

QUEENSTOWN LAKES DISTRICT COUNCIL**FOR MEETING OF 31 OCTOBER 2008****REPORT FOR AGENDA ITEM: 9****SUBMITTED BY: Project Manager – Ken Gousmett****REPORT DATED: 20 October 2008****FRANKTON MARINA AND QUEENSTOWN MARINA DEVELOPMENT LTD:
EXTENSION OF TIME****PURPOSE**

To seek approval of a request for a further extension of time for the Memorandum of Understanding (MOU) between Council and Queenstown Marina Development Ltd (QMDL), by way of a variation.

BACKGROUND

Council entered into a Memorandum of Understanding with Queenstown Marina Development Ltd on 27 October 2006. The MOU sets out specific steps that QMDL are to complete within specified timetable. Details of the development proposal for the Frankton Marina Recreation Reserve are contained in the MOU which has been presented to Council previously. A copy of the MOU is available upon request.

QMDL has made several requests for extensions of time and all have been granted although not all for the time period requested. The current expiry date of the MOU is 27 October 2008. A further request for an extension of time has been received from QMDL.

The joint Otago Regional Council and Queenstown Lakes District Council land use decision was issued in late June 2008. The conditions are favourable to the applicant (QMDL) and they have not appealed any part of the decision. Three appeals have been lodged and QMDL are actively engaged with all three appellants to try to resolve the appeals. The appellants are Warrington family, the Boat Shed Preservation Group and Wensley Development. QMDL advise that they are close to reaching agreement with the Boat Shed Preservation Group and Wensley Development and that discussions with the Warrington family are continuing. QMDL also advise that there are two section 274 interested party notices in respect of the Wensley appeal. One is from Transit NZ who advise that this is intended as a 'watching brief'; QMDL did a deal with Transit prior to the Council hearing re: the intersection with Sugar Lane and Frankton Road. The Wensley appeal touches on access / intersection issues hence Transit's interest. The other is from Tulloch a party who has purchased one of the ground floor Wensley units. An aspect of the Wensley appeal is views of the lake vis-à-vis QMDL's plans for the area in front of the Wensley development. Both notices will be attended to in conjunction with the Wensley appeal.

LINZ has issued a draft lease for the lake bed and QMDL is currently negotiating some of the conditions with LINZ. Council has agreed to the lease of reserve land subject to the land use resource consent being issued.

Clause 2.4 of the MOU covers the grounds for an extension and states that "such extensions shall not exceed 12 months". Council's lawyer advises that to grant further time extensions a variation to the MOU is necessary. A draft variation is attached.

This has been circulated to QMDL and their lawyer has advised by email that "QMDL approves the variation". The variation nominates an expiry date of 27 February 2009. This is recommended as being a reasonable time to complete negotiations on the agreement to replace the MOU given the Christmas holiday period and that there is usually no Council meeting scheduled during January. The agreement to replace the MOU has been drafted and forwarded to QMDL for their review and comment.

ATTACHMENT

1. Draft variation to the Memorandum of Understanding.

SIGNIFICANCE OF DECISION

This is not a significant decision under Council's significance policy.

CONSULTATION – INTERESTED OR AFFECTED PERSONS

The only consultation on the requested extension of time has been with QMDL, as required by the MOU. However the development proposal covered by the Memorandum of Understanding has had extensive public and affected party consultation and has been through a notified land use consent process.

RELEVANT COUNCIL POLICIES

The following policy documents have been considered in the preparation of this report:

- The Council's "policy on significance"
- Memorandum of Understanding between the Council and Queenstown Marina Development Ltd.

DISCUSSION

It would be reasonable to approve the variation to the MOU which would extend the expiry date to 27 February 2009. To refuse to grant any extension of time may be viewed as being unreasonable.

OPTIONS

The options are:

- a. Approve the variation to the MOU.
- b. Approve the variation to the MOU but with a different expiry date.
- c. Refuse to grant the variation to the MOU.

FINANCIAL IMPACT

This decision will have no financial impact.

DELEGATIONS REGISTER REFERENCE

This decision will have no effect on delegations.

RECOMMENDATION

- 1. *That this report be received; and***
- 2. *That Council approves the Variation to the Memorandum of Understanding; the revised expiry date of the Memorandum of Understanding now being 27 February 2009.***

DATED

2008

QUEENSTOWN MARINA DEVELOPMENTS LIMITED

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

VARIATION OF MEMORANDUM OF UNDERSTANDING

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VARIATION OF MEMORANDUM OF UNDERSTANDING

DATED

2008

PARTIES:

- (1) **QUEENSTOWN MARINA DEVELOPMENTS LIMITED** at Christchurch
(hereinafter referred to as QMDL)
- (2) **QUEENSTOWN LAKES DISTRICT COUNCIL** at Queenstown (hereinafter
referred to as the Council)

BACKGROUND

- A. The parties are parties to a Memorandum of Understanding dated the 27th October 2006 (the MOU) and this Variation is a variation to the MOU.
- B. Clause 2.4 of the MOU prevents the Council from granting extensions to QMDL to fulfil certain of its obligations under the MOU beyond the 27th October 2008.
- C. The parties have agreed to extend the time period in the MOU during which the Council may grant those extensions to QMDL to enable the parties time to agree and execute a new agreement to replace the MOU.

AGREEMENT

1. The wording of the last sentence in the clause 2.4 of the MOU shall be amended so that the existing words

“then the Council may grant an extension for such period as the Council in its sole discretion, acting reasonably, deems reasonable and necessary in the circumstances, provided that such extensions shall not exceed 12 months”

shall be replaced by the following words

“then the Council may grant an extension for such period as the Council in its sole discretion, acting reasonably deems reasonable and necessary in the circumstances, provided that such extensions shall not be granted beyond the 27th February 2009 or such later date as the parties may agree in writing”

- 2. The parties confirm and acknowledge that subject only to the variation set out in clause 1 hereof, all other terms and conditions contained in the MOU shall continue to bind the parties.
- 3. The parties shall be responsible for their own legal costs in respect of the preparation and execution of this Variation.

SIGNED for and on behalf of)
QUEENSTOWN MARINA DEVELOPMENTS) Director
LIMITED)
in the presence of:)
Director/Authorised Signatory

.....
Signature

.....
Full Name

.....
Address

.....
Occupation

THE COMMON SEAL of the)
QUEENSTOWN-LAKES DISTRICT COUNCIL) Mayor
was hereunto affixed in the presence of:)
.....
Authorised Signatory

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness for each signature.