

QUEENSTOWN-LAKES DISTRICT COUNCIL

IN THE MATTER

of a hearing on submissions on a new lease
by D, R and P Young

REMARKABLES PARK LIMITED

Submitter

EVIDENCE OF CAREY VIVIAN

(PLANNER)

23 June 2016

1. Qualifications and Experience

- 1.1 My name is Carey Vivian. I hold the qualification of Bachelor of Resource and Environmental Planning (Hons) from Massey University. I have been a full member of the New Zealand Planning Institute since 2000 and I am the local committee of the Resource Management Law Association. I am a director of Vivian + Espie Limited, a resource management and landscape planning consultancy based in Queenstown. I have been practising as a resource management planner in twenty-one years, having held previous positions with Davie Lovell-Smith in Christchurch; and the Queenstown Lakes District Council (QLDC), Civic Corporation Limited, Clark Fortune McDonald and Associates and Woodlot Properties Limited in Queenstown.
- 1.2 I have been a Queenstown Trails Trustee since 2007. I will retire from this role in October this year having completed the maximum term permissible of 3 x 3 years. During my time with the Queenstown Trails Trust (QTT) I have been involved in numerous resource consent applications supporting new trails or proposing new trails. I prepared the resource consent application for the construction of the Arrow River trail, as well as obtaining the commercial activity resource consent to use all of the Queenstown Trail for guiding biking.
- 1.3 Earlier this year the QTT released a document entitled **Queenstown Trails for the Future 2015-2025**. I was involved in the formulation of that plan at governance level. The purpose of the Plan is a 10 year strategy for the expansion and ongoing maintenance of the Queenstown trails network; a world-class series of tracks and trails for walking, hiking and biking in and around the Wakatipu Basin. I have attached a copy of this Plan to this evidence as **Attachment A** and refer to it throughout this evidence.
- 1.4 I am also a member of the Queenstown Mountain Bike Club, having been awarded life membership in 2008 for my services to trail development and advocacy. My involvement has included the preparation and sealing of several lease and licenses with the Department of Conservation and the QLDC for trail related activities at Wynyard, Queenstown Bike Park, Jardine Park, Gorge Road and 7 Mile Reserve.
- 1.5 I also note that I live in Frankton, not far from the subject site. I have walked and biked past the site on hundreds of occasions, I have fished in the river adjacent to the site and visited the site twice in my memory (once during a school kindergarten visit with my daughter and once to consult with the Youngs' about holding a biking event in the neighbouring paddocks). I am very familiar with the Queenstown

Trail as it passes the site and with the perception that it is private land (and not public recreation reserve).

- 1.6** I am not authorised to give this evidence for the Trails Trust or any other organisation I am involved with. This is my professional opinion as an expert planning witness. To that extent I advise that I have read the Code of Conduct for Expert Witnesses contained within the Environment Court Practice Note 2014 and agree to comply with it. Even though this hearing is not an Environment Court case, in the interest of good practice, I confirm that this evidence is within my area of expertise, except where I state that I am relying on information I have been given by another person and I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed herein.
- 1.7** For the benefit of the hearings panel not familiar with the Environment Court Practice Note 2014 (as this is not an RMA hearing) this means I am duty bound to assist you in reaching a decision and cannot advocate for my client.

2. Purpose and scope of evidence

- 2.1** As I understand the situation, the Youngs' have sought to lease 0.55 hectares of land to continue to operate a "zoological gardens" that surrounds their house. I understand they wish to continue activities they have been conducting for 50 or so years on the property.
- 2.2** I believe the consideration of the lease presents an opportunity to manage the reserve in an integrated and co-ordinated manner linking together the bird aviaries as a tourism venture, public use of the reserve and the realignment of the Queenstown Trail (which will ultimately link into the wider riverside development plans by Remarkables Park).
- 2.3** From a planning point of view, I consider this opportunity should be considered by this panel in deciding whether or not to grant this lease. While the Youngs' stewardship of this area has been ongoing for a long period of time, that alone is not a reason to grant the lease without considering wider community opportunities and benefits.
- 2.4** The reasons for considering this opportunity are primarily based on the projected urban growth of the area and the future demand this will put on the existing reserve network as a result. To that extent, in my view, it would be short-sighted of the QLDC to lease this much land for such a long period of time given the urban growth anticipated to occur around it. In my view, it would also be short-sighted to

continue to isolate public reserve land, on the margin of the Kawarau River, from public use and enjoyment, particularly given the opportunity to extend the Queenstown Trail to or through such a reserve, and the benefits of doing so to the business of maintaining and enhancing the aviaries.

- 2.5 To that extent I recommend an alternative proposal in Part 5 of my evidence that the area for the lease be reduced in size and provision is made for the Queenstown Trail to be realigned through the site to a riverside reserve.

