



**QLDC Council
28 July 2016**

Report for Agenda Item: 2

Department: Property & Infrastructure

Proposed New Lease for the Young Family: Zoological Gardens, Frankton

Purpose

The purpose of this report is to consider a new lease for the Young family to operate the Zoological Gardens in Frankton.

Recommendation

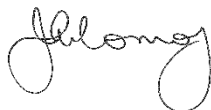
That Council:

1. **Note** the contents of this report;
2. **Approve** a new lease to D, R and P Young over Section 167, Block 1 Shotover Survey District, subject to the following terms and conditions:

Commencement	1 August 2016
Term	5 years
Rent	\$1.00 (Pursuant to Community Pricing Policy)
Reviews	None
Renewal	None
Termination	Council has the ability to give 24 months' notice to terminate the lease
Use	Gardens and animal enclosures and associated buildings and activities
Other	<p>That free access for the public to the lease area be provided (except the buildings);</p> <p>Consideration of Health and Safety;</p> <p>The lessee to maintain a minimum of \$2,000,000 public liability insurance;</p> <p>At termination, all buildings to be removed and the land reinstated;</p> <p>Lessee to assist Council in its effort with regard to the control of invasive weed species in the Kawarau River by whatever means are deemed appropriate within the context of a management plan for the Kawarau River;</p> <p>Lessee to provide access for Council to the lease area if remedial works are required for flooding or subsidence or to terminate if these events make continued use dangerous.</p>

3. **Agree** that a Reserve Management Plan for the area of and around the Zoological gardens in Frankton be prepared within three years of the lease commencement.
4. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting a new lease to D, R and P Young over Section 167 Block 1 Shotover Survey District.

Prepared by:



Property Manager - APL

6/07/2016

Reviewed and Authorised by:



Aaron Burt
Planner: Parks & Reserves
11/07/2016

Background

- 3 Ivan and Daphne Young were granted a lease over a recreation reserve known as Section 167 Block 1 Shotover Survey District, from 1 April 1983 for 33 years for "the purpose of a parkland for zoological purposes with associated buildings". The lease expired on 31 March 2016 and the Young family are seeking a new lease on similar terms and conditions as the previous lease. There is no renewal provision.
- 4 Ivan Young passed away in 2013. In 2014 Council named the reserve the "Ivan Young Zoological Reserve" in his honour. Daphne Young is quite elderly, but their daughters Penny and Rachel live on the property and are continuing with their father's legacy and wish to develop and manage the reserve into the future.
- 5 The Youngs' application (via Berry and Co) along with supporting material is appended as Attachments A-C. The intention to grant such a lease was notified in April with the submission period closing at the end of May. Five submissions were received, one from the applicant, three in support of the new lease and one opposed. The submissions are attached as Attachment D. Below is a summary of the submissions received:

Name	For/ Against	Details
Neil Clayton	For	Use is suitable; good stewardship
Robert Taylor	For	Excellent stewards; asset to community
Lorraine Spence	For	Children get to see animals; picnic area; good for locals and tourists
Applicants (represented by Berry & Co)	For	Change to 12 months' notice clause to 10 years, then 5 years notice
Remarkables Park Ltd	Against	Proposal doesn't comply with Reserves Act; privatises reserve and river frontage; Youngs do not provide free access to the river; land not stable (geotech report); RPL would maintain it at their cost.

- 6 A hearing was held on 23 June 2016 attended by Councillors Gazzard and Aoake. Representatives of the applicant appeared, along with those from Remarkables Park. Mr Clayton and Mrs Spence were also in attendance. The minutes of the hearing are attached as Attachment E and a further submission received from Berry and Co is attached as Attachment F.

Comment

- 7 Following the hearing, Councillors Gazzard and Aoake deliberated on the facts presented and passed the following resolution:

On the motion of Councillors Gazzard and Aoake it was resolved that the hearings panel:

- 1. Note the contents of this report;**
- 2. Consider the submissions received on the proposed intention to grant a new lease to D, R and P Young for the Zoological gardens in Frankton together with advice from officers;**
- 3. Recommend to Council that a new lease be granted over a recreation reserve known as Section 167 Block 1 Shotover Survey District, subject to the following terms and conditions:**

Commencement	1 August 2016
Term	5 years
Rent	Pursuant to Community Pricing Policy (\$1)
Reviews	None
Renewals	None
Termination	Council has the ability to give 24 months' notice to terminate the lease
Use	Gardens and animal enclosures and associated buildings and activities
Other	That free access for the public to the lease area be provided (except the buildings); Consideration of Health and Safety; The lessee to maintain a minimum of \$2,000,000 public liability insurance; At termination, all buildings to be removed and the land reinstated; Lessee to assist Council in its effort with regard to the control of invasive weed species in the Kawarau River by whatever means are deemed appropriate within the context of a management plan for the Kawarau River; Lessee to provide access for Council to the lease area if remedial works are required for flooding or subsidence or to terminate if these events make continued use dangerous.

- 4. Recommend to Council that a Reserve Management Plan for the area of and around the Zoological gardens in Frankton be prepared within three years of the lease commencement.**

- 8 As the land is recreation reserve, the consent of the Minister of Conservation is also required, such consent having been delegated to Council.

Options

- 9 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.
- 10 Option 1 To approve a new lease to D, R and P Young over Section 167, Block I Shotover SD with the terms and conditions detailed as above.

Advantages:

- 11 The reserve will continue to be developed and maintained and the zoological gardens will continue to operate, providing education, beautification and animal shelter at no cost to ratepayers.

Disadvantages:

- 12 There is some privatisation of public land.
- 13 The Council does not receive any rent from this activity.
- 14 Option 2 To approve a new lease to D, R and P Young over Section 167, Block I Shotover SD with different terms and conditions.

Advantages:

- 15 Similar to Option 1 however Council may wish to add, amend or remove certain conditions.

Disadvantages:

- 16 Similar to Option 1.
- 17 Option 3 Not to approve a new lease and for the Youngs to vacate the site.

Advantages:

- 18 The land would more readily be available for public use.

Disadvantages:

- 19 The zoological gardens would cease to operate and no longer be available as an educational activity for visitors and locals.
- 20 Council would need to maintain the reserve.
- 21 There would be no facility for abandoned animals.
- 22 It would be costly to continue improving and developing the site.
- 23 This report recommends Option 1 for addressing the matter because it would facilitate the ongoing development and availability of the zoological gardens.

Significance and Engagement

- 24 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to a public recreation reserve.

Risk

- 25 This matter related to the operational risk OR11 – decision making as documented in the Council's risk register. The risk is classed as low. This matter relates to this risk because the process to grant a new lease is detailed in the Reserves Act 1977.

Financial Implications

- 26 The cost of drafting a lease will be met by the applicant.
- 27 If the lease is approved, Council will not have to maintain the reserve.
- 28 If Council approves the drafting of a management plan, funds and officer time will need to be allocated to that project in the coming three years.

Council Policies, Strategies and Bylaws

- 29 The following Council policies, strategies and bylaws were considered:
- Significance and Engagement Policy.
 - Community Facility Pricing Policy
- 30 The recommended option is consistent with the principles set out in the named policy/policies. The Youngs do not operate for profit and satisfy the requirements of the Community Facility pricing Policy.
- 31 This matter is not included in the 10-Year Plan/Annual Plan but will need to be included going forward so that funding is available to undertake the reserve management plan.

Local Government Act 2002 Purpose Provisions

- 32 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 helping facilitate a privately run gardens and education facility.
 - Can be implemented through current funding under the 10-Year Plan and Annual Plan although some adjustment will be required in future years to facilitate the drafting of the management 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

33 The persons who are affected by or interested in this matter are the general public and Remarkables Park Limited (as the adjoining neighbour). The intention to grant a lease was publicly notified.

