

**QLDC Council
17 December 2015**

Report for Agenda Item: 7

Department: Infrastructure and Property

Queenstown Trail Commercial Cycle Guiding Review and Relicensing

Purpose

The purpose of this report is to evaluate the success of the initial term provided for commercial cycle guiding on the Queenstown Trail (QT Trails), and to approve granting new licences for a further term of up to 7 years, subject to annual renewals.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Approve** granting up to 15 generic licences for commercial cycle guiding on the Queenstown Trail (identified in Schedules 1, 2 & 3, attached to this report):
3. **Approve** the following terms and conditions for each of the 15 licences as follows:

<i>Term:</i>	<i>One year</i>
<i>Renewal:</i>	<i>Six x one year renewals, with the prior agreement of both parties</i>
<i>Use:</i>	<i>Commercially guided biking tours</i>
<i>Assignments:</i>	<i>With the prior written approval of Council only</i>
<i>Fee:</i>	<i>\$500 per annum plus GST or 7.5% of gross revenue, whichever is the greater</i>
<i>Advertising:</i>	<i>Advertising, hoarding and other billboards not permitted</i>
<i>Merchandise:</i>	<i>Sale of merchandise on or about the tracks or trails not permitted</i>
<i>Insurance:</i>	<i>Public liability insurance of \$2 million</i>
<i>Operating hours:</i>	<i>Subject to resource consenting approvals, but not before daylight or after twilight hours</i>
<i>Commencement:</i>	<i>Upon execution of the licence (the applicant to pay all reasonable costs associated with the drafting of the licence).</i>

- Health & Safety:*
- i. Licensees to provide a Health & Safety plan audited and accredited by the Ministry of Business Innovation and Employment.*
 - ii. Licensees to confirm with Worksafe NZ whether their business needs certification under Health and Safety in Employment (Adventure Activities) Regulations 2011*

Special conditions:

- a) Max group size of 12 persons including 2 guides. Groups up to 6 require 1 guide. Group sizes 7 to 12 require 2 guides.*
 - b) Council to retain the ability to manage the maximum trips per day per operator. In the first year of the new approval period, this is to be set at 3 trips per day per operator.*
 - c) Council to review the licence at each renewal taking into account any relevant track strategies and other policies endorsed or approved by Council.*
 - d) Council to retain the absolute right to restrict tracks as conditions and track use dictate. Should tracks be removed from the licence, the Council will provide no less than one weeks' notice to the licensee unless a health and safety issue has been identified in which case the Council to have immediate ability to restrict trail use by licensees.*
 - e) Hours of operation on the Frankton Track between Park Street and the Frankton Marina, to be further restricted to between 10am and 4pm daily.*
 - f) Licensees to be restricted to formed trail/track use only. Licensees to ensure that where there is lawn or man-made grass bordering a cycle trail that cyclists must stay on the trail or avoid damage to the lawn/grass.*
4. **Agree** to exercise Ministerial prior consent (under delegation from the Minister of Conservation) to the granting of up to 15 commercial bike guiding licences over the reserves listed in the schedules above:
5. **Agree** to delegate approval of final terms and conditions and signing authority to the GM Infrastructure.

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30/11/2015

Reviewed and Authorised by:



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2/12/2015

Background

- 1 Council administers four licences for commercial cycle tour operators on the Queenstown Trail network (Fat Tyre Adventures, Arrowtown Bike Hire, Vertigo Heli Adventures and Around the Basin). These licences are in accordance with Resource Consent RM120285 which permits up to 15 trips per day with a maximum 15 people.
- 2 The licences cover a mixture of recreation, local purpose reserve and fee simple land as set out in **Attachment A**.
- 3 Licensing commenced during 2012, with the following resolution being passed by the Property Subcommittee on 13 September 2012:

On the motion of Councillors Overton and Mann it was resolved

1. **That the Property Subcommittee receives this report.**
2. **That the Property Subcommittee approve the terms of the draft licence as per the licence document within the report and subject to the following conditions;**
 - a) **Term: Commencement upon issue of licence; expiry 30 September 2015.**
 - b) **Licence Fee: \$1,500.00 + GST per annum management fee and \$10.00 + GST per head.**
 - c) **Use: Commercial Guided Cycle Trips.**
 - d) **Assignment: No assignment.**
 - e) **Safety: Licensee to hold "Outdoorsmark" within two years of being issued a licence.**
 - f) **Compliance: Licensee to show to Council prior to issue of Licence that all safety & standards comply with the Resource Consent.**
 - g) **Insurance: Licensee to hold public liability insurance of minimum \$1,000,000.00.**
 - h) **Removal of references to Section 61 of the Reserves Act 1977 (to be dealt with by full Council on 25 September 2012).**
3. **That the Property Subcommittee restrict the amount of licences issued to ten for the first 12 months; and**
4. **That the Property Subcommittee approve one trip per day per operator licence.**
5. **That this report and resolution be made available to the public as part of the next QLDC Finance and Corporate Committee agenda.**