3. Urban Growth

- 3.1 The subject site is, in my opinion, strategically important to urban growth of Frankton area because it provides direct access to the river and continues the riverside open space that extends along its length. Urban growth is recognised as one of the key resource management issues facing our District. The Proposed District Plan (PDP) states:

“The District experiences considerable growth pressures. Urban growth within the District occurs within an environment that is revered for its natural amenity values, and the District relies, in large part for its social and economic wellbeing on the quality of the landscape, open spaces and environmental image. If not properly controlled, urban growth can result in adverse effects on the quality of the built environment, with flow on effects to the impression and enjoyment of the District by residents and visitors. Uncontrolled urban development can result in the fragmentation of rural land; and poses risks of urban sprawl, disconnected urban settlements and a poorly coordinated infrastructure network. The roading network of the District is under some pressure and more low density residential development located remote from employment and service centres has the potential to exacerbate such problems.”

- 3.2 The Urban Development policies under the PDP provide a framework for a managed approach to urban development that utilises land and resources in an efficient manner, and preserves and enhances natural amenity values. The approach seeks to achieve integration between land use, transportation, services, open space networks, community facilities and education; and increases the viability and vibrancy of urban areas. It does this through the introduction of Urban Growth Boundaries which are seen as a tool to manage anticipated growth while protecting the individual roles, heritage and character of these areas. Specific policy is provided for these areas, including provision for increased density to contribute to a more compact and connected urban form.
- 3.3 Policy 4.2.4.2 of the PDP seeks to achieve the following with respect to the Queenstown Urban Growth Boundary:

“ Ensure that development within the Queenstown Urban Growth Boundary:

- *Provides a diverse supply of residential development to cater for the needs of residents and visitors*
- *Provides increased density in locations close to key public transport routes and with convenient access to the Queenstown Town Centre*
- *Provides an urban form that is sympathetic to the natural setting and enhances the quality of the built environment*
- *Provides infill development as a means to address future housing demand*
- *Provides a range of urban land uses that cater for the foreseeable needs of the community*
- *Maximises the efficiency of existing infrastructure networks and avoids expansion of networks before it is needed for urban development*
- *Supports the coordinated planning for transport, public open space, walkways and cycleways and community facilities*
- *Does not diminish the qualities of significant landscape features”*

3.4 Importantly, I consider the proposed lease of this reserve (or at least parts of the reserve) fails to achieve this policy which requires the “*coordinated planning for transport, public open space, walkways and cycleways and community facilities*”.

3.5 In addition to the provision of Urban Growth Boundaries, the PDP (in respect of the existing residential area of Frankton) and the ODP (in respect to Remarkables Park) enable considerable development opportunities which will, in due course, create a densely populated settlement in accordance with the Low Density Residential Zone (LDRZ) and Remarkables Park Zone (RPZ) provisions.

3.6 To the north of the subject site is the established LDRZ. The PDP states that this zone fundamentally provides for traditional suburban densities and housing forms. Houses will typically be detached and set on sections between 450 and 1000 square metres in area. However, the zone supports increased density, whether through smaller scale and low rise infill development, or larger comprehensively designed proposals, to provide more diverse and affordable housing options. Additionally the zone also supports low intensity forms of visitor accommodation such as guest houses, homestays and the commercial letting of a residential unit or flat where this does not adversely impact on the supply of permanent (long term) rental accommodation.

3.7 It is important to recognise that if infill of the existing Frankton residential land base is to occur as anticipated by the PDP there is no opportunity to expand the reserve network within that existing area. In my view, infill will put significant pressure on reserves in the future as these areas become more densely populated with less outdoor space. To that extent I consider the QLDC needs to be careful and forward thinking in the management of its reserves into the future. It shouldn't be thinking about today's demand, but the future population's demand as anticipated by the PDP.

3.8 To the east of the subject site is the RP Zone. The purpose of the RPZ, as outlined in the Operative District Plan (ODP), is to provide for a comprehensively managed and integrated high density

development containing opportunities for a range of supporting and complementary activities. This includes open space, visitor accommodation, transport, educational, recreational and commercial facilities.

- 3.9** In order to achieve a high standard of integrated development, sustainable management, building and open space design, the zone is subject to a Structure Plan, which details activity areas, and provides for a wide range of matters to be subject to Controlled Activity consent. The zone seeks to achieve maximum flexibility within the parameters of the Structure Plan.

- 3.10** Directly adjacent to the reserve is Activity Area 2C and 3. Activity Area 2C provides for:

“Activity Area 2 - Riverside Public Recreation

Activity area 2a on the river peninsula adjoining the Kowarau River, to the south covers land owned by the Council and is proposed to be developed for predominantly public open space. This element of the southern Riverside Public Recreation area is the proposed River Access Area. This area will be a public place carefully located on the river's edge in order to take advantage of the opportunities of such a location for river access. It may provide stopping points and a terminal/ticketing facility for water transport between the Frankton locality, Queenstown and other parts of the District as well as focus for limited commercial uses, eg restaurants, ticketing facilities. Activity Area 2b is a formed access strip joining two public streets. Area 2c is partly vested as a local purpose reserve and partly privately owned.”

