

QLDC Council
30 June 2016

Report for Agenda Item: 10

Department: Property & Infrastructure

New Ground Lease – Kingston Community Association

Purpose

The purpose of this report is to consider an application for a new ground lease over Lots 1 to 7, 23 & 24 of Block VII TN of Kingston, being a Local Purpose and Recreation Reserve. The lease is proposed in favour of the Kingston Community Association to formalise the use of the land for a Community Centre, Golf Club and Bowling Club.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Grant** a lease over Local Purpose and Recreation Reserve being Lots 1 to 7, 23 & 24 of Block VII TN of Kingston in favour of the Kingston Community Association for the purposes of a Community Centre subject to the following terms and conditions;

Commencement	1 July 2016
Term	10 years
Rent	Pursuant to Community Pricing Policy
Reviews	Two yearly
Renewals	One of 5 years
Use	Community Centre with subleases to Golf and Bowling Clubs
Assignment/Sublease	At Council's sole approval/discretion
Liability Insurance	\$2 million
Expiry Conditions	Remove improvements and make good or improvements revert to Council ownership at the election of Council.
Break Clause	Council may give 24 months' notice of termination if the land is required for the 'provision of core infrastructure services' or 'development of a significant community asset'. Compensation period within the first 10 years only.

3. **Agree** to the exercise of the Minister's prior consent (under delegation from the Minister of Conservation) to the granting of a lease to the Kingston Community Association over Lots 1 to 7, 23 & 24 of Block VII TN of Kingston.

4. **Delegate** signing authority to the General Manager, Property and Infrastructure.

Prepared by:



Blake Hoger
Property Manager
APL Property Limited
15/06/2016

Reviewed and Authorised by:



Aaron Burt
Planner: Parks & Reserves

15/06/2016

Background

- 1 Since approximately 1960, the community building and other structures have occupied Lots 1 to 7, 23 & 24 of Block VII TN of Kingston, however there is no record of a formal lease ever being entered into for the use and occupation of said land.
- 2 In 1969, Lot 1 Block VII TN of Kingston was vested in the Kingston Domain (NZGZ 169p.1105). In 1968, Lot 2 Block VII TN of Kingston was vested in the Kingston Domain (NZGZ1968 p.2309). In 1974, Lots 3 to 24 Block VII TN of Kingston were vested in the Kingston Domain (NZGZ1974 p.264).
- 3 In 1984, Lots 1 to 2 Block VII TN of Kingston were classified as Local Purpose Reserve (site for a community centre) while Lots 3 to 24 Block VII TN of Kingston were classified as Recreation Reserve (NZGZ1984p.4523).
- 4 Current structures on the land include a community building which has been on the site for a number of years and is administered by the Kingston Community Association (KCA). The building also acts as the Golf Club for the nearby course and a Lawn Bowls Club. Further, there are a bowling green and outlying sheds.
- 5 The KCA, prompted by a willingness to maintain the community building, and in doing so is seeking funding from the Department of Internal Affairs, has applied for a lease over the occupied land to formalise the arrangement.
- 6 There was initially some debate from the Kingston Golf Club (KCG) as to who the head lessee should be in such an application, however KCG has since confirmed it would be happy for this to be the KCA on the condition KGC may enter a sublease for the use of the land. An agreement between the two parties was reached and documented (attached). A sublease is intended for the Kingston Bowling Club (KBC) also.
- 7 The Property Sub-Committee resolved that this application be publicly notified in March 2016. The notification period closed on 22 April 2016 with no submissions received. A hearing was therefore not required.