Attachments

- A Letter of application from Berry and Co
- B Aerials showing the reserve outlined in red, the Young's private property outlined in blue and the approximate area of road reserve occupation outlined in green
- C Photo history of the site as provided by the Youngs
- D Submissions received
- E Hearing minutes
- F Further submission from Berry and Co

22 March 2016

Queenstown Lakes District Council

C/- APL Property Services

1st Floor, 50 Stanley Street

PO Box 1586

QUEENSTOWN 9348

Attention: Joanne Conroy

Email: joanne.conroy@aplproperty.co.nz

Dear Joanne

IVAN YOUNG ZOOLOGICAL RESERVE

We act for Daphne May Young and her two daughters Rachel and Penelope Young ("the Youngs") who own and manage the Ivan Young Zoological Reserve ("Zoological Reserve"). The Youngs' currently lease some of the land contained in the Zoological Reserve area from the Queenstown Lakes District Council ("the Council") which lease is due to expire on 1 April 2016. The leased land is legally described as Section 167, Block 1 Shotover District contained in CT 8C/594 (**attached** and marked "**A**"). The Youngs' own the freehold property that adjoins parts of the Reserve Land (CT OT1C/807 - **attached** and marked "**B**"). On behalf of our clients' we now wish to apply for an extension of the lease or a new lease for a further 33 years. In support of this application we note as follows:

1. Continue Ivan Young's legacy

- (a) Ivan Young and his wife Daphne created the Zoological Reserve over 50 years ago. Although Ivan is now unfortunately deceased, Daphne, Rachel and Penelope have continued to build on Ivan's original vision and hard work in creating the Zoological Reserve and wish to dedicate their lives to the ongoing preservation and management of this unique environment including the well being of a variety of abandoned and injured animals such as fish, birds, ducks and dogs. They wish to keep the area in its entirety as Ivan first envisioned for the community's benefit.

2. Erosion control

- (a) Significant parts of the land are made up of hard fill for the purpose of erosion control. That hard fill has not been stabilised to engineering standards and therefore is unsuitable for building.
- (b) As part of their efforts to mitigate further erosion of the land, the Youngs' have undertaken planting programmes to encourage stabilisation of the area. Erosion is likely

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Oamaru Partners

George Berry MNZM, LL.B.
David Salter BA, LL.B.
Michael de Buyzer LL.B., Notary Public
David Jackson LL.M. (Hons)

to have a prejudicial impact on the land and may incur ongoing costs to the Council and community if it is not properly managed.

- (c) We **attach** photographs (marked "C") that illustrate the stages of erosion control undertaken at the Zoological Reserve by our clients'.

3. Maintain the quality of the land

- (a) There have been no adverse incidents as a consequence of the historic Lease to the Youngs' and the land is properly maintained, managed and supervised.
- (b) All planting and landscaping to do with the Zoological Reserve is achieved at the cost of the Youngs'. If the Youngs' did not maintain or manage the land, then the property may lose its aesthetic appeal and it could easily revert to rough scrubby pasture type land.
- (c) The entire project is 99.9% organic. The Youngs' create their own compost, which is used together with other fillers as necessary to maintain the erosion protection and enrich the land.
- (d) Part of the Youngs' management programme is to assist and educate people in terms of organic systems, creation of soils, and animal welfare including Bumblebee Hives and Butterflies. The Zoological Reserve allows the facilitation of such a programme to be offered to the community.

4. Public Access

- (a) The public have access to the land at all times. In addition, there is a picnic area available to the public and where many visitors can relax using picnic tables and other facilities provided. The area is not fenced off.
- (b) We note that there is no Queen's Chain attached to the land.
- (c) We **attach** an aerial photograph (marked "D") of the layout of the buildings, walking tracks and other facilities including public access ways on the Reserve land and all of which are used for the proper functioning and management of the Zoological Reserve area.

5. Recreational Use

- (a) The Zoological Reserve provides many uses and opportunities for the benefit of the community. Some examples of recreational activities that take place at the Zoological Reserve include picnics, birthday parties, gardening awareness and education, children's recreation, animal interactions and an open space for walking and exploring.
- (b) Our clients' believe that the unique nature of the Zoological Reserve should be preserved and promoted as it is a natural environment, where members of the Queenstown public and tourists alike can visit and enjoy.

6. Not for Profit

- (a) The Youngs' operate the Zoological Reserve as a not for profit organisation. Access to the Zoological Reserve is free of charge for children and adults are charged a small fee of \$15.00. This money goes to helping maintain the Zoological Reserve and for supplies to feed the animals. The Youngs' do not receive any council or government grants to assist in the management of the Zoological Reserve.

- (b) We advise that none of the Youngs' draw any wage, salary or otherwise from this venture. Rachel Young commits herself full time to the Zoological Reserve and Penelope Young part time.
- (c) We are conscious of the fact that Queenstown is an expensive destination. The Youngs' consider the Zoological Reserve to be an enjoyable, inexpensive and educational entertainment choice for families and locals alike.

7. Relationship with the Department of Corrections

- (a) Since 1987, the Youngs' have engaged in relations with the Department of Corrections to employ men who have been convicted of crimes. These men are placed on site and supervised by the Youngs' while they carry out various tasks on the Reserve. This relationship provides a valuable service to the Probation Department.
- (b) We **attach** correspondence (marked "E") from Alice Cournane that illustrates the relationship with the Youngs'.

8. Relationship with the SPCA

- (a) We **attach** a number of letters (marked "F") from the SPCA outlining their relationship with the Youngs'. We believe these letters show the extent the Youngs' are willing to go to accept and accommodate any wayward or abandoned animals. The contact the Youngs' provide to the SPCA enables the SPCA to use their limited resources for other animal matters arising in the area.

9. Relationship with other groups in the Queenstown Community

- (a) The Zoological Reserve holds a special position in the Queenstown Community. It is regularly visited by various groups from the community, with a particular emphasis on children's groups such as Kindergartens and Schools, as well as the elderly and other community organisations.
- (b) We **attach** a copy of the visitor's book (marked "G") which suggests how people view the experience at the Zoological Reserve. We believe this evidence depicts the extraordinary benefit the community derives from visiting the Reserve and surrounding gardens. Furthermore, the number of global visitors represented in the visitor's books highlights the wide cross section of people that visit the Reserve.
- (c) We further **attach** various newspaper articles (marked "H") that demonstrate the extent of the Youngs' involvement in the community.
- (d) We also **attach** letters (marked "I") from groups in the Queenstown Community which exemplify the opportunity the Zoological Reserve provides for community groups such as theirs.

10. Relationship with the Council

- (a) The Queenstown Lakes District Council encouraged the recent naming of the reserve as the Ivan Young Zoological Reserve, which included a commemorative sign and unveiling ceremony conducted by the Mayor Vanessa Van Uden. We trust such actions reinforce the Council's appreciation and acknowledgment of the work the Youngs' undertake and the enjoyment the Reserve provides to the people of Queenstown and the wider Community.

- (b) We **attach** a newspaper clipping (marked "J") of the unveiling ceremony referred to above.
- (c) We further **attach** a copy of the decision (marked "K") made by the Council to name the reserve.
- (d) We also **attach** correspondence (marked "L") from Local Iwi stating their approval of the naming of the Reserve.

11. Reserves Act 1977

- (a) As the committee will be aware, the area of land in question is designated as a recreation reserve, designation No. 159, pursuant to the provisions of the Queenstown Lakes District Council district plan ("district plan"). We are happy to provide a detailed analysis of the Reserves Act 1977 ("the Act") if required particularly as it relates to the land in question and as it relates to the leasing of recreation reserve. Indeed if the committee has any questions in this regard, then we would welcome the opportunity to address these before any final decision is made. In the meantime however and in support of this application for a Lease, we note the following:
 - (i) Our clients' have at all times complied with the expressed and indeed implied terms of the Memorandum of Lease currently in place and which of course expires on the 1st day of April this year, 2016.
 - (ii) Without providing at this time a detailed summary as to the background to the granting of the Lease and which we anticipate Ms Conroy will address with the committee, we do, with respect, suggest that the current activities undertaken by the Youngs' satisfy the purposes of the Act and indeed provide what is effectively a public amenity with exemplary management which use and management will, based on past experience, continue to meet the expectations of the Act and the ongoing expectations of our community at no cost to the Council. Indeed any costs, particularly in terms of erosion control and general maintenance can be significant but which will continue to be met by the Youngs'.
 - (iii) We also note and as provided for in clause 7 of the existing Lease, that the referred to, walking access, is properly maintained for this purpose and which will continue to be the case irrespective of what intensity of development may occur along the northern boundary.

12. Summary

- (a) Although Daphne Young is the registered proprietor of the family residence and is the current Lessee pursuant to the Lease, Daphne, Rachel and Penelope ask that the Council grant to them an extension of the existing Lease or a new Lease for a further 33 years on the same terms and conditions as currently apply. Indeed due to Daphne's age, the future of the Zoological Reserve and the appropriate management of the Reserve rests in the hands of Rachel and Penelope who as stated previously, have essentially committed their lives to this project.
- (b) The information outlined above hopefully illustrates the Youngs' commitment to the current use and preservation of the Zoological Reserve and their intention to continue

to create a parkland and Zoological Reserve for the benefit of both the Queenstown local community and visitors to the area.