- 3.11** Activity Area 3 provides for:

“Activity Area 3 - Riverside Peninsula

This riverside development area situated on the river peninsula and adjoining the Riverside Public Recreation Area will enable development for commercial and retail activities, offices, apartments and condominiums, visitor facilities and visitor accommodation, church, plaza, restaurants and cafes, educational, recreational, and riverside facilities (including ferry-based transport). The intention is for the Riverside Peninsula area to develop as a vibrant mixed use precinct that includes vehicle access roads, pedestrian activities and shared pedestrian/vehicle environments within the Activity Area.”

- 3.12** While new open space opportunities will arise as RPZ develops, people will cross zone boundaries and therefore integrate with the older reserves in the Frankton area. In my view the QLDC, in deciding on this application, needs to consider the future population and how the subject reserve can best be utilised for the benefit of the community. In my view, given the forecasted urban growth in this area, that is not as the reserve has been managed in the past. The reserve should be open to the community (present and future) to visit and enjoy. At present the reserve is fenced off and for all intents and purposes reads a private property. Continuing management along these lines, while also promoting significant infill and new urban development adjacent to the reserve is in my opinion, a short-sighted approach.

4. The Queenstown Trail

- 4.1 The Queenstown Trail currently passes through the undeveloped Remarkables Park land from the reserve south of Kawarau Place to two riverside options (described as the upper and lower terrace). I understand the trail, as it passes through Remarkables Park undeveloped land is a license to occupy arrangement with the provision to create an easement once the final trail alignment through this area is determined.
- 4.2 As stated previously, the QTT have recently released a 10 year strategic plan for the expansion and ongoing maintenance of the Queenstown trail network; *“a world class series of tracks and trails for walking, hiking and biking in and around the Wakatipu basin”*.
- 4.3 The Strategy, like the PDP, recognises that one of the key issues facing the District is urban growth and in particular how that growth will affect the Queenstown Trail in years to come. Part 2.2.3 of the strategy states:

“Queenstown’s urban growth is planned to occur mainly in the Frankton Flats area between Queenstown Airport, Remarkables Park and Lake Hayes. Growth in the local population and in visitor arrivals will continue to provide business, employment, social, leisure and other benefits. It will also continue to be a major contributor to traffic congestion and other social issues such as housing affordability. Traffic congestion in Queenstown is already recognised as a serious issue facing the District. As residential and commercial subdivision continues to expand, there will be an associated need for effective and efficient linkages between communities, shops, schools, places of work, leisure facilities and the great outdoors.”

- 4.4 In my view, the reserve provides an excellent opportunity as an effective and efficient linkage for the Queenstown Trail between open space, the river margin and the wider community. It is opportunities such as this that the Strategy seeks to achieve. Part 4.1.2 of the Strategy details the guiding principles for the strategy:

4.1.2 Guiding principles for the trails strategy

- *Range of users...the trail strategy is for walkers, hikers and bikers of all skill levels.*
- *World class the trail network will be of the highest standard.*
- *Intergenerational equity planning today will enable activities that generate a net benefit to future generations.*
- *Leveraging infrastructure...trails will create rewarding visitor experiences and commercial opportunities.*
- *Maintained into the future...the network will be designed to minimise maintenance.*
- *Commuter friendly...trails will be designed to enable cycling as a viable alternative to public transport and encourage healthy lifestyle.*

- *Transparency...the strategy provides direction for transparent use of public and private funding.*

- 4.5 In my view, maintaining the opportunity to link the Queenstown Trail through this reserve recognises and acknowledges these guiding principles.
- 4.6 Importantly Part 4.6 of the Strategy details the decision making criteria for new trails. The Strategy acknowledges the Basin boasts an exceptional network, however there are still *“improvements required that will benefit residents and visitors”*. Such improvements include the links between hubs, connections to the Queenstown Trail for commuters, extensions to the network to offer new tourism experiences for walkers and riders. I consider the realignment of the Trail through the reserve could be of significant benefit to the Zoological Gardens business and the wider community (including visitor) use of the reserve. These activities can co-exist if planned in an integrated and co-coordinated manner. However this opportunity needs to be safeguarded now, otherwise this opportunity for both the Young’s and the community could be lost.
- 4.7 Finally, the Strategy details its goals for the future. “Goal 1” is to create a world class trail network for residents and visitors. The strategy recognises this is achieved through *“the total tourism experience”* including trail location, information, signage, maps, secure places to store or park bikes as well as links to tourism attractions and places to see and things to do. The aviaries could be one such tourism attraction in the future; a popular stopping point while walking or riding on the trail in the future. Approving the lease in the manner proposed is unlikely to ever, in my opinion, realise this opportunity.