Comment

- 8 Council has an opportunity to formalise the occupation and use of the reserve to provide all parties with both certainty and transparency around the use and responsibility of the land.
- 9 Lots 1 to 2 Block VII TN of Kingston are designated for a Community Centre, which is the intended primary use.
- 10 This report recommends a lease for a period of 10 years with a right of renewal for a further 5-year period, and a break clause of 24 months. The term of lease offered and the break clause notice to be provided have been recommended to reflect that the building is already some 50 years old, although it has been renovated/extended during this time. Where Council was to issue a lease covering a new building, the term offered and renewal would be considerably longer, perhaps 33 years with a renewal of the same.
- 11 The attached break clause options have been drafted for inclusion in future Community leases and aim to clarify in what situations the break clause could be enacted by Council, primarily being only related to 'provision of core infrastructure services' or 'development of a significant community asset'. This would see the break clause only enacted for major and significant purposes where overall the effects to the lessee are less than the benefits to the wider community.
- 12 The break clause is proposed to provide Council with a mechanism to end the lease sooner than 'at expiry' in case the land is needed for another purpose. This mechanism has not been explicit in previous leases, limiting Council's ability to act quickly through a defined process in the lease, in order to utilise sites mainly for infrastructure in the district.
- 13 We suggest the break clause is structured into two components, a term requiring compensation to be paid to the lessee, and a term not requiring compensation. Generally, the term requiring compensation will be the period of the lease prior to its first renewal, in the case of the KCA who have an existing building, the term suggested is 10 years.
- 14 The compensation clause is to help enable the community group to relocate to another location (potentially another Council owned site), if a major or significant community purpose requires the land. The compensation clause is structured to agree a fair value for the assets, and then reduces it by a pro-rata amount relative to the term remaining before renewal. The renewed term, would not offer any compensation under this formula, as it deemed that considerable use has already resulted from the original building efforts.
- 15 KCA is the intended head lessee and will administer the use of the community building. Access to the community building will be granted to both the KGC and the KBC via a sublease for their use as a club house.
- 16 Pursuant to Section 115 of the Reserves Act 1977, subleases may be granted on the condition the reserve was vested to the local authority pursuant to Section 26, which is the case for this land.

17 Ownership of the existing community building and sheds is not well documented however there is a Deed of Agreement between the KCA and KGC dated 1983 with respect to insurance, improvements and income of the building (attached). It is a recommended condition of the lease that all structures either be removed from the site, or revert to the ownership of Council at the expiry of the lease.

18 This report recommends the following terms for a lease;

Commencement	1 July 2016
Term	10 years
Rent	Pursuant to Community Pricing Policy
Reviews	Two yearly
Renewals	One of 5 years
Use	Community Centre with subleases to Golf and Bowling Clubs
Assignment/Sublease	At Council's sole approval/discretion
Liability Insurance	\$2 million
Expiry Conditions	Remove improvements and make good or improvements revert to Council ownership at the election of Council.
Break Clause	Council may give 24 months' notice of termination if the land is required for 'provision of core infrastructure services' or 'development of a significant community asset'. Compensation period within the first 10 years only.

Options

19 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

20 Option 1 To grant a lease to the Kingston Community Association under the terms and conditions recommended above.

Advantages:

- 21 The KCA, KGC and KBC will have certainty with respect to tenure at the site.
- 22 There will be clarity between all parties with respect to the use and maintenance of the land.
- 23 The KCA may apply for funding from Department of Internal Affairs for its intended renovations.
- 24 The residents of Kingston will have access to good community facilities.

Disadvantages:

- 25 An area of local purpose reserve may not be used for alternative purposes (Please note however that the reserve is designated for a Community Centre).

- 26 Option 2 To grant a lease to the Kingston Community Association under alternative terms and conditions.

Advantages:

- 27 Similar to Option 1 however Council may choose to vary the terms and conditions as recommended.

Disadvantages:

- 28 Similar to Option 1.

- 29 Option 3 To decline granting a lease to the Kingston Community Association.

Advantages:

- 30 The local purpose reserve will be available for alternative purposes/alternative community centres.

Disadvantages:

- 31 The KCA, KGC and KBC will be required to vacate the reserve and find an alternative location from which to operate.

- 32 The community of Kingston will lose the use of a community centre, a golf club and bowling club.

- 33 This report recommends **Option 1** for addressing the matter as it will help meet the current and future needs of the Kingston community for local public services.