We welcome the opportunity to discuss the above matter at your earliest convenience.

Yours faithfully

BERRY & CO



Abbey James

Law Clerk

e-mail: ajames@berryco.co.nz

Encl.



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Queenstown Lakes District Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented by the GIS data. While reasonable use is permitted and encouraged, all data is copyright reserved by Queenstown Lakes District Council. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED



view
1978?
← →
down ↑
up
Road



erosion. Reseue. 1986
Rocked up now



FEB
1974



1988



looking up River. 1986



new fill near bend of river

151152



viewing river

new rocks new planting - numbered special flood trees willow



new rock wall. Allens house & trees gone,



Ivan looking at sewage spill from New Taint next door.

4-12-96



Reserve looking south.

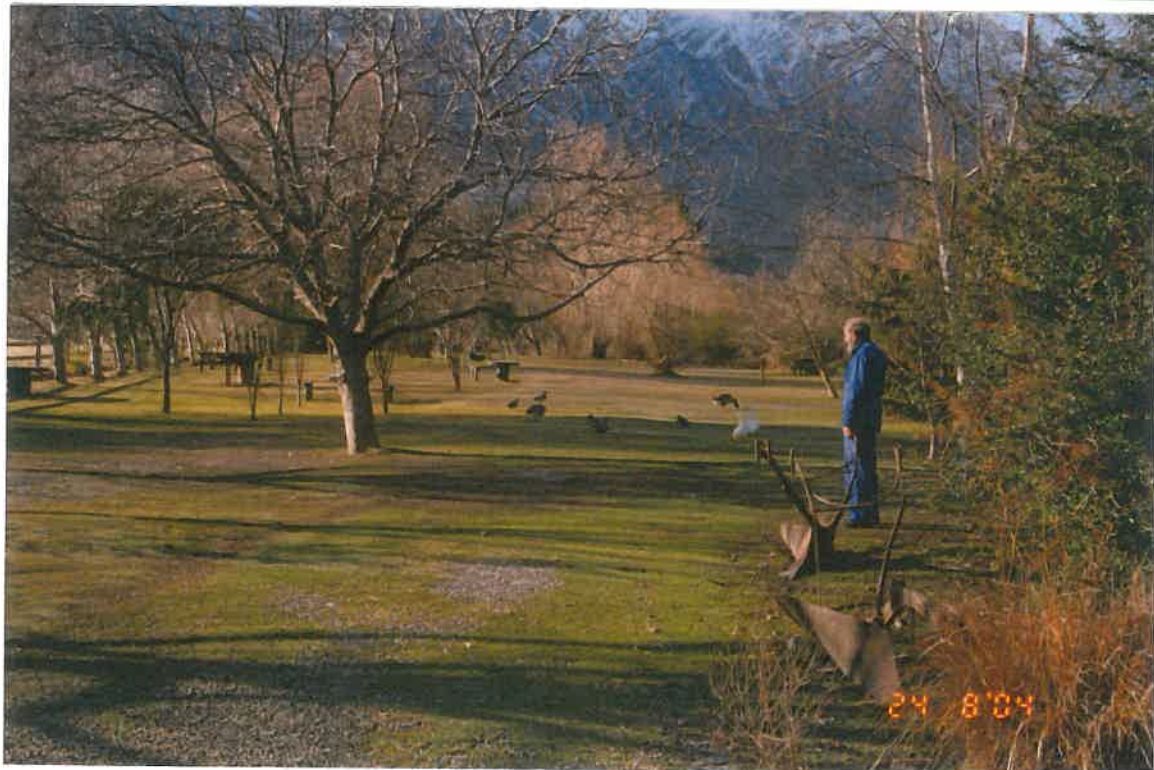


Reserve from pontoon - looking north



Rill o - River 1991





View house
front garden
average car
park.
1993.



Ivan fixing
up Reserve
by hand, after
trucks with
fill.



Wall re
done now
woodland
walk. pipe
done by
Council
1991.



18 1991



left new wall
woodland garden
Right new wall
~~new~~ concreted & high



Arden River 1996



middle now has safety wall
Right Left of it now redone concrete. 29.11.1991

Dr Neil Clayton

27 MAY 2016

417 Portobello Road
RD 2 Dunedin 9077
Tel: 03 476 1384
Mob: 027 476 1384

20 May 2016

Joanne Conroy
APL Property Ltd
PO Box 1586
Queenstown 9348

**Young Family Application to Renew Lease of Reserve, Section 167,
Block 1, Shotover**

Dear Ms Conroy

I support the application by the Young family for a renewal of their lease of this reserve and request that the Queenstown Lakes District Council grant the application.

My reasons for supporting the application are:

1. The intended use of the reserve by the family is suitable for the location;
2. Given the family's record of stewardship of this reserve over many years, QLDC would be hard pressed to find more fitting lessees.

I wish to be heard in support of this submission.

Yours faithfully



Robert Taylor
21 Hobart St
Queenstown
Tel. +64 3 442 8331
Mob 0274 862146

May 27th 2016

Queenstown Lakes District Council
Per APL Property
PO Box 1586
QUEENSTOWN

By e-mail: jo.conroy@aplproperty.co.nz

Dear Council,

**Re: Intention To Grant Lease Over Recreation Reserve to
D, R, and P Young**

I fully **support** QLDC's intention to grant a lease to the applicants to allow them to continue operation of the Zoological Gardens, on land adjoining the Kawarau River at the end of Riverside Road, Frankton described as Section 167 Block 1 Shotover Survey District contained in Certificate of Title OT8C/594.

I am a lifelong permanent resident of Queenstown, and believe the Young Family (Applicants) have been excellent stewards of this reserve land used by them in the past – under guidance of the late Ivan Young, and should be granted a new lease or the existing lease should be extended to allow his children to continue the work, operating the Zoological Gardens, which they have been involved with over many years. This facility is and will continue to be an asset to the Wakatipu Community, especially in the future as much of the districts schooling is relocated to Frankton.

Regards

Robert Taylor

From: [Darryl Spence](#)
To: [Joanne Conroy](#)
Subject: Lease of recreation reserve.D.R.and P Young.
Date: Thursday, 26 May 2016 5:54:27 PM

Dear Jo,

I am writing to you in the hope that the lease on the Zoological gardens can be renewed. Over the years I would take my children there to see the animals and now I take my grandchildren, We take a picnic and the kids love it, I would hate to see it close and I know the children would be very sad.

Penny and Rachel are always very welcoming and love to show the children all the different animals. It's a great place to spend a sunny afternoon for locals and tourists.

Yours sincerely
Lorraine Spence

26 May 2016

Property Subcommittee
Queenstown Lakes District Council
C/- APL Property Services Limited
1st Floor, 50 Stanley Street
PO Box 1586
QUEENSTOWN 9348

Email: joanne.conroy@aplproperty.co.nz

Dear Joanne

**SUBMISSION IN RELATION TO THE QUEENSTOWN LAKES DISTRICT COUNCIL INTENTION TO GRANT A
LEASE OVER RECREATIONAL RESERVE TO D, R AND P YOUNG**

Introduction

1. We refer to our clients' application to the Queenstown Lakes District Council dated 22 March 2016 requesting a renewal of their lease over the recreational reserve legally described as Section 167, Block 1, Shotover District contained in CT 8C/594 and confirm that we act for D, R and P Young, being the applicant's for the lease as described in the notice advertised in the Mirror Newspaper on Wednesday 27 April 2016.
2. In relation to the proposed terms of the new lease as determined by the Property Subcommittee ("Committee") of the Queenstown Lakes District Council we ask the Committee to consider the following:

Further submissions

3. The proposed termination clause under the new lease provides the Council with the ability to terminate the lease upon giving 12 months notice to our clients'. We suggest that this term is inappropriate and unreasonable for the reasons set out below:
 - (a) The fixture of animal enclosures and incidental structures on the land are of a permanent nature, housing many homeless or neglected animals together with other

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David Jackson LL.M. (Hons)

zoological specimens. To uplift or dismantle such facilities would require a considerable amount of time (not to mention cost to our clients') to make suitable alternative arrangements. We are of the view that 12 months would be an insufficient timeframe to allow our clients' to terminate 50 years of occupation, in a reasonable and dignified manner.

