

**QLDC Council****27 August 2015****Report for Agenda Item: 12****Department: Infrastructure****Skyline Enterprises Renewal and Variation of Lease****Purpose**

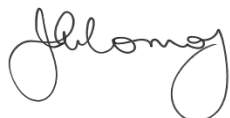
To consider a renewal of lease for a further five years for Skyline Enterprises Limited and variations to amend the permitted use section and the management of the helipad in the current lease.

**Recommendation**

That Council:

1. **Note** the contents of this report.
2. **Agree** to renew registered lease L5014878.1 contained in Leasehold Title 3417 ("Lease") under section 54(1)(d) of the Reserves Act 1977 between the Council and Skyline Enterprises Limited for a further five year period from 1 April 2015 to 31 March 2020 on the following basis:
  - a. Rent will remain payable at the rate previously agreed between the parties and documented in the Deed of Renewal of Lease and Rent Review dated 30 June 2011;
  - b. The Lease will be varied by:
    - i. Varying the permitted use contained in clause 7 to include the words *"and other tourism activities as approved by the Lessor from time to time"* immediately before the words "and the land secondly described";
    - ii. varying clause 28, so that (subject to the grant of resource consent) Skyline will operate the helipad located on the premises at its sole cost in accordance with the conditions of the resource consent and the Council as Lessor under the Lease will have no obligations with respect to the helipad;
  - c. All other terms and conditions express or implied in the Lease will continue to apply subject only to the above variations.
3. **Approve** the lease renewal and variations as detailed above as a delegate of the Minister of Conservation.

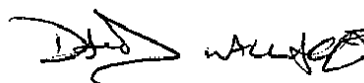
Prepared by: Joanne Conroy



Property Manager - APL

7/08/2015

Reviewed and Authorised by:



Senior Planner – Parks and  
Reserves

10/08/2015

## Background

- 1 Skyline Enterprises Limited (Skyline) was granted a lease over Bob's Peak from 1 April 1995 for five years, with the ability to renew for further terms of five years (provided the total term of the Lease does not exceed seventy five years). The Lease has been renewed through to April 2015, and is currently due for a further renewal. The lease area is legally described as Section 1 Survey Office Plan 22971 and Section 1 Survey Office Plan 24832 described in computer interest register 3417, and is classified as recreation reserve.
- 2 The leased site includes gondola access and a restaurant building, containing a restaurant and function facilities, a cafeteria and souvenir shops, specialist stargazing site, confectionary store and kiwi haka. It also has a luge track, with associated chair lift, a helicopter landing area and access to public walking and mountain biking tracks.
- 3 Under clause 28 of the current lease management of the helipad on the leased land remains with the Council as Lessor. Council applied for resource consent for the helipad in 2008 and consent was granted but then appealed. The consent application was transferred to Skyline (and they are now the applicant) and the matter has been heard by the Environment Court with a decision pending. Whatever the outcome, the helipad will require considerable upgrade works and monitoring into the future, which Council is not in a position to do. Skyline has agreed to take over responsibility for all necessary upgrade works and monitoring.
- 4 Skyline is considering expanding its tourism activities to potentially include gold panning, a climbing wall and a Zipline operation. Where such activities include new improvements, the current Lease requires the Lessee to seek Lessor's consent. They would also be required to seek resource consent. The current wording in the Lease in regards to the permitted use of the land is:

"That the Lessee shall use the land firstly described solely for the purposes of a restaurant, terminal, gift shop, manager's residence, video viewing facility and any other use or uses ancillary thereto, and operating a luge and ski lift to transport customers..."

and therefore is restrictive on the type of activities that can be undertaken within the Lease and does not extend to other uses that may be consistent with the existing operation.

- 6 Under section 54 of the Reserves Act, the consent of the Minister of Conservation will be required for the Lease renewal but it is not required for any variation of the Lease registered on the title. The Minister's powers have been delegated to the Council, and therefore the Council is able to decide whether or not to consent to the renewal of Lease on the Minister's behalf.

