

QLDC Council  
29 October 2015

Report for Agenda Item: 1

Department: CEO Office

**Memorandum of Understanding between the Queenstown Lakes District Council and the Queenstown Lakes Community Housing Trust**

**Purpose**

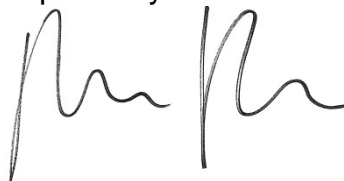
The purpose of this report is to clarify the respective roles of the Council and the Queenstown Lakes Community Housing Trust (the Trust) by agreeing to a Memorandum of Understanding (Attachment A) between both parties.

**Recommendation**

That Council:

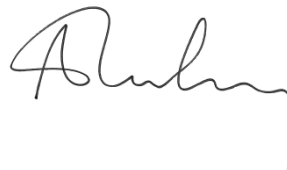
- a. **Notes** the contents of the report;
- b. **Agrees** to the Memorandum of Understanding between the Council and the Trust.

Prepared by:



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Corporate Services  
16/10/2015

Reviewed and Authorised by:



Adam Feeley  
Chief Executive

16/10/2015

**Background**

- 1 The Council adopted the HOPE Strategy in 2005 as an early adopter of a goal to deliver affordable housing to the local community. One of the recommendations of the strategy was to establish a housing trust to implement the objectives of the strategy. The Trust was established to deliver affordable housing to the communities of the Queenstown Lakes District.
- 2 The Trust is advancing its delivery plans but relies on Council for: operational funding; to act as guarantor where necessary; and to support the utilisation of Council-owned land where appropriate (for example land transfers).
- 3 The proposed MOU is simply a prudent way to formalise an existing arrangement.

### ***Options***

#### 4 Option 1: Do nothing

Advantages:

- None

Disadvantages:

- This would negate the affordable housing objectives of the HOPE Strategy 2005.

#### 5 Option 2: Agree to the MOU

Advantages:

- This would fulfil the affordable housing objectives of the HOPE Strategy 2005.
- Enable the Trust to meet delivery objectives and offer partners that the Trust is a community housing delivery agent.
- Offer an assurance to the Trust of Council's commitment to affordable housing in the district.

Disadvantages:

- None the funding is already budgeted in the 10 Year Plan

#### 6 Option 2 is recommended.

### ***Significance and Engagement***

7 This matter (agreeing to an MOU) is of low significance, as determined by reference to the Council's Significance and Engagement Policy.

### ***Risk***

8 This matter does not have significant risk. It relates to SR1 'Current and future development needs of the community (including environmental protection)', as documented in the Council's risk register.

9 The recommended option considered above will assist to mitigate the risk by enabling the Housing Our People in our Environment (HOPE) Strategy 2005.

### **Financial Implications**

10 None as a grant of \$50,000 is currently budgeted in the 10 Year Plan. The MOU seeks to grant the Trust up to \$50,000 per annum for the next five years or until other agreements have been negotiated between parties.

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

- HOPE Strategy 2005

- QLDC 10 Year Plan 2014/24

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

11 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;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies.

### **Consultation: Community Views and Preferences**

12 This decision requires no further consultation (10 Year Plan 2014/24).

### **Attachments**

A MOU

## Memorandum of Understanding

**Between:** Queenstown Lakes District Council (“Council”)

**And:** Queenstown Lakes Community Housing Trust (“the Trust”)

**Date:** .....

### 1. Background

- 1.1. Prior to the creation of the Trust, the Council was the primary driver of affordable housing issues; provided community housing; and was responsible for the formation of the working party which developed the HOPE Strategy. That document became the foundation document for defining the direction and goals for affordable housing in the district and was adopted by Council in June 2005.
- 1.2. One of the recommendations of the HOPE strategy was the creation of a housing trust to implement the HOPE Strategy. That Trust is the Queenstown Lakes Community Housing Trust.
- 1.3. Council and the Trust recognise each other as partners in addressing the housing issues in the District. In that partnership, it is recognised that the Trust and Council have a common stakeholder – the community. The Trust, through its independence, is able to operate autonomously and is expected to be both innovative and responsive in delivering housing solutions that meet the needs of the community but at all times being mindful of broader Council policy.

### 2. Purpose of MOU

- 2.1. There are two purposes to this agreement:-
  - 2.1.1. To identify and document those areas where support from Council is crucial for the Trust to meet the housing delivery actions of the HOPE Strategy; and
  - 2.1.2. To clarify and confirm the respective roles of Council and the Trust insofar as affordable housing is concerned.
- 2.2. The Trust is advancing its delivery plans on several fronts, which rely on Council:
  - 2.2.1. To contribute operational funding;
  - 2.2.2. To be guarantor for the Trust where necessary;
  - 2.2.3. To support development proposals for the use of Council land where it can.
- 2.3. These commitments will –
  - 2.3.1. Help enable the Trust to meet its delivery objectives;
  - 2.3.2. Satisfy partners that the entity is a community housing delivery agency in the District;
  - 2.3.3. Provide assurance to Trustees that business plans prepared by the Trust and agreed by Council are realistically achievable.