5. Recommendation

- 5.1 The recommend in considering this lease application the hearing panel:
- Reduce the extent of the lease area to only include the reserve land containing the aviaries, car park and a small area of land to the north of the house;
 - Safeguard the potential to relocate the Queenstown Trail through the reserve in the future;
 - Maintain the riverside area of the reserve for the benefit of the existing and future population growth.
- 5.2 I have sketched this recommendation on the attached plan.



REF: 1131 - ATT1
DATE: 22.06.2016
SCALE: NOT TO SCALE

ATTACHMENT A

vivian+espie

resource management and landscape planning
vivian+espie Limited Resource Management and Landscape Planning
PO Box 2514 Queenstown
Physical Address: Unit 15, 70 Glenda Drive, Frankton, Queenstown
Tel: +64 3 441 4189 Fax: +64 3 441 4190 Web: www.vivianespie.co.nz

Young Family Application to Renew Lease of Reserve, Section 167, Block 1, Shotover – Submission by Dr Neil Clayton

1. I hold a doctoral degree in environmental history from the University of Otago. I am very familiar with the environmental changes that have occurred in the Wakatipu region over the whole of the period from the beginning of European settlement in the 1860s to the present.
2. I am well aware of the land use changes that have occurred in the Frankton area since the 1950s and 60s, in particular the loss of hitherto productive farmland which previously contributed to the scenic character of the area.
3. Much of the land in the general vicinity of the reserve leased by the Youngs has in more recent times been swallowed up piecemeal by urban and commercial developments promoted by, among other entities, Remarkables Park Limited.
4. This encroachment is steadily advancing towards the Kawarau River. It is evident from the submission by Remarkables Park Limited that if the Queenstown Lakes District Council does not take preventative action, intrusion will continue to the detriment of the scenic values provided by the river itself and its margins.
5. One means of reducing the environmental effects of that encroachment is to ensure that the integrity of the riverside reserves is maintained and enhanced. Those reserve areas provide at least some degree of buffering between the river and, in terms of scenic values, detrimental land use changes. It is evident from the submission by Remarkables Park Limited that the company has other views about that.
6. The intended use of the reserve by the Youngs is suitable for the location because it will assist in providing and maintaining that buffer.
7. I have known the Young family for some forty years. I have had frequent contact with them and their late father Ivan over that time.
8. Ivan evinced a strong sense of stewardship of the land for the whole of the time I knew him, not only with regard to his riverside property but in his public role as the Queenstown Borough Council's reserves foreman.
9. It has long been clear to me that Ivan's ethos has been passed on to his daughters Rachel and Pene and that they are prepared to carry on the

stewardship of the Riverside Road reserve for as long as they are able. Moreover, they will do so at no cost to the Council, as they have done in the past.

10. It has been equally apparent to me that they, like their father, are both quite selfless and entirely lacking in self-interest in their care and concern for both the riverside and the river itself. That, in my opinion, judging by its submission, is more than can be said for Remarkables Park Limited.
11. From the early 1970s until the mid 1980s I was Harbourmaster, Marine Division, Ministry of Transport, with responsibility for Otago inland harbours, including Lake Wakatipu and the upper section of the Kawarau River. In that capacity I became aware of the family's understanding of and concern for the environmental integrity of the river and its surroundings, well beyond the boundaries of their own property and the adjoining reserve areas.
12. From their own meagre resources they have somehow found the means to maintain and improve riverbank stability, which was, and continues to be, vulnerable to the wake effects of high powered commercial and private vessels, particularly at times of high river levels. At no time did they ask for vessels to be ordered off the river, preferring instead to take an educative approach to the environmental problems created by unthinking vessel operators.
13. During that period, and in subsequent years, I also have become deeply aware of just how knowledgeable about, and protective of, the wild life values of the river and the wider Wakatipu region the family is. The numerous letters they have received from various organisations over the years attest to that.
14. Given the family's record of stewardship over many years, QLDC would be hard pressed to find more fitting lessees. There is nothing in the submission from Remarkables Park Limited that leads me to believe that the company's proposals would result in a better or more appropriate environmental outcome.

