

**QLDC Council
14 December 2017**

Report for Agenda Item: 12

Department: Community Services

New lease over part of Section 8 Block XV Town of Queenstown to The Empanada Kitchen Limited

Purpose

To consider a new lease to The Empanada Kitchen Limited for approximately 3.816 square metres, being part of the Council building located on section 8 block XV, Town of Queenstown.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Approve** a new lease under section 54(1)(d) of the Reserves Act for The Empanada Kitchen Limited for approximately 3.816 square metres of the Council building, part of which is located on section 8 Block XV Town of Queenstown subject to the following conditions:

Term: Two years

Rent: \$16,000 plus GST per annum plus OPEX

Reviews: At renewal (to market, or CPI at Council's discretion)

Renewal One of two years

Commencement: Upon Signing

Use: Sale of pre-prepared takeaway foods and drinks

Insurance: \$2 million public liability insurance cover

Assignments: With the approval of Council

Special conditions:

- a. At expiry, Lessee to remove chattels from the premises but all fixtures and fittings affixed to the premises shall revert to the Lessor without any compensation.
 - b. Lessor to maintain the building in which the premises are located.
3. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of a lease to The Empanada Kitchen Limited for 3.816 square meters of the Council building located on section 8, block XV, Town of Queenstown.
 4. **Delegate** signing authority to the General Manager, Community Services.

Prepared by:



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13/11/2017

Reviewed by:



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13/11/2017

Reviewed and Authorised
by:



Thunes Cloete
General Manager,
Community Services

Background

1. The Empanada Kitchen Limited was granted a lease over the kiosk located in the public toilet block on Earnslaw Park from 1 September 2013 for two years, following a public tender of the space. The lease included one right of renewal for a further two years, which was exercised and expired 31 August 2017. At the time of notification of the proposed lease under the Reserves Act in 2013, Council received submissions both for and against issuing the lease, and was required to hold a reserve hearing to evaluate the submissions. The lease was ultimately approved by Council and the lease agreement commenced.
2. The Empanada Kitchen Limited now seeks a new lease over the same site to continue to operate as the current lease has expired. The lease area is approximately 3.816 square metres, part of the Council building, part of which is located on section 8 Block XV Town of Queenstown (the public toilet block). The land is recreation reserve subject to the Reserves Act 1977.
3. The Lessee prepares the empanadas elsewhere in a commercial kitchen and brings them to the site where they store them in a pie warmer for sale directly to the public as a takeaway food item. They also sell non-alcoholic drinks. While there was some opposition to the lease when it was notified in 2013, we have no recorded complaints since the Lessee commenced operation.
4. The process to grant a lease required notification under section 119 of the Reserves Act. The intention to grant a new lease was notified on 7 September 2017, with submissions sought.
5. In the interim, the Lessee has been operating with a temporary reserve permit.

Comment

6. The activity has operated over the past 4 years with no complaints received. Rent was \$12,000 per annum plus GST but a recent market assessment has resulted in the new rent agreed at \$16,000 if the new lease is granted.
7. The Queenstown Bay Foreshore Reserves Management Plan covers the reserves in this area and contemplates "commercial and community activities compatible with the passive recreation use of the reserves". It specifically allows consideration of temporary commercial activities. In this case, the activity is not

temporary, but is low impact because it is within an existing building and will not occupy any undeveloped land within the reserve. As the activity is not contemplated by the Management Plan, it was publicly notified.

8. Terms and conditions reflect the previous lease including one renewal of two years by agreement of both parties. Suggested terms are:

Term:	Two years
Rent:	\$16,000 plus GST per annum plus OPEX
Reviews:	At renewal (to market, or CPI at Council's discretion)
Renewal	One of two years
Commencement:	Upon Signing
Use:	Sale of pre-prepared takeaway foods and drinks
Insurance:	\$2 million public liability insurance cover
Assignments:	With the approval of Council
Special conditions:	
	a. At expiry, Lessee to remove chattels form the premises but all fixtures and fittings affixed to the premises shall revert to the Lessor without any compensation.
	b. Lessor to maintain the building in which the premises are located.

Options

9. Option 1 Approve a new lease to The Empanada Kitchen Limited over approximately 3.816 square metres part of the Council building, part of which is located on section 8 Block XV Town of Queenstown subject to the terms and conditions listed above.

Advantages:

- 10. It makes use of an otherwise empty portion of an existing reserve building.
- 11. It will enable users of the reserve to be able to purchase a unique food which may be consumed on the reserve.
- 12. It allows for an element of oversight of the reserve, that may be beneficial to users of it.
- 13. It provides an element of vibrancy to the town centre.
- 14. It will generate income to Council of \$16,000 per annum.

Disadvantages:

- 15. Maintains the existing commercial activity on the reserve that may be more appropriate in another location.

16. Option 2 Approve a new lease to The Empanada Kitchen Limited over approximately 3.816 square metres part of the Council building, part of which is located on section 8 Block XV Town of Queenstown subject to potentially different terms and conditions to revise the activity and controls.

Advantages:

17. As above.

Disadvantages:

18. As above.

19. Option 3 Not approve a new lease to The Empanada Kitchen Limited and for the activity to cease.

Advantages:

20. Would not compete with other food outlets in the town centre.

Disadvantages:

21. It would severely impact the business of the lessee.

22. It would not make use of an otherwise empty portion of an existing reserve building.

23. It would not provide an element of oversight of the reserve, that may be beneficial to users of it.

24. It would not enable users of the reserve to be able to purchase a unique food which may be consumed on the reserve.

25. Potentially reduces the vibrancy of the town centre.

26. Council would not receive income of \$16,000 per annum.

27. Council's position may be viewed as inconsistent with the notified intention to grant the lease.

28. This report recommends **Option 1** for addressing the matter because it will enable an existing well run commercial business to continue to operate from Earnslaw Park and will also provide income to the Council.