- (b) The nature of the reserve land is such that it provides a home to many animals. If the lease were to be terminated these animals would require rehousing. The animals are cared for and fed at the cost of our clients' who also provide support to the public and other animal welfare services within the Queenstown district. Therefore a greater period of time to allow the comfortable rehousing of these animals would be appreciated.
 - (c) Our clients' have a profound psychological attachment with the land. Their father (Ivan Young) and Mrs Young created the Zoological Reserve over 50 years ago and since then they have continued to build on their father's original vision and hard work, dedicating their lives to the ongoing preservation and management of this unique environment. 12 month's notice to leave such a setting would impact severely on our clients' as the land is not only their home but their livelihood and life's work. Our clients' own the property that immediately adjoins the reserve land which has allowed them to provide a stewardship role in caring for the health and wellbeing of the land, river, vegetation of the area and erosion issues. This invaluable but discrete role helps ensure the preservation of the reserve land and it's surroundings for the benefit of the Queenstown Community.
 - (d) We further reiterate the submissions in our clients' original application letter in relation to the stability and quality of the land. It is common knowledge and Council records further substantiate, that the land is prone to erosion and is generally unsound for building purposes.
4. We understand that the inclusion of such a termination clause is largely a result of current "council policy" when granting leases of this nature. However we emphasise the longevity and enduring connection our clients' have with the land in question and ask that this fact be taken into account when considering a reasonable notice period.

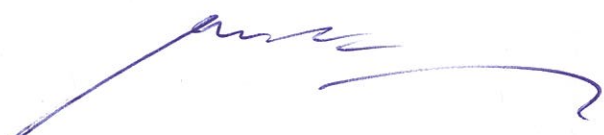
Proposal

- 5. We propose on behalf of our clients' that the termination clause be amended to allow Council the ability to terminate the lease but with 5 years written notice to our client of their intention to do so. This would assist and provide time for our client to make the necessary arrangements to remove various fixtures on the land, rehouse animals and return the land to the council in an appropriate manner.
- 6. We also suggest that such notice to terminate the lease would only be given in the event that the proposed alternative use of the reserve land would be of greater benefit to the Queenstown Community than the existing use is at the time of notice.

7. We also propose that such a right to terminate the lease by the council be exercised only after the expiration of the first 10 year term of the lease.
8. Should the Committee require any further information or assistance then our clients' would be happy to address the same at the convenience of the Committee.

Yours sincerely

BERRY & CO



Revell Buckham
Partner

e-mail: rbuckham@berryco.co.nz

Encl.

Submission by Remarkables Park Limited on the proposal to grant a new lease of the recreation reserve at the end of Riverside Road, Section 167, Block 1, Shotover SD, (Ivan Young Zoological Reserve) to D, R and P Young

1.0 Introduction

Remarkables Park Limited (RPL) believes that the public should be granted free and unimpeded access to this recreation reserve and the adjoining river and that the reserve should be used for its proper purpose as a recreation reserve. The reserve land and the adjoining area of unformed legal road should be made available to allow the Queenstown Trails Trust's river trail (the Twin Rivers Ride) to be extended and relocated closer to the river in this location. This would allow the publicly owned land to be actively used by the public and for the public amenity values of the reserve area to be further enhanced. For these reasons RPL is opposed to the proposal to grant a new lease of this land to private parties.

2.0 Reserves Act Requirements

2.1. In making this submission RPL notes that; 1, not only is it undesirable from a public access perspective and 2, contrary to the principles of the Reserves Act 1977 (the Act) to continue the privatization of this area of riverside land, but 3, QLDC does not appear to have statutory authority to lease the land for the proposed purpose.

2.2. The powers granted to a territorial authority to lease a recreation reserve are much narrower than the notice advertising this proposal suggests. The APL report states: "*Pursuant to the Reserves Act 1977, leases can be granted on recreation reserves provided they benefit users of the reserve.* " That is not a proper statement of the law relating to leasing recreation reserves. There are limitations on the uses for which a recreation reserve can be leased.

2.3. Firstly, any proposed leasing of a reserve must be done in the exercise of a council's functions under section 40 and "to the extent necessary to give effect to the principles set out in section 17" of the Act. Those two provisions are set out below with underlining added.

40 Functions of administering body

(1) □ The administering body shall be charged with the duty of administering, managing, and controlling the reserve under its control and management in accordance with the appropriate provisions of this Act and in terms of its appointment and the means at its disposal, so as to ensure the use, enjoyment, development, maintenance, protection, and preservation, as the case may require, of the reserve for the purpose for which it is classified.

□ (2) □ Every administering body of a reserve that includes any part of the Wanganui River shall, in carrying out its functions, have regard to the spiritual, historical, and cultural significance of the river to the Whanganui iwi.

It is noted that the reserve in question is a recreation reserve. Its purpose is recreation.

17 Recreation reserves

(1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as recreation reserves, for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

2) It is hereby further declared that, having regard to the general purposes specified in subsection (1), every recreation reserve shall be so administered under the appropriate provisions of this Act that—

(a) the public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on the administering body by [sections 53 and 54](#), to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and general well-being of the reserve and for the protection and control of the public using it:

(b) where scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife are present on the reserve, those features or that flora or fauna or wildlife shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve: provided that nothing in this subsection shall authorise the doing of anything with respect to fauna that would contravene any provision of the [Wildlife Act 1953](#) or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [Heritage New Zealand Pouhere Taonga Act 2014](#):

(c) those qualities of the reserve which contribute to the pleasantness, harmony, and cohesion of the natural environment and to the better use and enjoyment of the reserve shall be conserved:

(d) to the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.

2.4. It is apparent from these provisions that, as a recreation reserve, priority should be given to providing for recreation and sporting activities and the physical welfare and enjoyment of the public, with an emphasis on the retention of open spaces and on outdoor recreational activities including recreational tracks in the countryside. The activities proposed by the Youngs are not consistent with these mandated purposes. Neither can it be contended that the existing animal enclosures “contribute to the pleasantness, harmony, and cohesion of the natural environment”.

2.5. Secondly, section 54(1) provides only four situations in which a lease of a recreation reserve can be granted. S54(1)(b) & (c) are not relevant as they apply only to sporting facilities and voluntary organisations. S54(1)(d) applies to the carrying on of a trade, business or occupation and is not relevant. So the only

possible provision under which the proposed lease to the Youngs could be authorized is S54(1)(a) which states:

S54 (1) With the prior consent of the Minister, the administering body, in the case of a recreation reserve that is vested in the administering body, may from time to time, in the exercise of its functions under [section 40](#), to the extent necessary to give effect to the principles set out in [section 17](#),—

(a) ☐ lease to any person, body, voluntary organisation, or society (whether incorporated or not) any area set apart under [section 53\(1\)\(h\)](#) for baths, a camping ground, a parking or mooring place, or other facilities for public recreation or enjoyment. The lease—

(i) ☐ may require the lessee to construct, develop, control, and manage the baths, camping ground, parking or mooring place, or other facilities for public recreation or enjoyment, or may require the lessee to control and manage those provided by the administering body; and

(ii) ☐ shall be subject to the further provisions set out in [Schedule 1](#) relating to leases of recreation reserves issued pursuant to this paragraph:

2.6. The first point to note is that, for part of a recreation reserve to be leased, the area has to be “set apart” by the Council under section 53(1)(h) for quite specific purposes. That subsection states:

53 Powers (other than leasing) in respect of recreation reserves

(1) ☐ The administering body of a recreation reserve may from time to time, in the exercise of its functions under [section 40](#) and to the extent necessary to give effect to the principles set out in [section 17](#),—...

h) at any time and from time to time set apart any part or parts of the reserve—

(i) ☐ for gardens, open spaces, footpaths, driveways, or picnic grounds, or for the provision of any other like facilities for public recreation or enjoyment or for facilities and amenities necessary for the public using the reserve; and construct or develop those gardens, open spaces, footpaths, driveways, picnic grounds, or other facilities for public recreation or enjoyment or facilities and amenities necessary for the public using the reserve; and fix reasonable charges for the use of those picnic grounds, facilities, and amenities:

(ii) ☐ with the prior consent of the Minister, for baths, camping grounds, parking places for vehicles, or mooring places for boats, necessary for the convenience of persons using the reserve, and construct and develop such baths, camping grounds, and parking or mooring places, and fix reasonable charges for the use of such baths, camping grounds, and parking or mooring places:

(iii) ☐ with the prior consent of the Minister, for compounds for animals for display to persons using the reserve, and construct and develop such compounds, and fix reasonable charges for viewing the animals therein:

2.7. The use proposed to be undertaken on the reserve under the proposed lease is stated to be: “*Gardens and Animal enclosures and associated buildings and activities*”.