## **Comment**

### **Lease Renewal**

- 5 The Lease was originally for terms of five years with the right to renew for further terms of five years so that the full period of the Lease is a maximum of 75 years. The Lessee can give notice of their desire to renew the Lease for a further term (which they have done) and if they are not in breach of the terms of the Lease, there is no sport or recreational activity that should have priority on the land, and the trade or business is still needed to enable the public to obtain the benefit and enjoyment of the reserve, or for the convenience of persons using the reserve, the Lessor must grant the renewal.
- 6 There has been no other sport or recreational activity proposed for the land, either through the management plan process or since. The business still enables the public to obtain benefit and enjoyment of the reserve by providing transport to the area, where it would otherwise not be accessible to all. The gondola also provides access to bike and walking trails on Ben Lomond.
- 7 Council has the ability to review the rent at each renewal. However at the renewal completed in 2010, the parties agreed that no review would be undertaken in 2015. Instead, the 2010 renewal allowed for a stepped rental increase so that the rent paid is currently 3% of turnover related to the sale of food, beverages, retail of merchandise and photography, and 3.75% of turnover for all other income. On 1 April 2017, the percentage for "other" turnover will increase to 4%.
- 8 The options available to Council in relation to the renewal are to either agree to renew the Lease for a further five years, or to decide that the land is required for some other sports or recreation or that the business is not required for people to enjoy the reserve.

### **Lease Variation - Helipad**

- 9 Since the Lease commenced in 1995, Council has "managed" the helipad, with such management being limited to approving the operators and collecting a fee of \$5 per landing from those operators. The helipad has been on site since the mid 1970's and was constructed by Alpine Helicopters which is now the Helicopter Line. They constructed the helipad with the approval of Council at the time, but no planning consent was sought or given. Glacier Southern Lakes Helicopters were given approval to use the helipad in 1985. No other

operators have Council approval to land on the helipad. Skyline now owns the Helicopter Line.

- 10 When it became apparent that the helipad did not have planning consent, Council decided to apply for resource consent because it was effectively the operator of the helipad and responsible for its use, even though it allowed two commercial operators to use it. Consent was granted subject to a number of conditions related to upgrading the facility and monitoring its on-going use. The consent was appealed to the Environment Court, and a decision is pending.
- 11 It became apparent that the cost of finalising the consent, the conditions related to upgrading the helipad facility and the requirements relating to on-going monitoring and management of the helipad would be costly, risky and too onerous for Council. That includes monitoring the number of landings per day/week/month, ensuring that the agreed approach and take-off routes are as approved, and ensuring the health and safety of users and spectators on and around the helipad is maintained. Therefore Council agreed to allow Skyline to take over the consent application.
- 12 On this basis, regardless of the outcome of the Environment Court proceedings, it is now prudent to amend the clause related to management of the helipad from the Lease so that the obligations in relation to the consent and use of the structure will sit entirely with Skyline.
- 13 Skyline has agreed to permit Glacier Southern Lakes Helicopters to continue to land on the helipad indefinitely along with the Helicopter Line. Other operators wishing to use the facility will be required to reach agreement with Skyline. Any fees received for using the helipad will be included in the turnover figures used for calculating rent payable to Council under the Lease.

### **Variation of Lease – Change of Use**

- 14 All leases on reserves include a permitted use clause that clarifies what activities the Lessee is permitted to carry out on the reserve. Clause 7 of the Lease (wording above) is justifiably restrictive to reflect the requirement of section 54(1)(d) of the Reserves Act and it is prudent for Council to retain control over the use. However, there are currently a number of Lessor approvals that are needed before any new activities can be undertake resulting in a level of duplication. They include the Lessee having to seek Lessor and Minister of Conservation approval for any buildings or improvements on the land, and for Council to consider any resource consent application as an affected land owner.
- 15 Skyline is considering ways to enhance the experience of their visitors by providing additional activities within the Lease. The current options are gold panning, a climbing wall and a Zipline. The request for approval for those activities and associated improvements along with approval of Council as the land owner will be the subject of a separate report. This report is not seeking approval of those activities per se. If eventually approved, those activities would currently require a variation of the use clause of the Lease as they are not consistent with the current permitted use wording. On this basis, it is

proposed to expand the wording of clause 7 of the Lease to state as follows, with the suggested new wording underlined and in bold:

*That the Lessee shall use the land firstly described solely for the proposes of a restaurant, terminal, gift shop, manager's residence, video viewing facility and any other use or uses ancillary thereto and operating a luge and ski lift for transporting customers, **and other tourism activities as approved by the Lessor from time to time***

- 16 Any additional activities undertaken by Skyline could increase their turnover, thus increasing the rent paid to Council.