Significance and Engagement

- 34 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement policy as while it does not involve a Council strategic asset, is of low importance to the Queenstown Lakes District, is not inconsistent with policy and strategy and does not impact on Council's capability and capacity, it may be of significant interest to the general Kingston community.

Risk

- 35 This matter relates to the strategic risk SR1 – Current and future development needs of the community as documented in the Council's risk register. The risk is classed as low.
- 36 The recommended option considered above mitigates the risk by ensuring the Kingston Community Association, Kingston Golf Club and Kingston Bowling Club can continue to operate.

Financial Implications

37 Council may be required to pay compensation to the lessee at a future date, should the break clause be enacted within the initial 10-year term of the lease. The cost of drafting the lease will be met by the applicant.

Council Policies, Strategies and Bylaws

38 The following Council policies, strategies and bylaws were considered:

- Significance & Engagement Policy 2014 – the proposal is a matter with medium significance in terms of this policy as it does not impact Council's strategic assets, affect a large number of residents, ratepayers and the environment but may create reasonable community interest in the matter.
- 10-Year Plan/Annual Plan – the matter is not included in the 10-Year Plan / Annual Plan as the applicant will pay all costs.

Local Government Act 2002 Purpose Provisions

39 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring the community has access to a community centre for a variety of purposes;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

40 The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes District community.

41 The Council has publicly notified an intention to grant a lease with no responses received.

Attachments

- A Site Plan
- B Letter of Agreement between KCA and KGC dated 16 December 2015
- C Deed of Agreement between KCA and KGC dated June 1983
- D Proposed break clause text to be included in lease



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Queenstown Lakes District Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented by the GIS data. While reasonable use is permitted and encouraged, all data is copyright reserved by Queenstown Lakes District Council. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED



16 December 2016

APL
Stanley Street
QUEENSTOWN

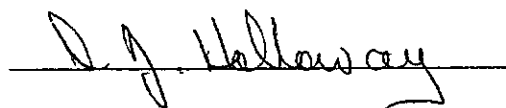
Attn: Blake Hoger

LEASE TO KINGSTON COMMUNITY ASSOCIATION, INC AND KINGSTON GOLF CLUB,
INC

We are pleased to be able to record our agreement that Kingston Community Association will apply for a lease over the land described in the 1984 Gazette Notice as Block VII, Kingston Township, which was classified to be a local purposes reserve (site for a community centre). I therefore enclose a lease application that reflects that agreement.

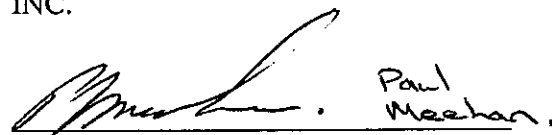
I would be grateful if you could give this matter your urgent attention as we expect Internal Affairs, following receipt of the letter of support from Queenstown Lakes District Council (QLDC), will probably only release the monies applied for when the lease has been agreed to between QLDC and Kingston Community Association, Inc.

Signed by KINGSTON COMMUNITY
ASSOCIATION, INC.



Secretary

Signed by KINGSTON GOLF CLUB
INC.

 Paul Meehan.

Secretary

DATED 1983

BETWEEN

KINGSTON GOLF CLUB
(INCORPORATED)

AND

KINGSTON COMMUNITY CENTRE
(INCORPORATED)

DEED OF AGREEMENT

TAIT WARD ADAMS AND MURDOCH
Solicitors
INVERCARGILL

AGREEMENT BETWEEN THE KINGSTON GOLF CLUB (INCORPORATED)
AND THE KINGSTON COMMUNITY CENTRE (INCORPORATED)

1. THE land and building as defined in the attached map is to be jointly leased by the two organisations and the rental is to be paid on the basis of 1/3 Community Centre and 2/3 Golf Club.
2. THE building is to be adequately insured and the cost of insurance is to be paid on the basis of 1/3 Community Centre and 2/3 Golf Club.
3. THE Golf Club is to be responsible for meeting all electricity charges and the Community Centre will pay to the Golf Club the sum of \$5.00 each time the building is used by the Community Centre to cover electricity use.
4. THE building is to be available for hire out to any other party at a charge of \$10.00 for a day function and \$25.00 for an evening function, and any income from this source shall be shared on the basis of 1/3 Community Centre and 2/3 Golf Club. It is agreed that if the building is hired out then the club licence will not be operated nor will liquor be available to those hiring the hall nor will liquor be brought into the hall. This shall not operate to prevent any hirers of the building from applying for a special extended hours permit for a social gathering under S218 Sale of Liquor Act 1961.
5. IN the event of a building or its contents being damaged by

either organisation or by a third party, such damages shall be made good by the party responsible.

