

Memorandum of Understanding

Governing negotiation of a Management Services Agreement relating to Wānaka Airport

Queenstown Lakes District Council

Queenstown Airport Corporation Limited

Memorandum of Understanding dated 17 September 2021

Parties

Queenstown Lakes District Council, a local authority under the Local Government Act 2002 (QLDC)

Queenstown Airport Corporation Limited, a Council-controlled organisation under the Local Government Act 2002 (QAC)

(each a **Party**, together the **Parties**)

Introduction

- A Wānaka Airport is currently managed by QAC under a Temporary Agreement.
- B The Temporary Agreement anticipates the negotiation of a new Management Services Agreement between the Parties (**MSA**). It is intended that the MSA will be agreed before the end of 2021.
- C The parties acknowledge:
- a. that QAC's ongoing management and operation of the Airport, and relationship to QLDC, makes it appropriate for QLDC to undertake a direct source, closed competitive process for the services; and
 - b. QLDC will follow an open market process to award an MSA if the parties are unable to agree terms that meet the principles in QLDC's procurement policy and guidelines.
- D This MOU governs the process for negotiating the MSA and the next steps for the parties depending on the outcome of the negotiations.

Terms

1 Interpretation

- 1.1 In this MOU, the following words have the following meanings unless the context requires otherwise:

Airport means Wānaka Airport;

LGOIMA means the Local Government Official Information and Meetings Act 1987;

MSA has the meaning set out in recital C;

MOU means this memorandum of understanding;

Negotiation Matters has the meaning set out in clause 3.1;

Services means the management services for the Airport as described in the Temporary Agreement and such other services that the parties may agree in the MSA;

Steering Group has the meaning given in clause 7.3;

Temporary Agreement means the Letter of Comfort from QLDC to QAC dated 25 May 2021 and extended by a letter dated [];

2 Key MOU Principles

- 2.1 The Parties will negotiate in good faith towards the conclusion of the MSA.
- 2.2 The Parties recognise that the negotiations are within a direct source closed competitive procurement situation. To that end, they will be open and transparent about, and exchange information relating to, the Negotiation Matters so as to enable QLDC to be satisfied as to Quality and Value for Money (as required by QLDC's procurement policy and guidelines).

3 Negotiation Matters

- 3.1 The negotiations between the Parties will cover the following commercial, operational and legal matters (non-exhaustively):
 - (a) Nature and scope of services, standards and key performance indicators.
 - (b) Alignment of MSA, and nature and scope of services, with statement of intent and other strategic or planning documents.
 - (c) Process for determining any forward capital works programme and alignment of cycle with statement of intent and other strategic or planning documents.
 - (d) Costs of services (on an open-book basis), including testing for value-for-money.
 - (e) Responsibility for regulatory compliance, including health and safety, aviation, and resource management matters.
 - (f) Governance arrangements, including any standing committees, and responsibility for stakeholder (including lessee and community liaison).
 - (g) Arrangements for managing any issues arising from the proximity of the Project Pure Wastewater Treatment Plant and Disposal Fields.
- 3.2 QLDC will contract with an independent consultant to assist it in respect of the Negotiation Matters and so that it can be satisfied as to Quality and Value for Money (as required by QLDC's procurement policy and guidelines). QLDC will provide to QAC a confidentiality undertaking signed by the consultant in an appropriate form before providing the consultant with any confidential information.

4 Negotiations

- 4.1 Negotiations will generally take the form of face-to-face discussions (via technology if required due to Covid-19 Alert Level restrictions) and email communications, together with attached draft MSA provisions where available.
- 4.2 To initiate a meeting, either Party may send the other Party a notice setting out the proposed date, venue and draft agenda. The Parties will then work co-operatively to confirm meeting details and to finalise the date, venue and agenda in advance of the meeting.
- 4.3 The Parties will use reasonable endeavours to ensure their Key Representatives and any other relevant personnel attend each meeting, and otherwise do all things reasonably necessary to progress the discussions and negotiations contemplated in this MOU.
- 4.4 Following each meeting, a summary of discussion and action points, with applicable timeframes, will be circulated and agreed by the Parties.

5 Timeline

- 5.1 The Parties will meet no less frequently than once per [fortnight] and at such other times as are reasonably necessary to progress discussions on the Negotiation Matters.
- 5.2 The timeline for the negotiations is as follows:
- (a) **By 29 October 2021:** Parties have finalised draft MSA ready for approval by Chief Executives;
 - (b) **By 11 November 2021:** Parties have concluded MSA subject to approval by QLDC Governing Body and QAC Board of Directors; and
 - (c) **By 31 January 2022:** MSA executed by Parties.
- 5.3 If any extension is required to these dates, this must be discussed and agreed between the Parties.

