responsibilities of chief executives. For example, we have been asked by chief executives about managing potential conflicting roles when they are asked to be on the boards of council subsidiaries.

### **Lessons for local authorities**

- 7.12 Elected members and officers of local authorities will often have many connections in their communities through family and friends. From time to time, they will be conflicted when matters come before their local authority for decision. Our guidance for public entities on managing conflicts of interest notes that such conflicts are inevitable in a small country and not necessarily a problem if they are managed properly.
- 7.13 Our guidance also says that, most often, what needs to be managed (and be seen to be managed) is the risk of adverse public perception that could arise from overlapping interests.
- 7.14 Pre-existing or inevitable conflicts, such as those that arise from connections or existing interests, are slightly different from a conflict created by pursuing an opportunity while in the job. A local authority employee who wishes to pursue a private interest that might conflict with their role needs to consider the risk of

adverse public perception of their actions. A conflict created by an employee's actions is likely to be perceived less favourably than a pre-existing or inevitable one beyond the employee's control.

- 7.15 Some people see no problem with a local authority employee pursuing an opportunity available to others, provided the conflict of interest that arises can be managed. Others will think it inappropriate, especially for a chief executive. In making judgements about whether to pursue private interests that conflict with their roles, employees need to consider how their actions will be perceived and the risk of opening their employer to criticism.
- 7.16 Even if the conflict is properly managed, some people may still perceive it as inappropriate for local authority staff members to pursue private financial interests and for their local authorities to allow them to do so. This shows that even an adequately managed conflict can lead to public perception problems.
- 7.17 Any senior local authority employee should carefully consider the effect of choosing to pursue a private financial interest, where that interest creates a conflict with their ability to perform their job. This requires judgement and thinking through possible scenarios, including whether the conflict might affect other areas of responsibility in the future. Their manager – and, for a chief executive, the Mayor – should also think through the implications and be comfortable with their plan to manage those implications. This is particularly so for a chief executive because of the statutory responsibilities to advise councillors and lead staff.
- 7.18 Although all local authority employees have the same rights and privileges as private individuals, those rights and privileges must be considered in the light of their responsibilities to the local authority. In some instances, a choice might have to be made.

# Appendix

## Terms of reference for our inquiry

### **Inquiry into how the Queenstown Lakes District Council and its chief executive have managed the chief executive's interest in a proposed special housing area**

#### **28 May 2015**

The Auditor-General, Lyn Provost, has decided to carry out an inquiry into how the Queenstown Lakes District Council and its chief executive, Mr Adam Feeley, have managed the chief executive's interest in land owned by his family being considered for a special housing area.

This document sets out the background and terms of reference for the inquiry.

#### **Background**

On 23 October 2014, the Queenstown Lakes District Council (the Council) agreed a housing accord with the Minister of Housing under the Housing Accords and Special Housing Areas Act 2013. The accord is intended to increase housing supply and improve housing affordability in the Queenstown Lakes District, with a particular focus on the Wakatipu Basin. The broad effect of the accord is to streamline Resource Management Act processes for special housing areas approved by the Minister of Housing.

On 30 October 2014, the Council adopted a policy setting out its criteria and process for assessing expressions of interest for special housing areas. The Council called for expressions of interest in early November.

On 26 November 2014, the chief executive advised the Mayor of his family's intention to express interest in creating a special housing area on land owned by the family. He also proposed steps for how the Council could manage his interest in the matter. The chief executive's family submitted an expression of interest in early December.

At the chief executive's suggestion, the Mayor advised us of the proposed management approach and sought our views on any additional steps needed. We said in late December that we were comfortable with the approach. At that time, we focused on the steps that were to be put in place to manage the chief executive's interest rather than the prior policy development process. For completeness, we have decided that it is important to consider the policy development period.

In May 2015, as the Council got closer to making decisions on expressions of interest for special housing areas, we received several requests from people in the Queenstown Lakes District to inquire into the chief executive's interest in land owned by his family being considered for a special housing area, including any

involvement he had in developing the housing accord and the Council's policy before he declared an interest.

The requests raise issues of trust and confidence in Council processes, and issues about how Council officers can participate in those processes as members of the community. Accordingly, we have decided to undertake an inquiry into how the Council and chief executive are managing the chief executive's interest as the Council proceeds to make decisions on special housing areas.

### **The inquiry**

The inquiry will consider:

- the nature and extent of any involvement by the chief executive in developing the Council's housing accord and related policy for special housing areas;
- how the Council and chief executive:
  - have managed the chief executive's interest in land owned by his family being considered for a special housing area; and
  - should manage matters if the land owned by the chief executive's family is approved as a special housing area; and
- any other matters the Auditor-General considers it desirable to report on.

The inquiry is being carried out under sections 16 and 18(1) of the Public Audit Act 2001. We will not comment while the inquiry is under way, but will publish a report when the inquiry is completed.