

# QLDC Council 6 September 2018

Report for Agenda Item: 9

**Department: Community Services** 

Licence to Occupy Bendemeer Bay Recreation Reserve, for the Gree Family Trust at 57 Arrowtown-Lake Hayes Road

# **Purpose**

To consider granting a Licence to Occupy to the owners of 57 Arrowtown-Lake Hayes Road, The Gree Family Trust, over adjacent Bendemeer Bay Recreation Reserve, to enable them to maintain adequate sightlines for their proposed vehicle crossing.

#### Recommendation

#### That Council:

1. **Note** the contents of this report;

 Grant a new licence, in accordance with Section 54(2) of the Reserves Act, to the owners of 57 Arrowtown-Lake Hayes Road, being Lot 1 DP 7630, subject to the following conditions:

Commencement TBC

Term Ongoing unless otherwise terminated.

Rent \$1.00 if demanded.

Use Maintain adequate sightlines

Assignment and Sublease With Licensor's prior written approval

Insurance \$2 million public liability insurance cover

Termination 1 year for core infrastructure purposes

Special The licence is granted to maintain the

sightlines for Lot 1 DP 7630 only and does not permit the licensee to exclusively use the

licence area.

Prior to any grant of 224(c) to enable subdivision of Lot 1 DP 7630, the existing access through Section 87 BLK IX Shotover SD shall be decommissioned, landscaped in established grass, and the boundary fenced, all at the expense of the applicant, and to the written satisfaction of the Parks and Reserves

Planning Manager.

The applicant consents to the Licence being encumbered against the title of Lot 1 DP 7630 to ensure the recommended terms and conditions continue in perpetuity for all future owners of the property.

If Lot 1 DP 7630 is subdivided, the subdivision shall include a volunteered condition that a Maintenance Company be formed with all new lot owners to be party to that Company and be responsible for meeting the terms and conditions of the licence.

- 3. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of a new licence to The Gree Family Trust over the reserve.
- 4. **Delegate** signing authority to the General Manager for Community Services.

Prepared by:

Reviewed and Authorised by:

Blake Hoger Property Advisor

APL Property

Limited

31/07/2018

Thunes Cloete General Manager Community Services

23/08/2018

#### Background

1 The Gree Family Trust (the applicants) own the property at 57 Arrowtown-Lake Hayes Road, legally described as Lot 1 DP 7630 BLK IX Shotover SD.

Senior Planner: Parks

**Aaron Burt** 

& Reserves

14/08/2018

- 2 Adjacent to the property is the Bendemeer Bay Recreation Reserve, legally described as Section 87 BLK IX Shotover SD (the Reserve). The applicants' property and the reserve are illustrated on the location and site plans included as Attachment A.
- 3 The applicants have historically relied upon an informal access to their property over the Reserve. In 2015 they sought to formalise the access and were granted approval in principle, to progress with the establishment of a Right of Way ['ROW'] Easement over the land.
- 4 At the time the ROW was approved, the Property Subcommittee imposed terms which would require the applicants to share with the Council any value derived should the property be subdivided. The applicants subsequently chose not to register the ROW Easement.

- 5 The applicants wish to establish access directly from the road with a vehicle crossing from Arrowtown-Lake Hayes Road.
- 6 The proposed vehicle crossing is on a bend of the Arrowtown-Lake Hayes Road and it has been assessed that sightlines across the Reserve will need to be maintained for safety purposes. The sightline is marked as area 'C' on the Subdivision and Sight Line Plan included as Attachment B.
- 7 Maintaining the sightlines will require that no structures are installed or trees planted within the area. The existing vegetation will also need to be maintained.
- 8 A Licence to Occupy the reserve to manage and maintain the area has been sought by the applicants so that they may seek approval for their vehicle crossing.

#### Comment

- 9 It is proposed that a licence be entered into with the applicants which will prevent both structures and plants being positioned in the sightline area and, also, place an obligation on the licensee to maintain the area to ensure it doesn't become overgrown. The licence is not intended to allow the licensee to use the land exclusively or do anything other than maintain it.
- 10 The applicants consider a licence to be desirable over a ROW Easement for the sightline area as, in accordance with QLDC's Easement Policy, an Easement Land Impact Fee would otherwise be applicable. A licence is deemed an appropriate instrument for formalising this arrangement.
- 11 Given that the applicant has existing access over the reserve which will be lost and that they will now be obliged to maintain an area of reserve, it is deemed that they gain no significant benefit from the proposal. It is therefore considered appropriate that only a peppercorn fee be charged for the licence.
- 12 Should the licence be approved, it would be appropriate that the existing access across the reserve, albeit informal, be decommissioned by the applicant and a fence installed along the boundary. It is a recommendation of this report that the decommissioned access is landscaped in grass at the applicants' expense. This is so that there will be no cost to Council to remedy the applicants' previous use of the reserve to enable vehicle access to their property.
- 13 There is a potential that Council will require the reserve for another purpose in the future. As the continuation of this licence will be necessary to maintain private access to the property, it is recommended that a termination clause be included within the licence enabling Council to terminate for core infrastructure purposes only.
- 14 An example of a core infrastructure project is future road widening however in such a circumstance it is expected that the road widening would actually improve the sightlines for the private road crossing and in such an event, there may not be a need for a licence.
- 15 It is also recommended that the licence be encumbered upon the title of the applicants' property to ensure the terms and conditions of the licence continue in perpetuity. Given the intention to subdivide, it is further recommended that a

- Management Company of all future owners who will benefit from the licence be formed to take responsibility for the licence.
- 16 As the licence is proposed on a recreation reserve and is not contemplated by the Arrowtown and Lake Hayes Reserve Management Plan, the Council's intention to grant a licence must be publicly notified in accordance with the Reserves Act. Such intention was notified with submissions due 20 July 2018 however no submissions either in favour or against the proposal were received.

