

Central Otago Environmental Society
3381 Ida Valley- Omakau Road
Oturehua 9387
Central Otago

Ms Sarah Gardner
Chief Executive
Otago Regional Council
70 Stafford Street
Private Bag 1954
Dunedin 9054

30th June 2020

Dear Sarah,

You will be aware of the danger of a perception of conflict of interest in decision making of public entities such as the Otago Regional Council.

The Auditor General's guidelines on what constitutes a conflict of interest contains the following parameters:

2.1

*As already noted, in the public sector there is a conflict of interest where:
A member's or official's duties or responsibilities to a public entity could be affected by some other interest or duty that the member or official may have.*

This is the key test to keep in mind. The remainder of this Part discusses aspects of this test in more detail.

2.2

*Another way of considering whether a conflict of interest may exist is to ask:
Does the member's or official's other interest create an incentive for them to act in a way that may not be in the best interests of the public entity?*

2.3

However, that question does not always provide a complete answer because the issue is not confined to considering the possibility of financial loss or other direct disadvantage to the public entity. Sometimes it can relate to the risk that a member or official could:

- use publicly funded resources or time to advance their own other interests; or*
- be influenced in their decision-making by a sense of loyalty or obligation to someone else, or by an unduly fixed view.*

2.4

A conflict of interest can arise in a wide variety of ways. Sometimes a situation may be more accurately termed a "conflict of duty" or "conflict of role", but in this

guidance we use the general term "conflict of interest" to cover these situations, too. We also use the term "conflict of interest" to cover circumstances that include or appear to include "bias" or "predetermination".

We believe that the proposed move to depose Marian Hobbs as Chair of the ORC, as outlined in a letter to you signed by 9 Councillors (15 June 2020), represents a conflict of interest on the part of certain Councillors that demands consultation with the Auditor General, lest as in 2.3 above, certain Councillors might "be influenced in their decision-making by a sense of loyalty or obligation to someone else, or by an unduly fixed view".

We point out the following elements that might constitute a conflict of interest, both for the decision making of the ORC, and in the eyes of public observers.

1. Although the signatories of the 15 June letter to you have declared publicly that their concern with the role of Marian Hobbs is regarding leadership, it is apparent that the issue is a specific one, focussed on her leadership on protection of environmental resources, particularly water. It is clear to anyone following the conflict that the issue that has sparked the conflict arises from Ms Hobb's liaison with Hon David Parker, Minister for the Environment, and his subsequent decision to "call in" decisions regarding the issuing of water permits in Otago.
2. For the last 30 years the ORC has failed to pursue a programme of monitoring natural waterways and 'takes' from them. Professor Peter Skelton's 2019 report to the ORC states:

The Otago region is at a critical juncture for freshwater planning. Existing planning provisions to manage freshwater are inadequate and the expiry of the Otago mining privileges (deemed permits) is only two years away. There are also growing challenges for the state of the freshwater resource in Otago in view of the high level of water abstraction and the significant alteration of natural flows, ecosystems and habitat for indigenous flora and fauna.

The immediate issue facing the Council is the challenge of developing a fit for purpose planning framework ahead of the expiry of the deemed water permits on 1 October 2021.

3. Two of the ORC Councillors were previously prevented from voting on the water rights issue because the Auditor General determined that they had a conflict of interest, being possessors of water permits that were beneficial to their pecuniary interests. These were Councillors Gary Kelliher and Kate Wilson.
4. It was in pursuit of the Skelton Report that Chair Marian Hobbs felt duty-bound to inform the Minister for the Environment that this advice was likely to be unable to be followed because of resistance from fellow ORC Councillors. The result was the 'calling in' of the issue by Hon. David Parker.

5. Pursuant to this, the initial 7 Councillors opposing the views of the Chair garnered the support of two others, and the letter to you calling for her resignation was issued.
6. Of the 9 signatories to the June 15th letter, two are Councillor Gary Kelliher and Councillor Kate Wilson, previously barred from voting by the Auditor General after an investigation of their circumstance revealed a clear conflict of interest.
7. Among the remaining 7 signatories of the letter of 15 June 2020, we observe the following potential conflicts of interest:
 - a. Councillor Andrew Noone has a 900 hectare sheep and cattle farm, and is a shareholder in such entities as Silver Fern Farms, Ravensdown, and CP Wool. While these shareholdings are small, and the Auditor General has determined they do not constitute a significant pecuniary interest, they provide the appearance of a conflict of interest to the general public.
 - b. Councillor Hope and her husband own a 2000 hectare sheep and beef farm. While she does not hold water permits, she does draw water from a bore on her land which falls under the category of current permitted activity rules. Once again, in the public mind this may well be regarded as a conflict of interest.
 - c. Councillor Hilary Calvert is a joint 24% shareholder in 4 Rivers Farming Company Limited, which owns 8760 hectares of farming land, mostly sheep and beef. This provides a pecuniary interest which may be seen as a conflict of interest.
8. We consider that even if there is not pecuniary gain for the above Councillors, there is evidence of “circumstances that include or appear to include ‘bias’ or ‘predetermination’”.
9. We are of the view that the attempt to unseat Marian Hobbs as Chair of the ORC is partisan, and driven chiefly by opposition to her attempts to conform the Regional Council to national policy frameworks on waterways.
10. One way of determining if the move to unseat Marian Hobbs is related to the issue of water policy would be to poll Councillors on whether they are committed to jointly proceed with existing ORC undertakings to Minister of Environment David Parker and the Skelton Report on land and water planning and timelines, irrespective of who is Chair of the organisation – as committed to in January 2020. If they were to give written undertakings that they would do so, this might remove the impression of a conflict of interest.

Thank you for your consideration of such matters.

Yours sincerely,

To be taken as signed,

Ray Wright
Chair, on behalf of:

Central Otago Environmental Society