Neil Clayton (BA, PG Dip A, PhD)
21 June 2016

**STATEMENT OF ROBERT JAMES GREENAWAY FOR REMARKABLES
PARK LTD**

QUALIFICATIONS AND EXPERIENCE

- 1 My name is Robert James Greenaway
- 2 I am a consultant recreation and tourism planner with more than 25 years' experience.
- 3 I graduated from Lincoln University in 1987 with a three-year Diploma in Parks and Recreation Management with Distinction, and completed 18 months of postgraduate study in conservation management. I hold the status of an Accredited Recreation Professional with the NZ Recreation Association (NZRA), and until recently was the Chair of the NZRA Board of Accreditation for member accreditation to professional status, but remain a Board member. I am also a 'core group' member of the New Zealand Association for Impact Assessment. In 2011 I was appointed as an inaugural Board member of the Sir Edmund Hillary Outdoor Recreation Council, to assist Sport New Zealand with the implementation of the National Outdoor Recreation Strategy, amongst other things.
- 4 I was awarded the Ian Galloway Memorial Cup in 2004 by the NZRA (of which I am a past Executive member) to recognise 'excellence and outstanding personal contribution to the wider parks industry'. In 2013 I was awarded the status of Fellow with the NZRA.
- 5 Between 1990 and 1995 I worked with an international tourism and recreation development consultancy, Tourism Resource Consultants, on a range of large and small development and advisory projects. This work included ecotourism development planning in Samoa, for potential World Heritage Sites in the Solomon Islands for the Ministry of Foreign Affairs and Trade, event management (multisport and mountain biking), and domestic reserve, tourism and recreation management planning.
- 6 Between 1995 and 1997 I worked for Boffa Miskell Limited in Christchurch, focusing on recreation planning for local authorities and tourism development planning for private agencies.
- 7 Since 1997 I have worked independently. The majority of my work is for private companies, local and central government, and environmental and community agencies. Over recent years I have prepared assessments and evidence about recreation and tourism for (amongst others): the Porter Heights Ski Area, Contact Energy (Clutha River), Meridian Energy (Project Hayes wind farm, Manapouri hydro, Central Wind, Mokihinui hydro, NBTC hydro, Hunter Downs hydro, Hurunui Wind, Waiau (Amuri) hydro), TrustPower (Wairau hydro, Arnold hydro, Patea hydro, Matahina hydro, Lake Kaniere hydro, Lake Coleridge irrigation and hydro), Genesis Energy (Castle Hill wind), Mighty River Power (Puketoi wind), King Country Energy (Mokau hydro), Marlborough District Council (King Salmon), NZone Skydive (airfield consenting), the

New Zealand Recreational Sport Fishing Council (Snapper 1 quota review), the New Zealand Fish and Game Council (Hurunui River), the Rena insurers, and MainPower (Mt Cass wind farm). I have completed more than 300 consultancy projects nationally since 1997 and have presented evidence at approximately 70 resource management hearings. I have completed recreation and tourism research and planning projects for almost 30 local and regional councils.

- 8 In the Queenstown Lakes area I have worked on the recreation and tourism components for, for example, Shotover River training and gravel extraction for the Queenstown Airways Corp, the Ladies Mile residential development, the Parkins Bay Preserve development, the Peninsula Bay development, the Hill End development, consenting and investigation work for Contact Energy on the Clutha River, a tourism review for the Clutha Mata-Au River Parkway Project, evidence for Pioneer Energy on the Nevis River, a variety of helicopter landing consents and concessions for Helicopters Queenstown, the NZone runway consenting, and several other small development investigations. I am currently preparing an assessment of effect for Queenstown Park Ltd for the Queenstown Gondola proposal.
- 9 I have prepared and contributed to numerous reserve management plans and development strategies in Nelson, Tasman, Selwyn, Dunedin, Wellington, Auckland, Christchurch, Banks Peninsula and Waitaki. Much of my assessment work requires the review of reserve values under the Reserves Act. I have recently completed a review of the Open Space and Recreation Zone rules for the revised resource management plan for Nelson City Council with specific reference to reserve management plans as tools for defining permitted activities and/or providing assessment criteria for consent applications.

SUMMARY OF SUBMISSION

- 10 My submission considers
 - 10.1 The future likely use of the private land adjacent to the Ivan Young Zoological Reserve and its influence over priority reserve uses;
 - 10.2 The value of the future use of the Ivan Young Zoological Reserve for public recreation, particularly considering the Twin Rivers Ride;
 - 10.3 The need to complete reserve management planning for the public riparian areas along the true left of the Kawarau River either side of and including the Ivan Young Zoological Reserve, prior to a lease being agreed.

- 11 My recommendation is that:
- 11.1 A reserve management plan be prepared for the Kawarau Falls Recreation Reserve and the reserves extending eastward along the River to the mouth of the Shotover River, including the Ivan Young Zoological Reserve, and riparian road reserves. These areas will develop further as critical scenic and recreation settings and require a more comprehensive management approach than is currently applied.
 - 11.2 While the management plan is being prepared, the existing lease be replaced by a temporary licence to occupy or other similar mechanism.
 - 11.3 The management plan include an outline development plan to show how, if desired, a zoological gardens can continue within the site while providing for enhanced public access, and that the outline plan and the policies of the management plan assist in defining the parameters of a future lease.
- 12 My submission is not that the Ivan Young Zoological Reserve is an inappropriate use for the reserve in at least the short-term, but that a lease agreement needs to reflect the significance of the setting for potential future recreation and tourism development; and that a reserve management plan will provide the necessary comprehensive review to provide security for all parties.