# **Options**

17 Option 1 To grant a new licence to The Gree Family Trust over Section 87 BLK IX Shotover SD subject to the terms and conditions listed above

# Advantages:

- 18 The applicants will be able to form a private accessway to their property.
- 19 The applicants will be responsible for maintaining an area of reserve at no cost to the public.
- 20 The applicants will be able to proceed with their subdivision application should they choose to do so.
- 21 An area of reserve will be unencumbered by private vehicle use.

#### Disadvantages:

- 22 There may be a cost to Council in monitoring the terms and conditions of the licence.
- 23 Council may be prevented from using the reserve for another purpose in future.
- 24 Option 2 To decline granting a new licence to The Gree Family Trust over Section 87 BLK IX Shotover SD

#### Advantages:

- 25 There will be no costs involved in monitoring a licence.
- 26 Council won't be prevented from utilising the reserve in future as they see fit.

#### Disadvantages:

- 27 Alternative means of securing a private access for the applicants currently, and for their potential subdivision, will need to be considered which will likely involve an ongoing private use of the reserve.
- 28 The reserve won't be maintained by the applicant.
- 29 This report recommends **Option 1** for addressing the matter as it will enable the applicants to establish an accessway to their property directly from the road rather than over recreation reserve with no significant impact to the public.

# Significance and Engagement

30 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy as although it involves a reserve, the impact of this decision is minor on the general public.

#### Risk

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

# **Financial Implications**

32 All associated costs including legal, design, and installation of the crossing will be met entirely by the applicant. Due to the low impact nature of the licence, no ongoing licence fee is recommended.

## **Council Policies, Strategies and Bylaws**

- 33 The following Council policies, strategies and bylaws were considered:
  - Significance and Engagement Policy
  - Arrowtown Lake Hayes Reserve Management Plan 2013
- 34 The recommended option is consistent with the principles set out in the named policies.

#### **Local Government Act 2002 Purpose Provisions**

- 35 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 providing a decision in a timely manner;
  - 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**

- 36 The persons who are affected by or interested in this matter are predominantly the users of the reserve and residents/ratepayers of the Queenstown Lakes District community.
- 37 The Council has provided a mechanism for community consultation through public notification of the intention to grant a licence. No submissions have been received.

#### **Attachments**

- A Location and Site Plan
- B Subdivision and Sight Line Plan



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# 57 Arrowtown - Lake Hayes Road Lot 1 DP 7630

Date: 14 January 2016 Created By: ER



# **SITE PLAN - Licence Area Not To Scale**



Attachment B: Subdivision and Sight Line Plan 163 SIGHTLINE 80m Existing access over reserve Sec 87 BLK IV Sight line Area over Recreation Reserve Shotover SD Recreation Reserve Existing access LOT I 2160m2 Sec 65 LOT 2 BLK IV 1050m2 Shotover SD Recreation 6.8 Reserve 47.1 PROPOSED MEMORANDUM OF EASEMENTS 33.6 Purpose Shown **Dominant Tenement Servient Tenement** LOT 2 LOT I DP 300162 Right of Way Lot 2 Hereon Lot 1 Hereon DP 300162 AREAS B & C - SIGHT LINE COVENANT AREA NOTE: ADDITIONAL SERVICE EASEMENTS MAY BE REQUIRED SUBJECT TO RESOURCE CONSENT SUBJECT TO FINAL LT SURVEY. EASEMENT AREAS 370m2 CLIENT REVIEW 16.10.16 Rev. : Date : Revision Details 01 12673 Clark Fortune McDonald & Associates K Dunlop C 7.4.17 Remove Lot 2, amend ROW **LOTS 1 & 2 BEING A PROPOSED SUBDIVISION OF** 1:250 @ A1 D : 25.5.17 : Amend ROW to Lot 3 309 Lower Shotover Road, P.O.Box 553 Queenstown 1:500 @ A3 Tel. (03)441-6044, Fax (03)442-1066, Email admin@cfma.co.nz E 13.7.17 Reduce ROW size **LOT 1 DP 7630** F 23.8.17 RELOCATE ACCESS Designed Shop 2, Otago House, 475 Moray Place, P.O. Box 5960 G 21.09.17 Sightlines added, reduction of covenant area Mt Nic 2000 & MSL | H Tel. (03)470-1582, Fax (03)470-1583, Email admin@cfma.co.nz H : 20.04.18 : Add additional sightline covenant area .12600\12673\acad\12673\_01\_Proposed Subdivision\_REVH.dwg Plotted: 20.04.2018