

QLDC Council  
28 July 2016

**Report for Agenda Item: 5**

**Department: Property & Infrastructure**

**Change of Guarantors – Queenstown Commercial Parapenters**

**Purpose**

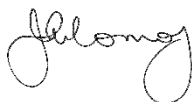
The purpose of this report is to consider approval for replacing a number of the current Guarantors of the lease to Queenstown Commercial Parapenters with new Guarantors to reflect the current Directors.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Approve** the removal of the following Guarantors from the lease to Queenstown Commercial Parapenters Limited:  
  
W J Brundell, A J Grant, C Gut, N Grant, RG McCrostie, T D McGeorge, J C Newton, C Murphy, S Smith  
  
And replace them with:  
  
B Casey, S Erceg, D Eller, B Haskell, J S McMurtrie, G Y Millet, T Rold and G J Taylor.
3. **Approve** the above changes in Guarantors for the Queenstown Commercial Parapenters lease as delegated to Council by the Minister of Conservation.
4. **Include** a new clause in the lease requiring the Lessee to have a current CAA Adventure Aviation Operations Certificate and that all activities on the land are undertaken in accordance with the Health and Safety at Work Act 2015 (and its subsequent regulations).
5. **Delegate** signing the “Deed of Acknowledgement of Change of Guarantors” to the General Manager, Property and Infrastructure.

Prepared by:



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12/01/2016

Reviewed and Authorised by:



Aaron Burt  
Planner: Parks & Reserves

## Background

- 1 Council granted a lease to Queenstown Commercial Parapenters Limited for their take off area on Ben Lomond from 1 June 2000 for 19 years, 364 days (expiry 30 May 2020). The lease includes the Guarantee of the then Directors that they would pay rent and other moneys due, and perform all covenants in the lease (and renewals).
- 2 At the time there were thirteen Directors, all of whom signed the lease as Guarantors. Since then, nine of the Directors have left the Company and been replaced by eight new Directors. The Directors have asked that the lease be varied to remove the old Guarantors from the lease and replace them with the new Directors.
- 3 The names are as follows:

### **Current Guarantors**

W J Brundell

A J Grant

C Gut

N Grant

R G McCrostie

T D McGeorge

G A McIntyre

M Holland

J C Newton

C Murphy

R B Scwaller

S Smith

B Sinclair

### **Proposed Guarantors**

Guy Anthony McIntyre

Michael Holland

Rene Bruno Scwaller

Brendan Sinclair

Brendan Casey

Shane Erceg

Dominic Eller

Brady Haskell

Jamie Stuart McMurtrie

Georges Yvon Millet

Thomas Rold

Gavin John Taylor

- 4 The Lease states that "assignments of this Lease or changes in the shareholding of the Lessee... shall not exonerate or release the Guarantor from the liabilities of the Guarantor under this Lease nor shall the Guarantor be released by any other act, omission, matter or thing where a surety only would be released." Therefore Council has no obligation to agree to the change of Guarantors.
- 5 It is appropriate to amend the terms of the lease to include provision for the new Health and Safety legislation. The part of their operation that relates to taking off, flying and landing is controlled by CAA and therefore the lease should now

include a requirement for the lessee to hold a current CAA Adventure Aviation Operations certificate. For their activities on the ground, a requirement for them to act in accordance with the Health and Safety at Work Act 2015 and its subsequent regulations is advisable and recommended.

## **Comment**

- 6 As stated above, Council is not obliged to approve the change in Guarantors. However, the previous Guarantors are no longer Directors of the Company and it is advisable that the new Directors be held to account for the obligations under the Lease in place of the now retired Directors.
- 7 The Company has always adhered to the terms of the lease and rent payments have also been made promptly in the past. We do not consider that Council's commercial position will be materially altered by this proposal.

## ***Options***

Option 1 Approve the change in Guarantors for the Queenstown Commercial Parapenters lease and include Health and Safety requirements.

### *Advantages:*

- 8 Places liability for the lease obligations with the current Directors of the business who have control of the Company and its activities.
- 9 Includes requirements for the lessee to act in accordance with the current Health and Safety legislation.

### *Disadvantages:*

- 10 There would be one less Guarantor, therefore reducing the private persons that Council could hold responsible for the lease conditions and in particular payment of rent.
- 11 Option 2 Not to approve the change in Guarantors for the Queenstown Commercial Parapenters lease.

### *Advantages:*

- 12 Council will have thirteen Guarantors as opposed to twelve if the change is approved, thus increasing the persons Council can hold responsible for the lease obligations.

### *Disadvantages:*

- 13 Nine of the current Guarantors are no longer involved with the business and therefore not in control of its activities, whereas eight of the current Directors have no obligations to Council for lease terms.
- 14 This report recommends **Option 1** for addressing the matter so that the current Directors of the Company are responsible for the lease obligations.

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

15 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because it does not change the status significant Council asset, does not have any financial impact on Council and is not of relevance to the Community.

### ***Risk***

16 This matter related to the operational risk OR011 – Decision Making as documented in the Council's risk register. The risk is classed as low. This matter relates to this risk because it does not change the status significant Council asset, does not have any financial impact on Council and is not of relevance to the Community.

### **Financial Implications**

17 As the Lessee will meet the Council's costs in relation to the lease changes, there are no financial implications.

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

18 The following Council policies, strategies and bylaws were considered:

- Significance and Engagement Policy

19 The recommended option is consistent with the principles set out in the named policy/policies.

20 This matter is not included in the 10-Year Plan/Annual Plan and does not change the plan in any way.

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

21 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 assisting with the on-going operation of a commercial lease that generates funds for Council.
- 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**

22 No persons were identified as being affected by this matter.