- 4 The matter was brought back to the Property Subcommittee on 14 February 2013 to revise some of the terms of the licence, aimed at encouraging a greater up take of the licence. This later resolution is as follows:

On the motion of Mayor van Uden and Councillor Mann it was resolved

1. **That the Property Subcommittee approve the terms of the draft licence with the following amendments:**

- a) **Licence Fee: Be revised to \$500.00 + GST per annum management fee or 7.5% of gross revenue, whichever is the greater.**

- b) **Safety: Reference to "Licensee to hold Outdoorsmark within two years of being issued a licence" is removed.**

- c) **Safety: That the requirement for health and safety plans to be audited by businesses accredited by the MBIE be included.**

- d) **Operating hours: That 'hours of operation' are specified as within daylight and twilight hours, except for the Frankton track between the Queenstown Gardens and Kawarau Falls Bridge which is restricted between 4-6pm on weekdays.**

2. **That this report and resolution be made available to the public as part of the next QLDC Finance and Corporate Committee agenda.**

- 5 The Property Subcommittee approved notification of the new trail licences on 22 October 2015.

On the motion of Mayor van Uden and Councillor Stammers-Smith it was resolved that the Property Subcommittee:

1. **Note the contents of this report;**
2. **Approve notification of the intention to grant up to 15 generic licences for commercial cycle guiding on the Queenstown Trail (schedule of land included below).**

Comment

- 6 Council currently has four operators licensed on the QT trails under this scheme, each paying a minimum of \$500+GST per annum. In the last financial year, total income across the four operators was \$3,198+GST. The income makes a small contribution to the overall Council spending on track and trail maintenance in the Queenstown area, which is approximately \$115,000 annually.

- 7 The trial licensing scheme has had a lower up-take than what was anticipated in 2012, however Council has approximately half a dozen other interested parties considering taking out a licence at some point in the future.
- 8 During the trial period, one complaint was received relating to an incident where there was a large 'Around the Basin' bike tour group blocking part of a trail and a lack of control of group members being the main issue. One way to address such an issue reoccurring is to limit the approval to twelve (12) persons per group with two (2) guides for groups bigger than six (6) persons (guides included). This would combine with another mitigation method proposed which allows the maximum trips per trail per operator of three (3) per day, essentially restricting the group sizes but increasing the trips permissible per day. Both of these clauses are in accordance with terms approved over other trails by Council to Cycle Tours New Zealand recently.
- 9 Since the licences were initially contemplated, health and safety requirements have undergone significant reform with many changes becoming operative in 2016. Guiding companies operating on difficult trails now are required to become certified operators under the Health and Safety in Employment (Adventure Activities) Regulations 2011. Previously, guidance was that licensees only needed to have health and safety plans audited by accredited suppliers such as Outdoorsmark. A condition that operators must satisfy this requirement with Worksafe New Zealand, if required, has been incorporated into the new recommended special conditions of the proposed licences.
- 10 Currently licensees are charged \$500 p.a. or 7.5 % of gross revenue, whichever figure is greater. It is suggested that this fee remains under the new term, as some of the operators seldom use the licence as it is and Council can still benefit from increased use under the 7.5% of gross revenue clause.
- 11 The current resource consent RM120285 granted to Council, provides consent for the guiding activity, and has a final expiry of 22 August 2022.
- 12 The existing resource consent has some seven years left to run. It is suggested that because the intention of the generic licences was to facilitate commercial operators on the trails, that the consent should now be updated to include additional trails which now form part of the network. Recently vested reserves that currently are not covered by the resource consent are predominately in the Whitechapel area near Arrowtown.
- 13 Updating the resource consent is a separate process to what is being requested by this paper, and will be explored further with Council officers, subject to available funding.
- 14 The hours of operation are to remain as outlined in RM120285 as being during daylight hours. In line with other commercial licences issued by Council, operations on the Frankton Track will be restricted year round to between the hours of 10am to 4pm only, allowing unencumbered access to commuters on the track.
- 15 Following notification of the proposed licences on 28 October 2015, two neutral submissions were received. The first submitter proposed that it would be best to

formally restrict the commercial users to the formed tracks and trails, instead of allowing use across the whole of each reserve. The second submitter proposed that due to grass damage mainly on Queenstown Town Centre reserves that commercial users should be required to stay on the proposed formed tracks and trails. A new special condition has been agreed between both submitters as follows:

f) Licensees to be restricted to formed trail/track use only. Licensees to ensure that where there is lawn or man-made grass bordering a cycle trail that cyclists must stay on the trail or avoid damage to the lawn/grass.