- 2.4. The MOU is intended to delineate the areas of responsibility between Council and the Trust.

### **3. Nature of the relationship between the parties**

- 3.1. Although they are separate entities, both Council and the Trust share a common stakeholder – the community. Both entities also share a common interest in seeing the goals of the HOPE Strategy successfully implemented, and agree to collaborate in delivering the strategy.
- 3.2. The Trust role is specific to community housing while Council has a broad policy setting role across the spectrum of community issues including community housing.
- 3.3. At all times each organisation will endeavour:
- 3.3.1. to be supportive of each other to prevent any confusion within the community;
  - 3.3.2. communicate with each other in an open and constructive manner; and
  - 3.3.3. convey consistent policies and messages.
- 3.4. The Council will endorse the appointment of Trustees to the Trust, and will provide at least one Councillor on the selection panel along with existing Trustees.
- 3.5. The nature of the ongoing partnership between the parties requires that a working party of three Councillors; three Trustees; and an officer of the Trust meet quarterly or as required to review matters to progress the work of the Trust in the District

### **4. Annual Operating Capital**

- 4.1. Council agrees, subject to ratification through Council's annual and long-term planning processes, to make provision in its annual plans for a grant of up to \$50,000p.a. to the Trust for the next 5 years or until other agreements have been negotiated between the parties.

### **5. Performance Guarantees**

- 5.1. In some cases, Council support may be necessary for the Trust's activities. Such support may be written assurances or security in the form of guarantees or mortgages of the Trust's performance. Council agrees to give favourable consideration to proposals from the Trust, provided the Trust is willing to indemnify Council in respect of Council's exposure. The process for the Trust obtaining a guarantee of performance is set out in Appendix 1 to the MOU.

### **6. Stakeholder Agreements with Developers**

- 6.1. Existing Stakeholder Deeds
- 6.1.1. Council has entered into a number of stakeholder deeds with developers requiring developers to make a contribution to community housing as part of a Plan change request process. Some of these agreements pre-date the formation of the Trust and acknowledge a "trust" as the beneficiary of the developer contributions in the stakeholder contracts.

- 6.1.2. Under the terms of this Memorandum, Council confirms that the assets to be conferred to the “trust” as mentioned in these agreements will be the Trust in all cases.

## 6.2. New Stakeholder Deeds

- 6.2.1. With the creation of the Trust, the parties agree that the process for any future stakeholder deeds negotiated with developers will follow these guidelines:-

6.2.1.1. Stakeholder deeds will continue to be contracts between Council and the developer (the applicant).

6.2.1.2. Council will agree the quantum level of the contribution to community housing by the developer and when the obligation falls due.

6.2.1.3. The Trust may specify the form in which the contribution is to be made and negotiate with the developer in advance of a stakeholder deed being negotiated with Council. Any agreement reached between a developer and the Trust will take the form of a non-binding agreement that Council will view positively in agreeing the final terms and quantum in the stakeholder deed with the developer.

- 6.3. Council and the Trust shall be responsible for the enforcement of all contracts to which the Council is a party or where the Trust is a beneficiary in the event of any default by the developer, provided that the Council will not take enforcement action:

6.3.1. Until it is satisfied that the Trust has taken reasonable steps to negotiate a satisfactory outcome with the developer in question; or

6.3.2. Where it does not consider lawful grounds for enforcement exist; or

6.3.3. Where the Trust has not honoured its commitments to a developer under the stakeholder deed.

## 7. Council owned land

- 7.1. There are two ways in which Council may assist the Trust in meeting the delivery objectives set out in the HOPE Strategy:

7.1.1. Council will consider land transfer requests presented by the Trust on their merits and whether the transfer of land titles to the Trust will assist the provision of affordable housing in the District. Such requests will also require consideration of Council’s statutory obligations, including the Local Government Act 2002 and be accompanied by appropriate financial analysis.

7.1.2. Where the transfer of a land title to the Trust is not possible, Council will consider development proposals from the Trust, whether by joint venture, public-private partnership, or other means.

- 7.2. Where a transfer of land from Council to the Trust occurs, the Council will consider a transfer at nil value, provided that it is satisfied that the land in question will be used for the construction of affordable housing, and not be on-sold by the Trust for a capital gain.