### **Options**

- 17 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.

### **Lease Renewal**

- 18 Option 1 The first option is to approve renewal of Lease under section 54(1)(d) of the Reserves Act 1977 for a further five year period from 1 April 2015 to 31 March 2020.

19 Advantages: This would enable Skyline to keep operating, providing tourism activity for Queenstown and generating significant income for Council. The operation is still necessary to enable the public to obtain the benefit and enjoyment of Ben Lomond and for their convenience because all members of the public, regardless of physical ability, will continue to be able to access Ben Lomond via the Gondola.

20 Disadvantages: The recreation reserve is a developed area rather than an open space, available for passive recreation.

- 21 Option 2 The second option is to agree that the land is needed for some other recreational activity or that the business is no longer necessary to users of the reserve, and to refuse to grant the renewal.

22 Advantages: The built form may have to be removed and the reserve returned to passive use and open space, or could revert to Council ownership.

23 Disadvantages: That would see the loss of an important tourism icon and substantial rental income for Council. Some members of the public would be unable to access Ben Lomond if the Gondola was removed because it may be physically inaccessible.

This report recommends option 1 – that the Lease be renewed for a further five year period from 1 April 2015 to 30 March 2020, because it results in the best outcome for the public and Council.

## Lease Variation – Helipad

- 24 Option 1 That Council agree to vary the Lease to amend clause 28 so that Skyline will operate the helipad at its sole cost in accordance with the conditions of the resource consent for the helipad and that Council as Lessor shall have no obligations as landowner under this consent.
- 25 Advantages: Results in Skyline taking over the costs and risks associated with operation of the helipad.
- 26 Council will retain some income from the helipad because any landing fees will form part of Skyline's turnover.
- 27 Disadvantages: Council will not be able to charge landing fees to helicopter operators directly, potentially resulting in lower income (offset by Council not having to pay for the required upgrade of the helipad).
- 28 Option 2 That Council continue to operate the helipad including monitoring and controlling the operating conditions of the resource consent when granted, and for Council to pay for the upgrade to the helipad.
- 29 Advantages: The ongoing income to Council may be higher if Council charges the operators landing fees directly.
- 30 Disadvantages: Council will have to fund the upgrade of the helipad structure and manage the on-going operating conditions. The cost to do this is not included in the 10-year plan.
- 31 Council will be liable for health and safety issues, resource consent conditions and monitoring landing numbers, which will be challenging and expensive.
- 32 Option 3 That Council require the helipad to be removed and ask Skyline to withdraw the consent application.
- 33 Advantages: The risk associated with helicopter landings would no longer exist.
- 34 Disadvantages: A tourism activity that has been in place for many years will be lost and income from landings would no longer be received.
- 35 This report recommends option 1 as it allows the tourism activity to continue, ensures some income to Council, but ensures the costs and risks pass to Skyline.

## Variation of Lease – Change of Use

- 36 Option 1. That Council agree to vary clause 7 of the Lease to include the words "*and other tourism activities as approved by the Lessor from time to time*" immediately before the words "*and the land secondly described*" in the description of the permitted use.