SUBMISSION

Existing setting

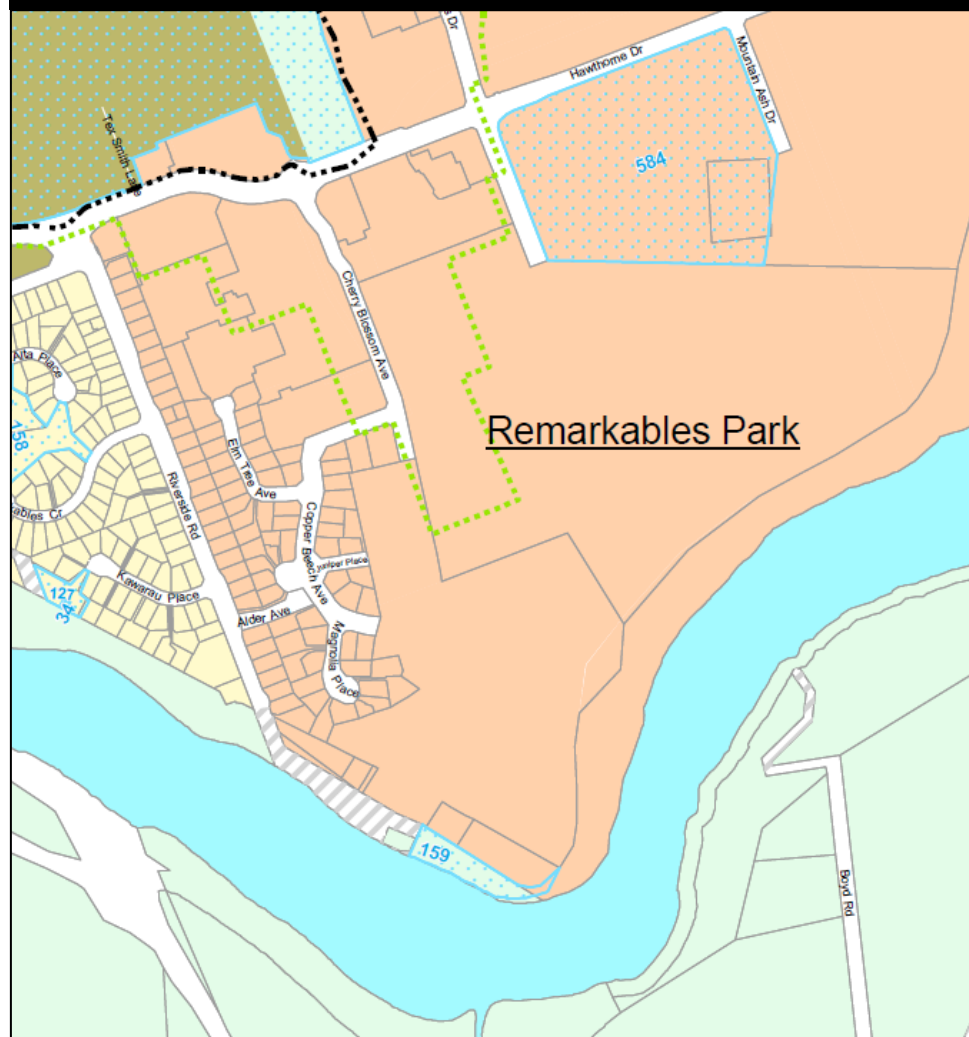
- 13 The Operative Queenstown Lakes District Plan defines the land surrounding the Ivan Young Zoological Reserve as the Remarkables Park Zone (Figure 1). Section 12.10.1 of the Plan notes:

Development of the Remarkables Park Zone acknowledges the outstanding physical resources and landscape value of the land. Within the objectives of determining an optimum strategy for integrated and sustainable resource management, every consideration has been given to developing the area in a way that maximises the key natural and physical resources and amenity values of its location....

The combined effects of these elements is such that the area provides Queenstown with a site which is well suited to higher density development comprising a mix of urban activities including residential, visitor accommodation, recreational, community, educational, commercial and retail activities.