The APL report also refers to the following uses:

- *a parkland for zoological purposes with associated buildings*
- *gardens*
- *an animal shelter for wayward or abandoned animals*
- *develop and manage the reserve*
- *educate visitors about flora, fauna and environmental issues*

2.8. However, the authority to lease in S54(1)(a), as highlighted above does not refer to those uses. It refers only to “any area set apart under [section 53\(1\)\(h\)](#) for baths, a camping ground, a parking or mooring place, or other facilities for public recreation or enjoyment.”

2.9. The wording seems to be a direct reference to S153(1)(h)(ii) and may be limited to the type of activity described in that subsection. It is possible that the added words “recreation or enjoyment” extends it to S153(1)(h)(i) but there is no wording that would link the leasing power in S54 to *compounds for animals for display* (S153(1)(h)(iii)). There is no authority to lease this reserve to the Youngs for their proposed purpose.

2.10. Even if the Council did have legal authority to lease a recreation reserve for “gardens and animal enclosures and associated buildings and activities”, any lease (including the old lease and the proposed new lease) is required to be subject to the further provisions set out in Schedule 1. The Schedule 1 provisions deal with renewals and termination but the language is instructive.

2.10.1. For a lease renewal to be granted the Council must be satisfied “that there is sufficient need for ... (the facilities) ... and that some other recreational use should not have priority in the public interest”. No information has been provided on the need for the animal enclosures or other facilities currently occupying the reserve. Neither has any information been provided on other recreational uses that might have priority. However the significance of the Queenstown and Wakatipu trails network is huge and there would be immediate use made of the trails if the Twin Rivers Ride was to be relocated and extended along this part of the river. In 2015, 10,618 people used the Twin Rivers Ride even though the trail was closed for part of the year because of weather damage. RPL contends that walking and cycling are recreational activities that involve many people. They are activities that are specifically in line with the statutory duty with which QLDC is charged and with the principles set out in the Act. They should have priority over a viewing place for caged animals – which is not in line with the section 17 principles that apply to recreation reserves.

In making the above comment on trail usage, it is noted that RPL is a major sponsor of the Queenstown Trails Trust and has an agreement with the Trails Trust under which RPL has taken over the maintenance of the Twin River Ride, from below the bottom of Riverside Road to the Shotover River confluence, for a fifteen year period

from 2015. RPL also resurrected the proposal to repair the major slip that caused the lower trail to be closed and is now managing that repair for the Trust. RPL believes that it has a good appreciation of the importance of the trail network both directly to existing and future residents of the Queenstown Lakes district and as a tourism asset for the whole district and wider region.

2.10.2. A lease under s54(1)(a) of the Reserves Act can be terminated if *the land leased is not being used or is not being sufficiently used for the purpose specified in the lease*. In this regard it is significant that the use of the reserve for the proposed purposes has not been continuous in the past. In particular there have been periods when the gardens have been closed and not accessible by the public. Anecdotally, when locals are asked about the Zoological Gardens the response is: “Is that still open?” This suggests that, had the Council been more vigilant in the administration of this land in the past, the old lease would have been terminated and would definitely not be up for possible renewal now.

3.0 The Current Situation

3.1. The current arrangement between Council and the Youngs effectively privatises a significant section of the Kawarau River. This is partly alluded to in the APL report with the statement: *Access to the site is not ideal, being a single lane, shingle driveway that looks private and is not maintained by Council even though it is legal road.*

3.2. However, the true extent of the privatization is much greater than that. Although the proposed lease would cover 5,520 m² (shown red on the attached plan) and limit access to 189 metres of river frontage, the fencing, gates, gardens and signage installed by the Youngs have effectively privatized an additional 4,677m² of land that is public road (shown green on the attached plan) and have thus limited access to a further 136 metres of river frontage. In addition, the current alignment of the Twin Rivers Ride trail (which avoids the private-looking driveway access to the Youngs’ site) means that an additional 1,922m² (shown yellow) is effectively lost from public use.

3.3. The Youngs’ house is closer to the Kawarau River than any other dwelling in the district. It is far closer than would be permitted under the Council’s District Plan (or under the Regional Plan) and indeed the house is subject to serious inundation when the river is high. It is most unlikely that a dwelling in this location would have been legally able to be consented at any time so it is likely that the structure (and probably the house site itself) has been retrospectively consented at some time in the past. The Youngs have been able to treat the reserve and the area of unformed road (over a hectare in total) as their private curtilage over many years but that is not a good reason to continue the situation.

3.4. The APL report states “(t)hey have continued to provide free access to the river, which was a requirement of the old lease”. However that is not how the public sees the situation. There is no signage indicating that the public has access to the river or the reserve. On the contrary there is signage saying that dogs are prohibited, that there is no exit and that the zoological gardens are only open 10.00am – 4.30 pm. The anecdotal evidence is that local residents do not believe they have free access

to the river through “the Youngs’ property”. The fence between “the Youngs’ property” and the areas of adjoining reserve that were vested in Council by RPL is topped with barbed wire and there is not a single gate along the whole 387-metre length of the fence. This hardly suggests that users of the adjoining reserve areas, or the public generally, are welcome to cross “the Youngs’ property” to gain access to the river, or that free access is available.

3.5. The areas of adjoining reserve that were vested in Council by RPL are shown on the attached plan in green and outlined in a solid black line. The intention is that, as more land is developed within Remarkables Park, RPL will vest additional land in this vicinity in Council as reserve. The original lease to the Youngs would have predated the vesting of reserve by RPL. Council’s acquisition of the adjoining land as reserve is therefore a new factor that needs to be taken into consideration now when the request for a new lease is being considered. There is no logic in Council acquiring these new reserve areas (that range from 30 to 45 metres in width) if they are isolated and cannot be connected to the “Youngs’ reserve” and to the river.

3.6. At the time the first lease was granted to Mr Young, 35 years ago, there were far fewer homes in Frankton and the residential part of it known as Remarkables Park had yet to be developed. Accordingly the demand for reserves was much different than it is today when all of the Riverside Road area has been developed for housing and new residential dwellings are currently being constructed in Cherry Blossom Avenue, a short walk from this reserve. Much more land in this vicinity is currently under development for residential uses and other uses, such as visitor accommodation, that will generate use of the river and adjacent reserve areas.

3.7. The Remarkables Park Zone specifically provides for high density residential, visitor accommodation and commercial activities. Development of the land in accordance with its zoning is being encouraged by the Council and is being actively worked on by RPL. A ferry terminal is planned on the river’s edge a little further downstream from the Ivan Young Zoological Reserve. This new facility, which will provide an easy commuter connection to downtown Queenstown, will attract a new group of users to the riverside reserves. So too will the new Wakatipu High School (due to open at Remarkables Park in 20 months), as students will undoubtedly use the Twin Rivers Ride as a cycle or pedestrian route to and from school.

3.8. Council receives no rental from the Youngs for their occupation of this public land so there is no compensation to the public for forgoing access to the reserve and the river. On the other hand, the APL report notes that the Youngs charge a fee for people to visit the animal enclosures (currently \$15.00 per adult).

3.9. RPL has obtained geotechnical advice from consultant engineers, Tonkin and Taylor that the land in the vicinity of the river in this location will require significant engineering work to stabilize it for long-term use and prior to construction of buildings. RPL submits that it would be inappropriate to give control of this land to any party for any purpose for an extended period as this may restrict the ability for the owner to undertake or enable the required remedial work.

3.10. RPL and Council have agreed on the construction of a new sewer pumping station to be sited within the area of unformed legal road shown shaded bright green on the attached plan. This work is likely to be undertaken within the next 18 months. It makes good sense to terminate now the impression that the Youngs have any rights or expectations to occupy this area into the future.

3.11. If the Council's concern is that it does not want to take on the cost associated with maintenance of this reserve area, then RPL would itself be prepared to maintain the area. As noted above, RPL has a 15 year agreement with the Trails Trust to maintain the Twin Rivers Ride alongside the upper Kowarau River and RPL would be willing to extend that arrangement to cover maintenance of a relocated trail and further enhancement of the public land along that part of the river now occupied by the Youngs.

4.0 Reserve Management Plan

4.1. Council has confirmed that there is currently no Reserve Management Plan for the area identified as the Ivan Young Zoological Reserve. If a reserve management plan had been prepared it would likely have identified many of the above issues, (including the extent of existing use of the reserve, competing uses for the reserve, the importance of the trails network, the appropriate level of reserve land for the expanded Frankton residential area and the expanding Remarkables Park zone (high density residential/visitor accommodation/commercial activities) and the statutory principles that apply to administration and use of a recreation reserve) and perhaps many others. It seems entirely inappropriate to be considering the Youngs' proposal for the future of the reserve in the absence of a reserve management plan, especially when the proposed use would effectively privatize the area for a further 30 years and add considerable financial value to the Youngs' house for no compensation or financial return to the community.