- 37 Advantages: Extending the definition of the permitted use negates the need for duplicated processes while still allowing Council to assess any new activities for appropriateness and impact on the reserve at the time they are proposed.
- 38 Disadvantages: Allows an easier process for Skyline in the future in that a formal variation of the Lease would not be required for new activities that come within the additional wording that may result in undesirable activities. However, this can be mitigated by careful consideration by the Council when assessing a proposed change.
- 39 Option 2. That Council not allow the Lease variation and to require a separate variation of lease for any proposed new activities that don't fit within the current use clause.
  - 40 Advantages: Requires a more stringent process for new activities.
  - 41 Disadvantages: requires Skyline to seek a number of duplicated approvals from Council when considering new activities which would be inefficient and could be expensive.
- 42 Option 3. That Council does not approve the lease variation as proposed but approve a variation of lease to amend clause 7 to include Ziplines, climbing wall and gold panning subject to Skyline seeking the approval of Council for the improvements and the approval of Council as landowner to the resource consent when more details on the location and nature of the proposed activities will be available.
  - 43 Advantages: Allows Skyline to proceed with seeking the appropriate Council approvals for the currently proposed new activities but not any other activities.
  - 44 Disadvantages: Means Skyline must continue to seek a number of duplicated approvals from Council when considering new activities in the future.
- 45 This report recommends Option 1 for addressing this matter as it gives Skyline the ability to consider new tourism activities within the Lease area but enables Council to retain control through Lessor approvals for the improvements and affected land owner approval for any resource consent applications.

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

- 46 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it does not involve a Council strategic asset, but is of medium importance to the Queenstown Lakes District and the general community, is not inconsistent with policy and strategy and does not impact on Council's capability and capacity.

## **Risk**

- 47 This matter relates to strategic risk SR 3 ‘Management Practice – working within legislation’. The risk is classed as low. The matter relates to this risk because the options highlighted require the Council to follow a statutory process in order to renew and vary the Lease. A variety of operational risks (such as meeting levels of service, regulatory compliance and the health and safety risks associated with parties using reserves land) are triggered when the Council considers whether or not to renew the lease and approve the variations. This report recommends that the risks associated with this matter are tolerable.

## **Financial Implications**

- 48 No adverse financial implications for Council are anticipated. Although there may be some loss of revenue with the landing fees being paid to Skyline rather than directly to Council, any benefit it is offset by the cost of complying with the conditions of the resource consent. All costs associated with the consents and building improvements will be paid for by Skyline. Council and the Districts ratepayers are likely to benefit from some additional rental income if the use of the facility is increased as rent is charged as a percentage of income.

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

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

- Significance & Engagement Policy 2014 –the proposal is a matter with medium significance in terms of this policy as it does not impact Council’s strategic assets, affect a large number of residents, ratepayers and the environment but is expected to create a community interest in the matter.
- The Ben Lomond and Queenstown Hill Reserve Management Plan covers the area subject to the Lease. The plan contemplates the continuance of the Skyline activities. It refers to “provision for recreation and tourism activities that do not adversely impact on the landscape, recreation and natural values”. It also states “commercial users and public utility activities will be permitted within the reserve where they are compatible with or do not unduly affect its primary purpose, and recreation, landscape and biodiversity values”. It suggests “limited provision of commercial tourism based recreation activities that rely on the unique topography and location of Ben Lomond reserve, and are compatible with the reserves’ wider values”. The plan contemplates the use of the helipad for landings (subject to conditions). Therefore the recommendations in this report are consistent with the policies of the plan.
- This matter is not included in the 10-Year Plan/Annual Plan but does not have any known significant effect on income or expenditure unless Council decides to undertake the upgrade of the helipad.

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

- 50 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 supporting the improvement of tourist activities in the region.
- 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.

## **Legal implications**

Any renewal and variation of the Lease must be carried out under the relevant provisions of the Reserves Act, the terms of the Lease and any relevant Management Plan, which are being complied with. As the Lease is registered against the title to the Land, the renewal and variation will also need to be registered.

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

- 51 No consultation is envisaged or required by Council as detailed in this report. There is no requirement in the Reserves Act to publicly notify a renewal of the lease on the basis that it is contemplated by and conforms to the relevant Management Plan, nor is there any requirement to publicly notify a variation of lease.
- 52 As noted above, there is no requirement to publicly consult with respect to this decision. The renewal of the lease is in accordance with the relevant Management Plan and the terms of the existing lease. Renewal is provided for in the existing lease and the Council has a contractual obligation to grant a renewal in accordance with and subject to the lease terms. Skyline, as lessee, is the only party that has been identified as having a specific interest in, and is affected by, the Council's decision regarding the renewal and variation of its lease. The terms of renewal and variation have been negotiated with and accepted by Skyline.