Options

16 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:

17 Option 1 To approve granting up to 15 new licences for a term of up to 7 years, subject to annual renewals.

Advantages:

18 Will continue to allow commercial operators to make use of the Queenstown Trail network for low impact cycle guiding.

19 Supports tourism in the district and its return to the local economy.

20 Will derive a modest income to Council from the licences.

Disadvantages:

21 Continues a commercial activity on reserve and non-reserve land that might otherwise not be there.

22 No other disadvantages noted.

23 Option 2 To approve granting up to 15 new licences for a term of up to 7 years, subject to different terms and conditions.

Advantages:

24 There may be a benefit to Council or the operator if other terms and conditions are varied.

Disadvantages:

25 Licensees may not agree to different terms and conditions.

26 Option 3 To decline granting new licences for commercial cycle guiding on the Queenstown Trail network.

Advantages:

- 27 Would remove an aspect of commercial activity on reserve and non-reserve land that might otherwise be there.
- 28 No other advantages noted.

Disadvantages:

- 29 Would stop commercial operators making use of the Queenstown Trail network for low impact cycle guiding.
- 30 Would not allow Council to derive a modest income from the licence.
- 31 Would not support tourism in the district and its return to the local economy.
- 32 This report recommends **Option 1** for addressing the matter.

Significance and Engagement

- 33 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it involves some Council significant assets important to the Queenstown Lakes District community. The future commercial use of the Queenstown Trail reserves and other freehold land may be of interest to the Queenstown Lakes District Community.

Risk

- 34 This matter related to the operational risk OR027 levels of service, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk as it requires a decision from Council for a commercial activity.
- 35 Allowing commercial guiding on Council land presents a Health & Safety (H&S) risk, with size of the issue proportional to the experience of the guides, quality of rider and difficulty of trail. This can be mitigated by ensuring that every operator provides up to date operating H&S plans and that they carry public liability insurance at all times. These methods are currently utilised with existing guiding licences and will form part of the requirements under a new licence.
- 36 Option 1 recommended above mitigates the OR27 risk by providing the applicant with a decision in a timely manner.

Financial Implications

- 37 Council is set to receive minimum aggregate income per annum of \$2,000+GST, assuming current licensees continue with their activity.

Council Policies, Strategies and Bylaws

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

- Arrowtown-Lake Hayes Reserve Management Plan 2013. Conforms to the policy relating to low impact commercial activities specifically envisaging guiding (11.1).
- Sunshine Bay to Kelvin Heights Reserve Management Plan 1991. Conforms to the policy relating to low impact commercial activities (G26&27).
- Community Facility Funding Policy 2011. Conforms to policy setting rent at 7.5% of gross revenue.
- Significance and engagement policy.

39 The recommended option is consistent with the principles set out in the named policies.

40 This matter is included in the 10-Year Plan/Annual Plan

- Administration associated with overseeing this approval will be covered in existing property budget provisions.

Local Government Act 2002 Purpose Provisions

41 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 income to Council and a decision in a timely manner;
- 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

42 The persons who are affected by or interested in this matter are predominately the users of the Queenstown Trail network and nearby residents. Council has liaised with the Queenstown Trails Trust regarding terms and conditions of the licence terms and they are happy with the amendments suggested in this paper. Council has also publicly notified the reserve licences with the feedback received incorporated to the proposed new licence terms conditions.

Attachments

Schedules of land:

- 1 – Reserve Land
- 2 – Local Purpose Land
- 3 – Fee Simple Land

A Queenstown Trail Commercial Cycle Guiding Review and Relicensing – Maps showing areas of operation

SCHEDULE 1 – RESERVE LAND

Legal description	Certificate of Title	Reserve classification
Section 6, Block LI, Town of Queenstown	46575	Recreation Reserve
Section 1 Block LII Town of Queenstown	OT18A/765	Recreation Reserve
Section 7 Block LI Town of Queenstown	OT18A/765	Recreation Reserve
Part Section 4 Block LI Town of Queenstown	OT18A/765	Recreation Reserve
Part Section 5 Block LI Town of Queenstown	OT18A/765	Recreation Reserve
Sec 50, Block XXI, Shotover SD	583561	Recreation Reserve
Sec 1, SO 325746	149849	Recreation Reserve
Sec 9, Block XXXI, Town of Frankton	106447	Recreation Reserve
Section 39 Block XXXI Town of Frankton	544615	Recreation Reserve
Section 37 Block XXXI Town of Frankton	544615	Recreation Reserve
Section 44 Block XXXI Town of Frankton	Nil. Shown on SO 16443	Recreation Reserve
Section 27 Block XVIII Town of Frankton	Nil. Shown on SO 16443	Recreation Reserve
Section 22 Block I Coneburn SD	Nil. Shown on SO 16443	Recreation Reserve
Section 21 Block I Coneburn SD	Nil. Shown on SO 16443	Recreation Reserve