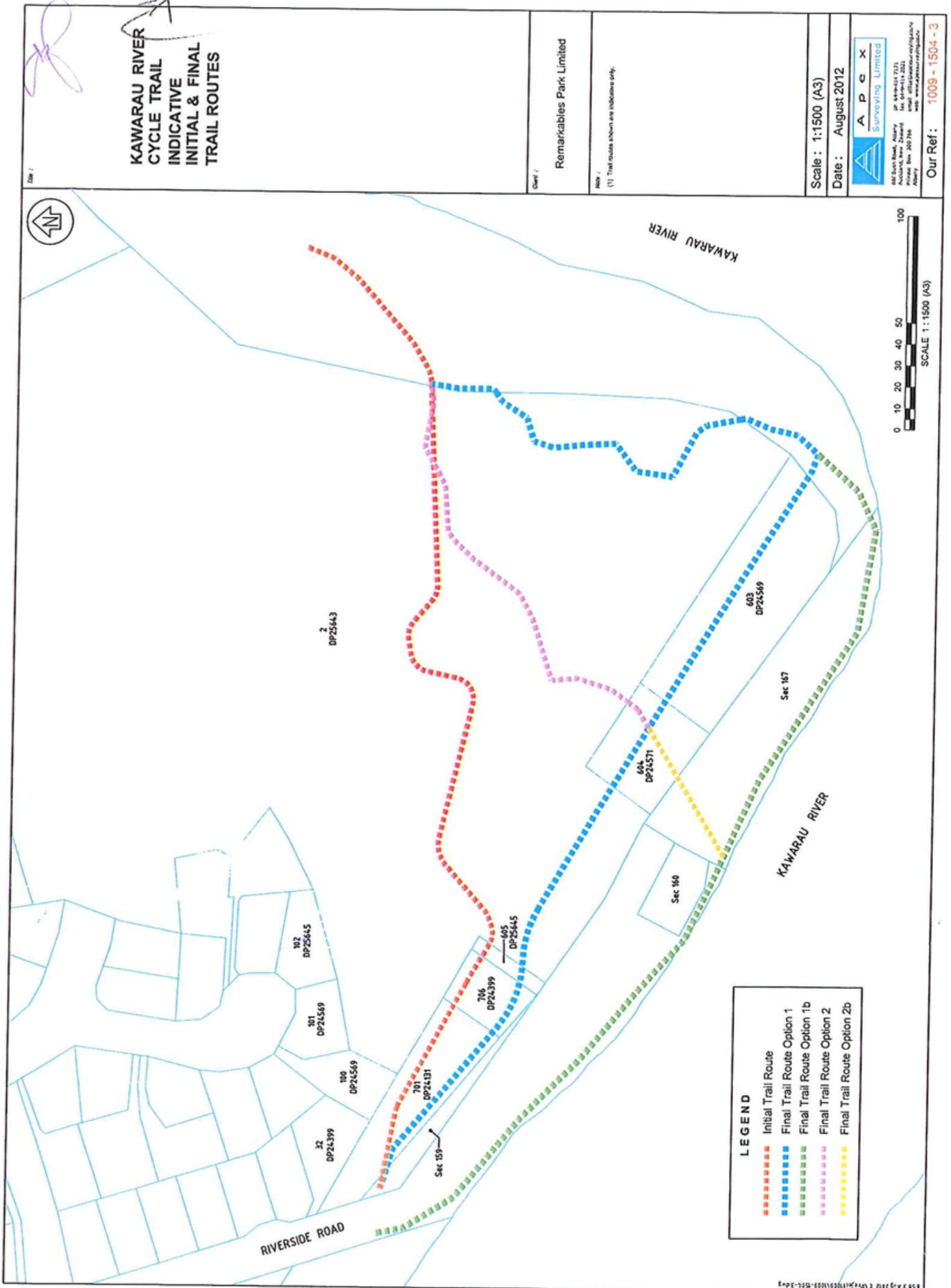
- 14 The Ivan Young Zoological Reserve is zoned Rural with a designation (159) that is common to recreation reserves as defined in the Plan (Designations A1, section B).

Figure 1: Detail from Map 33, Operative Queenstown Lakes District Plan



- 15 Remarkables Park Ltd (RPL) has a Licence to Occupy agreement in place with the Queenstown Trails Trust for the location of a section of the Twin Bridges trail on its land. This does not define a permanent location for the trail, and I understand the intention is to secure as much of the trail on the border of, or off, RPL land in the future as development proceeds.
- 16 Plans prepared to support the Licence show the 'initial' trail alignment as has now been formed (Figure 2). Options for a final trail route rely on selecting from a variety of alignments, including those within the Ivan Young Zoological Reserve (also shown in Figure 2).

Figure 1: Cycle Trail route options



- 17 The 120km Queenstown Trail had almost 700,000 walkers and cyclists using the component tracks between opening and the end of 2015; and 214,000 for the 2015 year. There was an average of 2370 track uses per month on the Twin Bridges Trail section between October 2012 and May 2015 (Queenstown Trail visitation report, June 2015).
- 18 In the 2000/01 season there was 3500 ± 1000 angler days on the Kawarau River and 1930 ± 750 in 2007/08 (Fish & Game national angler survey data). The vast majority of this occurs in the clear water upstream of the Shotover confluence.
- 19 Thunder Jet has consent to operate 40 return trips daily in the Kawarau River above the Arrow confluence; and Kawarau Jet (K Jet) has a higher maximum and operates approximately 60 return trips daily. unReel fishing guides operates up to four angling trips per day on the River (pers. comm. with all operators).
- 20 In summary: the recreation reserve is very close to central Queenstown, has important landscape, tourism and recreation access values; and there is an expectation, as expressed in the Queenstown Lakes District Plan for "higher density development comprising a mix of urban activities including residential, visitor accommodation, recreational, community, educational, commercial and retail activities" to occur immediately adjacent.
- 21 Continuing with a 'status quo' approach to reserve management in this setting is not advisable considering these existing and future influences.