6 Term

- 6.1 This MOU commences on its execution and will terminate on the earlier of:
- (a) the execution of the MSA; or
 - (b) written notice from QLDC to QAC that the Negotiation Matters cannot be agreed and that QLDC will be seeking to enter into an open-market competitive process to appoint a third party for the management and operation of the Airport.
- 6.2 Where QLDC gives written notice under clause 6.1, the parties agree that:
- (a) QAC will continue to provide the Services following the termination of this MOU until any new management services agreement entered into between QLDC and a third party commences; and

- (b) QLDC will not invite QAC to participate in the subsequent open-market competitive process.

7 Key Representatives and Steering Group

- 7.1 Each Party nominates the person identified in the table below as their key representative (each a **Key Representative**):

Party	Key Representative	Email Contact Details	Mobile Phone Number
QLDC	Peter Hansby	peter.hansby@qldc.govt.nz	027 202 9348
QAC	Andrew Williamson	andrew.williamson@queenstownairport.co.nz	021 774 464

- 7.2 Immediately after execution of this MOU, the parties shall form a Steering Group which shall be comprised of two representatives from QLDC and two representatives from QAC, as follows:

Party	Member	Role	Email Contact Details	Mobile Phone Number
QLDC	Mike Theelen	CEO	mike.theelen@qldc.govt.nz	<i>Insert</i>
QLDC	Stewart Burns	CFO	stewart.burns@qldc.govt.nz	<i>Insert</i>
QAC	Glen Sowry	CEO	glen.sowry@queenstownairport.co.nz	<i>Insert</i>
QAC	Andrew Williamson	CFO	andrew.williamson@queenstownairport.co.nz	<i>Insert</i>

- 7.3 The purpose of the Steering Group is:

- (a) During negotiations:
- (i) to act as a group for the Key Representatives or other personnel to present recommendations or approval or decline;
 - (ii) to provide updates and seek guidance from QLDC or QAC respectively;
- (b) After conclusion of the MSA, to continue as a governance body whose specific function, membership and terms of reference are to be addressed in the MSA.

- 7.4 Any notice under this MOU must be delivered by email to a Party's Key Representative at the email address identified in the table at clause 7.1.

8 Publicity

- 8.1 Neither Party may make any public statement and/or media release in relation to the MOU without the approval of the other Party, such approval not to be unreasonably withheld or delayed.

9 Confidentiality

- 9.1 This MOU is not confidential. However each Party must keep confidential all information made available by or on behalf of the other Party under or in relation to this MOU, and must not disclose such information to any third party unless:

- (a) the disclosure is required by law; or
- (b) the information is already publicly available (other than through a breach of this clause); or
- (c) the Party who provided the information has given its written consent to the disclosure; or
- (d) clause 9.2 applies.

9.2 The Parties acknowledge that they are subject to official information legislation (LGOIMA) and that following a request made under such legislation the Parties may disclose information relating to this MOU to the requester.

9.3 The Parties agree that the undertakings given in relation to the confidential information shall continue notwithstanding the termination of this MOU.

10 Disputes

10.1 While this MOU is based on a spirit of collaboration, if a dispute arises under the MOU, the Key Representatives will raise the matter of dispute with the Steering Group who will meet and seek to resolve the dispute through good faith discussions.

11 General

11.1 Notwithstanding any other clause in this MOU, this MOU does not bind or restrict QLDC as a regulatory authority, and any consent or agreement given by QLDC under this MOU is not an agreement or consent in its regulatory capacity, or vice versa.

11.2 Nothing in this MOU shall be construed to constitute a partnership or a joint venture between the Parties.

11.3 Each Party shall bear its own costs in relation to this MOU and the negotiations towards concluding the MSA.

11.4 This MOU may be executed in any number of counterparts all of which when taken together shall constitute one and the same document.

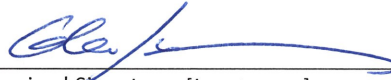
Execution

Signed for and on behalf of **Queenstown
Lakes District Council** by:



Authorised Signatory:
Michael Renier Antonius Theelen

Signed for and on behalf of **Queenstown
Airport Corporation Limited** by:



Authorised Signatory: [insert name]

GLEN ROBERT SOWRY