## **8. Policy matters on affordable housing**

- 8.1. Both parties have significant roles to play in the wide range of policy matters that influence housing affordability, and to that end the Trust and Council will operate on a basis of open dialogue and collaboration.
- 8.2. Council shall be the lead agency on issues involving statutory authority vested in the Council, such as the District Plan, Annual Plan, Rating Policy and Development Contributions Policy, where those matters relate to community housing.
- 8.3. The Trust will develop, publish and manage its own policies on community housing within the overall guidelines of the HOPE strategy while keeping Council apprised of these insofar as the broader community interests are affected.
- 8.4. The Trust agrees that any changes to the eligibility guidelines of households that the Trust may assist, will be agreed with Council.
- 8.5. The Trust has the discretion to deliver community housing into the areas of greatest need across the district at any time, whilst still having some regard for the catchment area from where assets may have been derived.
- 8.6. The continuation of this MOU is contingent on the Trust remaining a public benefit, not-for-profit entity, where any gain is deployed in fulfilment of the objects of the Trust.

## **9. Communication**

- 9.1. Both Council and the Trust may from time to time be seen as individually or collectively the appropriate body to speak on community housing matters. Both parties therefore agree to communicate with the other in advance of any significant issue related to community housing. Wherever reasonably possible, a joint view on the matter in question will be a goal, but failing agreement, both parties will strive not to publicly criticise or undermine the position of the other party. Any challenges, problems, criticisms of community housing may be directed to either Council or the Trust. Each party's obligation is that all matters of complaint or issues that have the potential to reflect on policies or the wider community are to be alerted to the other party at the earliest possible time when they arise.
- 9.2. Any communication by Council explicitly referring to the Trust will be referred to the Trust before release, and conversely any communication by the Trust explicitly referring to the Council will be referred to the Council before release except (in either case) where it is impractical to do so.

## **10. Confidentiality and Privacy**

- 10.1. While it is the intention of each organisation to observe the confidentiality of information that may be shared in the normal course of the relationship, the Trust recognises that Council is a statutory body and may have obligations to disclose information to other parties and to the wider public if requested.
- 10.2. If either party is required by law to disclose any information which has been obtained by them through undertaking the services they shall immediately notify the other party by telephone and in writing.
- 10.3. Both parties to this Agreement shall at all times act in accordance with the Privacy Act 1993, or any relevant codes of practice.

**11. Disputes**

- 11.1. Should any dispute arise under this Agreement, whether concerning the construction or performance of this Agreement or the rights and liabilities of the parties, the parties shall use their best endeavors to resolve the dispute within fifteen working days.
- 11.2. If the parties fail to resolve the dispute, the dispute shall be referred to a mediator acceptable to both parties on terms acceptable to both parties.

**12. Ongoing agreement**

- 12.1. The nature of the relationship between the parties requires an open and constructive dialogue. It is anticipated that the agreement will be reviewed when significant circumstances change that require the agreement to be amended.
- 12.2. A review of this agreement may be initiated by either party at any time.
- 12.3. In the absence of any significant changes being sought by the parties, the agreement will be reviewed by the Chair of the Trust and the Mayor every two years.

**13. Other matters**

- 13.1. Any variations to this MOU shall only be effective if recorded in writing and signed by both parties.

SIGNED BY: \_\_\_\_\_

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For and on behalf of:  
**Queenstown Lakes Community Housing Trust**                      **Date:**

SIGNED BY: \_\_\_\_\_

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For and on behalf of:  
**Queenstown Lakes District Council**                      **Date:**



## Appendix 1:

### Process for the Trust obtaining a guarantee of performance

- i) Proposal to Council showing:-
  - Why it is important in advancing the Trust's work
  - Potential exposure for Council
  - How risk to Council is mitigated
  - How the Trust plans to indemnify Council
  - When and how the performance guarantee might be lifted
- ii) If approved – ratification by full Council

## Appendix 2:

### Steps to complete a transfer of land

- a) internal consultation with Parks, Engineering, Finance and any relevant community association for any competing use that may already have been identified;
  - i) If a competing use is identified, then to Council to determine the priority use, or
  - ii) if none, then proceed to
- b) legal review to confirm availability for proposed use
  - i) if not legally available for proposed use, process stops
  - ii) if no legal impediments, then proceed to
- c) obtain independent valuation for the land
- d) consult Trust over valuation
  - i) if acceptable, then Trust to prepare a proposal for the terms and conditions it proposes, and detail of the housing development sought, then proceed to
- e) value/cost proposal to Audit & Risk Committee for consideration
  - i) if not acceptable to the Committee, then refer matter back to the Trust for reconsideration, or process stops
  - ii) if acceptable to the Committee, then proceed to
- f) Prepare Agreement for Sale and Purchase (ASP)
- g) Full Council for ratification
- h) Execute ASP; complete transaction
- i) Update property register

Note: Audit & Risk Committee review to occur during Resource Consent process.