Significance and Engagement

29. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it involves use of a reserve that is a strategic Council asset.

Risk

30. This matter relates to operation risk OR011A Decision Making. The risk is classed as moderate.

Financial Implications

31. The lease will generate rent of \$16,000 per annum plus GST if it is granted.
32. The Lessee will pay all costs incurred in granting the lease.

Council Policies, Strategies and Bylaws

33. The following Council policies, strategies and bylaws were considered:
- Significance and Engagement Policy 2014.
 - Community Facility Funding Policy update 2012
 - Queenstown Bay Foreshore Reserves Management Plan 2016
34. The recommended option is consistent with the principles set out in the named policy/policies. It should be noted that whilst this trade is not contemplated in the Queenstown Bay Reserves Management Plan, commercial trade is common on the reserve and the lessee's business operations are in line with other existing table and chair licences granted in the vicinity.
35. This matter is not included in the 10-Year Plan/Annual Plan and does not have any impact on it.

Local Government Act 2002 Purpose Provisions

36. 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 enabling a low impact commercial activity to operate in a Council building;
 - 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

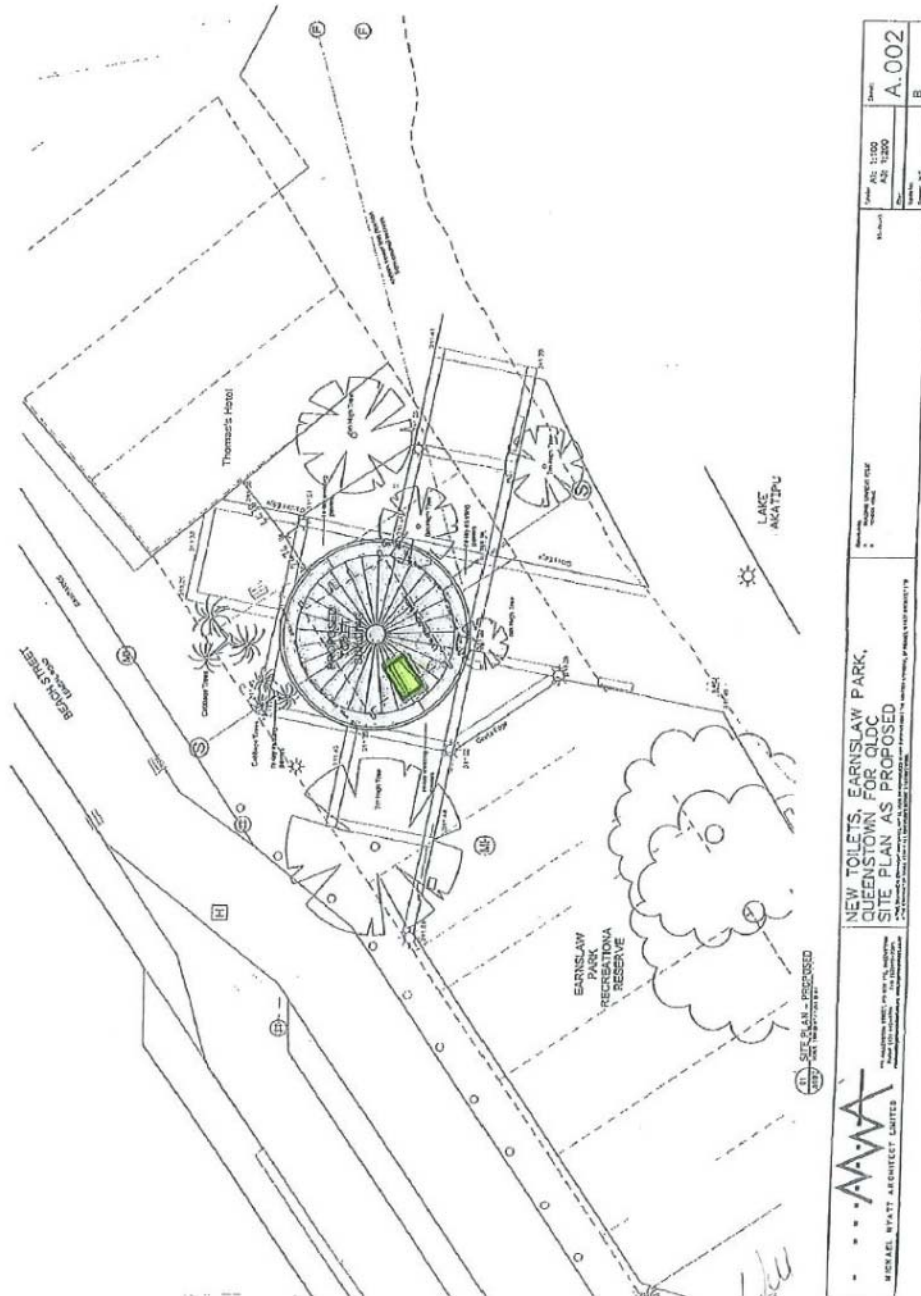
37. The persons who are affected by or interested in this matter are residents of and visitors to the Queenstown Lakes District. The intention to grant a new lease was publicly notified with no submissions being received.

Attachments

- A Building plan showing lease area
- B Aerial plan showing lease location

ATTACHMENT A: Building plan showing lease area

Attachment A: Building plan showing lease area



ATTACHMENT B: Aerial plan showing lease location

Attachment B: Empanada Lease Location