4.2. It is further noted that, in the absence of a management plan, Council cannot avail itself of the exclusion provided by S54(1A) of the Reserves Act. Any decision Council wishes to make in respect of leasing the reserve would require the prior consent of the Minister.

5.0 Request to be heard

RPL requests the opportunity to be heard at any hearing convened to consider this application to lease the reserve.

Remarkables Park Limited

Attachments (3): Aerial photo, recent photograph of entrance, historic photo of site flooding

Plan of areas currently occupied by Youngs and adjoining reserve areas (house site 813m² shown in blue)



Recent photograph of entrance to “Youngs’ property” showing fencing, a gate and signage on unformed legal road and a roadworks cone (behind the fence) that could be positioned to further discourage traffic.





Minutes of a hearing of submissions on a proposed new lease for Zoological Gardens, Frankton held in the Council Chambers, 10 Gorge Road, Queenstown on Thursday, 23 June 2016 beginning at 1.00pm

Present

Councillor Mel Gazzard (Chairperson) and Councillor Merv Aoake

In attendance

Mr Stephen Quin (Parks and Reserves Planning Manager), Mr Aaron Burt (Planner, Parks and Reserves), Mrs Joanne Conroy (Property Advisor, APL Property Ltd) and Ms Jane Robertson (Governance Advisor)

Election of Chairperson

The Governance Advisor called the meeting to order and invited the Councillors to elect a chairperson for the hearing. It was agreed that Councillor Gazzard would chair the hearing.

Apologies

An apology was received from Councillor MacLeod. It was noted that the resolution establishing the hearings panel required only two of the three nominated Councillors to form a hearings panel.

Conflicts

No conflicts of interest were notified.

Confirmation of Agenda

The agenda was confirmed without addition or alteration.

Hearing of submissions

Applicant's Presentation

The applicants (Ms Rachel Young and Ms Penny Young) were represented by Mr Revell Buckham (Solicitor). They were accompanied by Ms Abbie James (Solicitor). It was noted that their mother, Mrs Daphne Young (also an applicant), was unable to attend the hearing.

Mr Buckham sought clarification of the hearing procedure, especially in light of the legal submissions made by Remarkables Park Ltd ('RPL'). There was further discussion and it was agreed that it was appropriate for the applicant to have a right of reply after the submitters (including RPL) had spoken.

Mr Buckham presented evidence on behalf of the Youngs.

- The lease has been expired since 1983 and the Youngs have been stewards of land since.

- In recognition of Mr Ivan Young's involvement in development of the reserve, it had been named in his honour.
- Use of the land was self-explanatory and included the private house and the reserve to the south east. The hearing is dealing with this reserve only, immediately adjoining to which are some buildings for the bird life, taking up a small part of the reserve.
- The purpose of the reserve is the wellbeing of animals and public enjoyment of the gardens. Many of the animals taken in have been neglected and it is one of the few facilities in this area caring for animals in this situation. There are a number of regular visitors to the garden and a broad community aspect to the overall operation.
- There is no charge to enter the site but a small charge is payable for a tour of the site. It is a nominal operation and funded by the applicants' own resources. The applicants were happy to accept any conditions including sighting of financial records.
- Although access to site had been raised as a concern there is a public road to the house and the fence now in place had been put in place by Remarkables Park.
- The applicants acknowledged that it was a privilege to use the property and allowing people to access it free of charge was important to them. To this end the applicants were happy to ensure easy public access to the reserve. Whilst the existing fence could remain in place the applicants suggested that a stile or gates be placed to allow access over the fence. In addition, signage could be installed in consultation with Council officers to indicate that it was a public walkway, so that there was no misunderstanding about access.
- Some sort of security of tenure was sought and the applicants were concerned about the proposed term of the lease and the termination clause. The applicants were aware of the Council's policy review about the use of reserves but Mr Buckham suggested that this lease deserved more favourable conditions than the standard. In particular, he asked the panel to reconsider the one year notice of termination. He highlighted the unique aspects of this lease including its long-standing use as a reserve area and the fact that the family had been stewards of the land at their own cost for many years. They had a consented private jetty that they freely allowed others to use and the plantings had been designed to ensure vehicle access. Overall, they had made a significant investment in the property and it would be difficult to uproot. Furthermore, the family was hesitant to make further investment in the gardens if the lease was to be terminated at short notice. He suggested that a condition more palatable to the applicants was a five year notice period of termination and not in the first 10 years of the lease.
- Mr Buckham pointed out that the area is subject to erosion and flooding and the land edge would have disappeared without the intervention of the Youngs.

Presentations by submitters

Support

Dr Neil Clayton

Dr Clayton spoke to his submission in support of granting the lease. He highlighted the following points:

- He supported the views already expressed by the applicant and questioned the motives of Remarkables Park ('RPL') in opposing the lease.
- Much of the land near the reserve had already been swallowed up by commercial developments in the area, especially those belonging to RPL. This commercial encroachment was steadily advancing towards the Kawarau River and the Council needed to intervene to ensure that this intrusion did not become detrimental to the scenic values of the area. The reserve occupied by the zoological garden provided an effective buffer to this encroachment.
- The Young family had maintained and improved riverbank stability in the area and had not denied access to the reserve in any way as suggested by RPL.
- There was nothing in the RPL submission that suggested that its proposal would provide a better or more appropriate environmental outcome.

Mrs Lorraine Spence

Mrs Spence stated that many of her family and friends visited the gardens and it would be unfortunate to lose this facility.

Opposition

Remarkables Park Ltd

Mr John Young (Brookfields Lawyers)

Mr Young circulated written evidence which he summarised for the hearings panel. His key points were as follows:

- The current and proposed use of the reserve for the zoological gardens did not meet the purpose and principles of the Reserves Act 1977.
- There is no Reserve Management Plan in place covering the reserve.
- Use of the reserve as part of the trails network should be enabled because it would provide direct and free access to the riverbank.
- RPL wanted to see the activities at the zoological gardens to co-exist with RPL and to remain on the site, but it wanted to see new uses accommodated. In addition, RPL wanted the Council to take steps to ensure public awareness of free public access to the area.

- RPL opposed the Council granting a lease on the terms sought by the applicant and the terms proposed by the reporting officer.
- RPL considered the current use as zoological gardens was contrary to the Reserves Act because it did not preserve access for the public to the riverbank. Most ordinary members of the public arriving at the entrance to the zoological gardens would feel that they were not able to access the area. In addition, the garden had operating hours which would affect how people perceived whether they were permitted to enter the area.
- The proposed lease was an impediment to recreational tracks.
- Leasing powers under the Reserves Act required a 'trade, business or occupation must be necessary to enable the public to obtain the benefit and enjoyment of the reserve.' The zoological garden was not a trade because profit was not the object and it was not one that was necessary for the public to enjoy the reserve. Case law was presented which considered the meaning of 'necessary' with the High Court finding that enabling greater use and enjoyment of a reserve was critical.
- The Council had failed in its obligation to prepare a Reserve Management Plan for this area.
- If the Council was of a mind to grant a lease he recommended that:
 - The lease be granted for a much smaller area within the reserve;
 - The lease be granted for a one year term and the panel recommend that Council start preparing a Reserve Management Plan for the area.
 - Should the lease be granted for longer than a year, the 12 termination clause should be retained.
- He recognised that these suggested conditions would not be palatable to the applicants who sought security of tenure but stated that the issue was about public accessing the area without hindrance (fences, operating hours, admission charges). He accepted that the Youngs work meant that more people were aware of the area but it was not freely available to use in terms of the Reserves Act.

Carey Vivian (Planner)

Mr Vivian noted that in speaking at the hearing he was not authorised to give this evidence for the Queenstown Trails Trust.

Mr Vivian's evidence highlighted the following points:

- Consideration of the lease provided an opportunity to manage the reserve in an integrated and coordinated manner.
- It would be short-sighted to lease this much land for such a long period of time in light of the urban growth anticipated to occur around it. It would also be short-sighted to 'isolate' public reserve land from public use and enjoyment.