6. EITHER party has the right at any future date to make alterations or additions to the building provided the plans are acceptable to the other party. Should one party undertake additions or alterations, there is no obligation on the other party to meet any of the cost or charges associated with the development.

7. ANY problems arising from the joint nature or ownership of the property which is not covered by this agreement shall be resolved by negotiation or if not able to be negotiated to be referred to Arbitration in accordance with the Arbitration Act 1908.

8. RESERVATIONS for the use of the building is to be made with the Secretary of the Golf Club and will be accepted on a first come first served basis.



Signed:


President

Kingston Community Centre

Dated:

9/6/83




President

Kingston Golf Club

Dated:

8/6/83

QLDC – BREAK CLAUSE OPTIONS

1. Lessor Termination Right

1.1 **Termination Notice:** If the Lessor requires possession of the Premises for:

1.1.1 the provision of core infrastructure services (being drinking water supply, waste water collection and treatment, stormwater management and discharge, roading and footpaths); and/or

1.1.2 the development of a significant community asset,

then the Lessor may terminate this Lease on not less than [] months' prior written notice to the Lessee (**Termination Notice**). A Termination Notice may only be served on the Lessee [] years after the Commencement Date] *[Note: To decide whether or not Council can only terminate after a certain number of years or whether this right should be exercisable at any time].*

1.2 **Surrender of Lease:** On the expiry of the period specified in the Termination Notice the Lessee will be deemed to have surrendered the estate and interest of the Lessee in this Lease and the term will expire. The Lessee will yield up vacant possession of the Premises and [all provisions of the Lease applicable on expiry of the term will apply] / [the Lessee shall be required to leave the Premises in a clean and tidy condition but shall not be required to comply with its reinstatement and make good obligations under the Lease] *[Note: To decide whether the Lessee is required to comply with its reinstatement obligations on the termination date]*

1.3 **Compensation:** *Elect one of the following options:*

1.4 **No compensation:** The Lessee may not recover from the Lessor any damages or compensation of any kind, or obtain any order, injunction or other remedy against the Lessor as a consequence of receiving the Termination Notice or the operation of this clause.

OR

1.5 **Compensation:** On the date that the Lessee yield up vacant possession of the Premises [and complies with its reinstatement obligations] in accordance with clause 1.2 above the Lessor will pay to the Lessee an amount (plus GST) calculated in accordance with the following formula:

$$A - \frac{(A \times B)}{C}$$

Where:

A = [the cost of the Lessee's improvements installed or to be installed at the Premises (as certified by a quantity surveyor)] / [the value of the Lessee's improvements installed at the Premises (as certified by a registered valuer)] or \$[] *[Note: Value of improvements can either be assessed or a value agreed up front between the parties]*

B = the number of days from and including the Commencement Date, or (if applicable) the earliest date on which a Termination Notice may be served, to and including the expiry of the notice period under the Termination Notice

C = the number of days from and including the Commencement Date or, (if applicable) the earliest date on which a Termination Notice may be served, to and including

[insert the date the Lease would have expired if the Termination Notice had not been served]

PROVIDED that the Lessee shall not be entitled to any compensation pursuant to this clause if a Termination Notice is served after [insert date]. *[Note: To decide whether or not compensation should cease to be payable after a certain date]*

The Lessee will not otherwise recover from the Lessor any damages or compensation of any kind, or obtain any order, injunction or other remedy against the Lessor as a consequence of receiving a Termination Notice or the operation of this clause.