Legal description	Certificate of Title	Reserve classification
Pt Sec 29, Block I, Coneburn SD	259427 (Leasehold Title) 657995 (Head Title)	Recreation Reserve
Lot 70 DP 9249	95114	Recreation Reserve
Sec 29, Block XVIII, Town of Frankton	495950	Recreation Reserve
Sec 1-3 SO 409393	455331	Recreation Reserve
Sec 158-159 Block III Shotover SD	512574	Recreation Reserve
Lot 321 DP 379403	574161	Recreation Reserve
Pt Sec 25, Block I Coneburn SD	OT8C/789	Recreation Reserve
Pt Sec 3, Block I, Coneburn SD	SO 3766	Recreation Reserve
Pt Lot 69 DP 9249	95114	Recreation Reserve
Lots 4 & 5 DP 15096	464206	Recreation Reserve
Sections 49-50, Block IX, Sections 65, 68 & 87 Block IX Shotover SD	534518	Recreation Reserve
Pt Sec 131, Block III, Shotover SD	Nil	Recreation Reserve
Lot 3, DP 15096	129117	Recreation Reserve
Pt Sec 2, Block XXV, Town of Arrowtown	Nil. Shown on SO 18158	Recreation Reserve
Sec 3, Block XXV, Town of Arrowtown	Nil. Shown on SO 19928	Recreation Reserve
Sec 15, Block XXIV, Town of Arrowtown	460935	Recreation Reserve
Pt Sec 11, Block XXIV Town of Arrowtown	OT9C/271	Recreation Reserve

Legal description	Certificate of Title	Reserve classification
Pt Sec 20, Block XXXIV, Town of Arrowtown	SO 16390 (Imp Plan and Stat Action)	Recreation Reserve
Section 21 Block XXXVI, Town of Arrowtown	Nil. Shown on SO 16390	Recreation Reserve
Section 32 Block X Shotover SD	680602	Recreation Reserve
Section 26 Block X Shotover SD	680602	Recreation Reserve
Section 25 Block X Shotover SD	680602	Recreation Reserve
Section 114 Block VIII Shotover SD	680602	Recreation Reserve
Section 102 Block VIII Shotover SD	680602	Recreation Reserve
Lot 701 DP 24131	OT16A/258	Recreation Reserve
Lot 603 DP 24569	OT16C/422	Recreation Reserve
Lot 604 DP 24571	OT17A/820	Recreation Reserve
Lot 605 DP 25645	OT17C/1185	Recreation Reserve
Lot 706 DP 24399	OT16B/1044	Recreation Reserve

SCHEDULE 2 – LOCAL PURPOSE LAND

Legal description	Certificate of Title	Land classification
Sec 1 SO 410336	463142	Esplanade Reserve
Sec 2 SO 410336	463143	Esplanade Reserve
Lot 3 DP 300002	1032	Local Purpose Reserve (Esplanade)
Sec 49 Block XXI Shotover SD	647859	Local Purpose (Marina & Accessway) Reserve
Sec 60 Block XXI Shotover SD	2937	Local Purpose (Marina & Accessway) Reserve
Sec 52 Block XXI Shotover SD	OT7B/844	Local Purpose (Marina & Accessway) Reserve
Lot 19 DP 20484	Nil. Shown on DP 20484	Local Purpose Reserve (Recreation Reserve)
Sec 2 SO 21582	OT13A/645	Local Purpose (Marina & Accessway) Reserve
Lot 3 DP 421841	483926	Local Purpose Reserve
Lot 1 DP 447906	566246	Local Purpose Reserve (Esplanade)
Lot 2 DP 447906	566247	Local Purpose Reserve (Esplanade)
Lot 19 DP 20484	Nil. Shown on DP 20484	Local Purpose Reserve (Recreation Reserve)

SCHEDULE 3 – FEE SIMPLE LAND

Legal description	Certificate of Title	Land classification
Lot 3 DP 422388	507467	Fee Simple
Lot 4 DP 421841	483927	Fee Simple
Section 152 Block I Shotover SD	507466	Fee Simple (Sewage Treatment)
Section 144 Block I Shotover SD	507466	Fee Simple (Sewage Treatment)
Lot 2 DP 392200	369678	Fee Simple
Lot 2 DP 422388	507466	Fee Simple (Sewage Treatment)