- The site is strategically important to the urban growth of Frankton and granting a lease is contrary to various urban development policies in the Proposed District Plan. Infill development in Frankton will put more pressure on reserves in this area. Council needs to be more careful and forward thinking in management of reserves.
- The reserve provided an excellent opportunity to be an effective linkage for the Queenstown Trail and to be realigned through the site to a riverside reserve.
- If the Council was of a mind to grant a lease he recommended that:
 - The extent of the lease area be reduced to include only the aviaries, car park and a small area of land to the north of the house;
 - The potential to relocate the Queenstown Trail through the reserve be retained;
 - Maintain the riverside area of the reserve for the benefit of existing and future population growth.

The meeting adjourned at 2.30 pm and reconvened at 2.38pm.

Robert Greenaway (Consultant Recreation and Tourism Planner)

Mr Greenaway presented evidence which recommended the following:

- A reserve management plan be prepared for the all the reserves in the vicinity of the Ivan Young Zoological Reserve as a more comprehensive management approach than was currently applied was needed.
- While the management plan is being prepared, the existing lease should be replaced by a temporary licence to occupy or other similar mechanism.
- The management plan should include an outline development plan to show how the zoological gardens can continue on the site while providing for better public access than at present . This outline development plan should also define the parameters of a future lease.

Mr Brian Fitzpatrick of Remarkables Park Ltd was in attendance at the hearing but did not present evidence on behalf of RPL although he made a number of minor comments clarifying questions raised.

Mrs Conroy left the meeting at 3.00pm.

Applicant's Right of Reply

- Mr Buckham stated that the Council did have authority under 54(1)(b) to grant this lease and the only questions that remained therefore were on what terms. He agreed that a Reserve Management Plan was a relevant point but the lack of one did not prevent granting a lease. He also considered that no evidence had been presented by RPL demonstrating that it would be inappropriate to lease this land.

- The applicants agreed that the public should be able to see this area and use it and the family was happy to consult with the Council about how to make the appearance of access more tangible. He pointed that out few people would visit this area had the attraction not been there.
- In relation to the legal submissions presented, Mr Buckham asserted that it would be contrary to the principles and purpose of the Act if the Council was of a mind to grant a new lease on the terms sought by RPL.

There was further discussion about the possible development of a Reserve Management Plan covering this and the other reserves in the area and where this might fit into the work programme. It was noted that the parks team was preparing information about which reserves were covered by Reserve Management Plans for Council to determine a priority for work.

The public part of the hearing concluded at 3.15pm, at which point deliberations commenced.

Deliberations

Councillors considered the proposed lease conditions provided in the officer report. They did not support a term of ten years or two renewals of a further ten years and instead preferred a shorter term, but one with sufficient time that would allow for the preparation of a Reserve Management Plan.

They considered that a one year timeframe for preparing and finalising a Reserve Management Plan, as suggested at the hearing, was overly optimistic. Further, it was noted that the timeframe also needed to be sufficient to allow for the vesting of reserve land as proposed by Remarkables Park Ltd to take place, as this would allow that land to be included in the Reserve Management Plan. Following further discussion it was agreed that a five year lease term would be recommended along with a termination clause giving the Council the ability to give 24 months' notice to terminate the lease.

It was further agreed that the shortened term of the lease would be balanced by a new recommendation that a Reserve Management Plan covering this area be developed within the term of the lease.

The panel acknowledged that the lease term was shorter than that sought by the applicant and also considered any rights of renewal. The panel agreed that it would not provide any rights of renewal, but this did not preclude a new lease being granted at the expiry of the current lease. Further, a Reserve Management Plan would be developed over the current lease period and it would identify the area leased to the Youngs and the terms and conditions of the lease. This would make any future application for a new lease easy to achieve, in particular, removing the statutory requirement for public consultation.

Members gave consideration to the views expressed at the hearing about public access to the lease area. Some sympathy was expressed with the comments made that the entrance way to the zoological gardens and the 'no exit' road signage could imply that the area was not open to the public. There was extensive discussion about a suitable condition which would address concerns about access and it was agreed that the following would be recommended:

It was noted that the Council's parks and reserves department had good signage that could be used to assist in highlighting public access to the reserve.

- 1. Note the contents of this report;**
- 2. Consider the submissions received on the proposed intention to grant a new lease to D, R and P Young for the Zoological gardens in Frankton together with advice from officers;**
- 3. Recommend to Council that a new lease be granted over a recreation reserve known as Section 167 Block 1 Shotover Survey District, subject to the following terms and conditions:**

Commencement	1 August 2019
Term	5 years
Rent	Pursuant to Community Pricing Policy (\$1)
Reviews	None
Renewals	None
Termination	Council has the ability to give 24 months' notice to terminate the lease
Use	Gardens and animal enclosures and associated buildings and activities
Other	<p>That free access for the public to the lease area be provided (except the buildings);</p> <p>Consideration of Health and Safety;</p> <p>The lessee to maintain a minimum of \$2,000,000 public liability insurance;</p> <p>At termination, all buildings to be removed and the land reinstated;</p> <p>Lessee to assist Council in its effort with regard to the control of invasive weed species in the Kawarau River by whatever means are deemed appropriate within the context of a management plan for the Kawarau River;</p> <p>Lessee to provide access for Council to the lease area if remedial works are required for flooding or subsidence or to terminate if these events make continued use dangerous.</p>

- The meeting concluded at 4.05pm.*

30 June 2016

Property Subcommittee
Queenstown Lakes District Council
C/- APL Property Services Limited
1st Floor, Stanley Street
PO Box 1586
QUEENSTOWN 9348

Attention: Joanne Conroy
Email: joanne.conroy@aplproperty.co.nz

Dear Joanne

LEASE APPLICATION – D, R AND P YOUNG

We refer to the abovementioned application as heard before the Property Subcommittee ("Committee") on the 23rd day of June 2016 and take this opportunity to make the following comments:

1. As the Committee is aware, the writer objected to Remarkables Park Limited as a submitter presenting submissions (without reasonable notice) to the applicant or indeed the Committee itself. The writer had reserved the applicant's position as acknowledged by counsel for Remarkables Park Limited at that hearing.
2. In relation to the submissions made by Mr Carey Vivian and Mr Robert Greenaway, we reiterate our view that those submissions were not supported by any evidence particularly in terms of the Trails Trust and whereby there is no expectation on the part of the Trails Trust that a future trail be placed through the reserve land in question and neither is such provided for in the 10 year strategic plan of the Trust.

We also reiterate the comments made at the hearing whereby in terms of the planning commentary given by Mr Vivian and Mr Greenaway, such were speculative and have little, if any relevance to the application placed before the Committee at the hearing. Indeed, we are of the view that our clients use of the land satisfies all legal and practical considerations as set out in the written submissions presented to the Committee. We note the following:

Queenstown Partners

Revell Buckham LL.B.
Matthew Edwards LL.B.
Merrin Gill LL.B.

Oamaru Partners

George Berry MNZM, LL.B.
David Salter BA, LL.B.
Michael de Buyser LL.B., Notary Public
David Jackson LL.M. (Hons)

- (a) The Queenstown Lakes District Council ("QLDC") does have the authority at law to grant a Lease and indeed, this is in fact anticipated pursuant to the provisions of the Reserves Act 1977.
 - (b) Such authority is contained within Section 54(1)(d) of that Act.
 - (c) RPL also raised the issue of management plans and the fact that there was no such management plan in place at this point in time. Although the writer addressed this at the hearing it is relevant to note the following:
 - (i) The lack of a management plan is, as stated, acknowledged however this in no way precludes the QLDC from granting the proposed Lease.
 - (ii) It is reasonable to anticipate that if and when a management plan is prepared, that it will address the current utilisation of the recreation reserve by our clients and reinforce the history of occupation of this land by the Young family, the excellent stewardship of the land during this period and the broader and widespread community benefit as a consequence. Indeed, to speculate on whether any future use may provide a greater community benefit is not a matter which the QLDC could reasonably contemplate at this time however we do acknowledge that such matters would be considered at the time that a management plan is addressed and implemented.
 - (d) We submit that there can be no harm in the granting of a Lease to our clients at this time and indeed, to the contrary, it would be unreasonable, harmful and contrary to the evidence, considerations and authority available to the QLDC not to grant such a Lease. No other realistic recreational use of the land was tabled at the hearing and with respect, nor could any future recreational use be reasonably contemplated whereby our clients activities would prejudice such use particularly when reasonable conditions of public access and enjoyment will be maintained, encouraged and indeed, enhanced.
3. We submit therefore for the Committee and QLDC's consideration the following proposal:
- (a) That a Lease for 10 years with 2 rights of renewal be granted to our client.
 - (b) That our clients Lease can be terminated on giving 5 years notice after the expiry of the first period of 10 years. Such termination could be invoked in the event that any alternative proposed use would be of greater benefit to the Queenstown community than the then existing use.

With respect, we suggest that:

- (i) This achieves an appropriate outcome as to the utilisation of this land and the expectations and authority contained within the Reserves Act.

- (ii) Provides our client with some security of tenure and therefore confidence to manage, improve and enhance the Zoological Garden and which comprises public recreational areas, picnic areas, children's activities, gardens etc.
- (iii) Would still allow the QLDC to terminate on notice if this was deemed necessary pursuant to the terms of the proposed Lease or as a consequence of the outcome of a future management plan.

Yours faithfully
BERRY & CO



R W Buckham
Partner

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**EXTRACT FROM THE CONFIRMED MINUTES OF THE MEETING OF
QUEENSTOWN LAKES DISTRICT COUNCIL HELD ON 28 JULY 2016**

Public Forum

1. Revell Buckham, appearing on behalf of Penny Young and Rachel Young

Mr Buckham commented on the recommendations from the hearings panel on the new lease for the Young Family to occupy recreation reserve to operate their zoological garden at Frankton. He questioned whether a reserve management plan would be prepared within 5 years and detailed various concerns and risks for the Young family under this scenario. He suggested that with so many unknowns, a preferred outcome was to grant a lease for 10 years, with the right for the Council to terminate at its discretion on (say) 2 years' notice. However, if the Council was still of a mind to tie the granting of the lease to the preparation of a Reserve Management Plan, he suggested that the lease be granted for 10 years or for a period of six months from when the Reserve Management Plan was adopted and implemented, whichever period was lesser, but in any event, not less than 5 years from 1 August 2016.

2. Proposed New Lease for the Young Family: Zoological Gardens, Frankton

A report from Joanne Conroy (Property Advisor, APL Property Ltd) detailed the process undertaken to determine whether a new lease for the Young family to operate the Zoological Gardens in Frankton should be granted, noting that it had been publicly notified and a hearing had been held to hear submissions. The report highlighted the key considerations to which the hearings panel had had regard and presented the panel's recommendation to grant a new lease for five years, subject to conditions.

Mrs Conroy, Mr Quin and Mr Walker presented the report.

Members noted that the hearings panel's recommendations were for terms and conditions different from the policy adopted in the previous item, but observed that this indicated that the policy would not be appropriate for some situations. Consideration was also given to the applicant's request made in the public forum for a term of at least ten years and the concerns raised about what would occur if the Council was unable to prepare a Reserve Management Plan ['RMP'] for the area within the proposed five years of the lease.

The Mayor invited the members of the hearings panel to comment on the reasons behind their recommendation.

Councillors Gazzard and Aoake stated that key considerations had been a desire to allow the Youngs to continue to use the land which had been developed by their father and was now named for him, whilst balancing the needs and requests of others in the area. Submitters had sought a forward vision for the whole area which highlighted the need for a RMP and staff had

been confident at the hearing that it would be possible to develop a RMP within five years. The panel had therefore suggested a lease term of five years to ensure that there was impetus to prepare a RMP within this timeframe.

There was discussion about other options for the lease and conditions but the Mayor pointed out that the suggestions presented by Mr Buckham in the Public Forum represented a solution that was acceptable to the applicant. She observed that this was an approach which provided the applicants with five more years than the recommended term, but also a reasonable timeframe for the Council to work through the preparation of a RMP.

The Chief Executive considered that the Council had the discretion within the framework of the hearings process to approve a simple extension of the lease period to recognise the uncertainty about preparing a RMP.

Mr Quin responded to questions about open access to the site. He noted that there were plans to put Council signage in place and he would work with the applicants to establish clear access. The Mayor stressed the importance of including the RMP preparation in the work plan.

On the motion of Councillors Aoake and Gazzard it was resolved that the Council:

- 1. Note the content of this report;**
- 2. Approve a new lease to D, R and P Young over Section 167, Block 1 Shotover Survey District, subject to the following terms and conditions:**

Commencement 1 August 2016

Term 10 years

Rent \$1.00 (Pursuant to Community Pricing Policy)

Reviews None

Renewal None

Termination Council has the ability to give two years' notice to terminate the lease

Use Gardens and animal enclosures and associated buildings and activities

Other That free access for the public to the lease area be provided (except the buildings);

Consideration of Health and Safety;

The lessee to maintain a minimum of \$2,000,000 public liability insurance;

At termination, all buildings to be removed and the land reinstated;

Lessee to assist Council in its effort with regard to the control of invasive weed species in the Kawarau River by whatever means are deemed appropriate within the context of a management plan for the Kawarau River;

Lessee to provide access for Council to the lease area if remedial works are required for flooding or subsidence or to terminate if these events make continued use dangerous.

- 3. Agree that a Reserve Management Plan for the area of and around the Zoological gardens in Frankton be prepared within three years of the lease commencement.**
- 4. Agree to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting a new lease to D, R and P Young over Section 167 Block 1 Shotover Survey District.**

MEMORANDUM ADDRESSING THE RECOMMENDATION MADE BY THE PROPERTY SUB
COMMITTEE DATED THE 23RD DAY OF JUNE 2016

Matters Addressed:

1. The subcommittee has recommended that a Lease be granted for a period of 5 years commencing on the 1st day of August 2016 but on the proviso amongst other things, that such Lease can be terminated at the discretion of the council upon giving 2 years notice. ✓
2. As we understand matters, the relatively short duration is driven by an expectation that within that 5 year period, the council will pursue, adopt and implement a management plan (in accordance with Section 41 of the Reserves Act 1977), in relation to Queenstown Lakes District Council reserves. ✓
3. Potential difficulties with this proposal are (with respect), outlined as follows:

- (a) Will such plan be adopted and implemented within 5 years? In this regard, it is relevant to note that the period of 5 years is relatively arbitrary and whereby the 5 years referred to in Section 41 of the Reserves Act 1977 has no particular relevance to the council's position on this matter.

Also not having a management plan is not in itself fatal or particularly prejudicial to Queenstown Lakes District Council interests and as such, when and if a management plan is adopted and implemented, will be determined by council based on any number of considerations and timing issues.

- (b) Will the new council consider, preparing, adopting and implementing a management plan with any particular priority or urgency?
- (c) The preparation, adoption and implementation of a management plan may also, to some extent, be determined by the outcomes flowing from the current district plan review relevant. Also, any such management plan would realistically address all reserves within the jurisdiction and whereby difficulties or frustrations with 1 reserve may affect the outcome in relation to others.
- (d) There is always the very real likelihood that the wording of the relevant part of the proposed management plan is such that the specifics of a Lease in favour of the Young family are such that the public notification process must still be followed particularly if there is any doubt at all that any new Lease application in 5 years time is "in conformity with and contemplated by the approved management plan..".

- 3.1 With so many unknowns, there can be no assured outcome as to the completion and adoption of a management plan in relation to this area of recreation reserve.

In addition, such a short period of Lease has the effect of:

- (a) Causing frustration and anxiety to the Young family and effectively limiting any reasonable improvements and cost expenditure.
 - (b) Requiring the Young family to re-apply at the expiry of 5 years with all that, that entails if the appropriate management plan is not in fact in effect or does not reasonably allow the granting of a new Lease without going through the costly and demanding public notification process.
4. With respect, may we suggest that a preferred proposal for the benefit of all parties would be along the following lines:

- (a) That a Lease be granted for say, 10 years but which at all times, would be subject to the right for the council at its discretion to terminate such Lease. As mentioned, a Lease along these lines would:
 - (i) Allow the council to terminate at its discretion on say 2 years notice but failing that, would provide the Young family with some sense of reasonable tenure;
 - (ii) If the outcome of any proposed overall management plan was such that the Lease needed to be varied or indeed cancelled as a consequence of that management plan, then the right to cancel or renegotiate would be under the control and at the discretion of the council.

It is suggested that such a proposal would achieve all of council's desired outcomes and provide a reasonable interim foundation for the Young family to proceed with the reasonable and constructive management of the Zoological Gardens.

If however the council is inclined to relate the proposed Lease (if granted), to the adoption and implementation of the management plan, then may we suggest that the Lease be for a period of 10 years or for a period of 6 months from the date that a management plan in relation to this recreation reserve is adopted and implemented whichever is the lesser period but in any event, the term of the Lease shall not be less than 5 years from the 1st day of August 2016.

Revell Buckham