Reserve management planning

- 22 I am well-aware that although the Reserves Act 1977 requires the preparation of reserve management plans by administering authorities, there is a very high level of national non-compliance. And there is good reason – preparing management plans can be expensive and time-consuming, and when there is no exigency, I often recommend that plans not be prepared. It is preferable for plans to be prepared well, rather than a once-over-lightly approach taken merely to comply with the Act.
- 23 However, where there is a set of potentially competing demands for use of a reserve, in my opinion, a management plan must be prepared. This is the case with regard to the Ivan Young Zoological Reserve, particularly when the existing option is to provide for a long-term tenure agreement.
- 24 A future management plan need not foreclose the option for a zoological gardens on-site. However, it will recognise competing demands for use of the reserve.
- 25 In my opinion, the reserve is located in a recreationally strategic setting: fronting the river, including proposals for future cycle access, being near central Queenstown, and, in the future, being immediately adjacent to a high density development area.

- 26 The proximity of the developments permitted in the Remarkables Park Zone will have a significant influence over the use of the reserve with or without a long-term lease in place. Agreeing to a long-term form of occupation without forward planning will handicap all agencies concerned, as well as the community. There will inevitably be pressures on the occupiers of the reserve to respond to increased public access, noise (development and eventual occupation) and the relocation of the cycle trail. The zoological gardens may well remain appropriate in some form on the reserve, but it is highly unlikely that the status quo will remain appropriate.
- 27 An effective reserve management plan will ensure that all expectations for future reserve use and development are commonly understood; and will reduce stress on all parties in the long-term.

Recommendation

- 28 A reserve management plan is a requirement of the Reserves Act. In this circumstance, one needs to be prepared.
- 29 In the meantime, a licence to occupy can be agreed to support the continued activities of the zoological gardens. Once a management plan is agreed, an appropriate lease can be developed.
- 30 This lease may well have a longer termination advice period than the 12 months currently on offer, because it will be based on superior forward planning.



Rob Greenaway

22 June 2016

BEFORE A COMMITTEE OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

UNDER

the Reserves Act 1977

IN THE MATTER

An application by **D, R and P YOUNG** for a new lease over land designated as Recreation Reserve

AND

IN THE MATTER

of a submission by **REMARKABLES PARK LIMITED**

SUBMISSIONS OF COUNSEL ON BEHALF OF REMARKABLES PARK LIMITED

23 JUNE 2016

**BROOKFIELDS
LAWYERS**

J D Young

Telephone No. 09 379 9350

Fax No. 09 379 3224

P O Box 240

DX CP24134

AUCKLAND

MAY IT PLEASE THE COMMITTEE:

1. INTRODUCTION

- 1.1 Remarkables Park Limited (**RPL**) opposes the grant of a lease on the terms sought by D, R and P Young or the terms proposed by Ms Conroy because:
- (a) The current and proposed use does not meet the purpose and principles of the Reserves Act 1977 (**Act**);
 - (b) There is no Reserve Management Plan; and
 - (c) A trails network is a use of the reserve that should be enabled because it provides direct and free access to the riverbank.

2. PURPOSE AND PRINCIPLES OF THE RESERVES ACT 1977

- 2.1 Section 3 of the Act states its purpose, which includes “ensuring, as far as possible, the preservation of access for the public to and along...riverbanks”. Given the location of the recreation reserve, this is a particularly relevant statutory directive. The proposed lease does not preserve access for the public to and along the riverbank. To the contrary, it is an impediment to such access because the activity appears as a private enterprise where public access is restricted by time (there is a sign advising that gardens are closed before 10am and after 4pm), the imposition of a charge, and the presence of physical structures. Furthermore, a sign advises that there is “No Exit” and therefore a member of the public would understand that they could not walk through the gardens and continue along the riverbank.
- 2.2 Section 17 specifically addresses recreation reserves. Section 17(1) states that recreation reserves are:

“...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**”

The proposed lease is also an impediment to recreational tracks. While the future tracks will be in a urban environment and not the countryside, they are in a breathtakingly beautiful “natural environment” and, therefore, have significant recreational value.

- 2.3 The general purpose is further articulated under section 17(2)(a), which requires that “the public shall have freedom of entry and access to the reserve”. The public do not have freedom of entry and access to the reserve.
- 2.4 Section 17(2)(a) is subject to the exercise of powers under sections 53 and 54. Section 54 sets out leasing powers in respect of recreation reserves. Section 54(1) confirms that the leasing powers must be used in accordance with the “principles set out in section 17”. The new lease is proposed to be granted under section 54(1)(d), which states (relevantly):
- (d) grant leases or licences for the carrying on of any **trade, business, or occupation** on any specified site within the reserve, subject to the provisions set out in Schedule 1 relating to leases or licences of recreation reserves issued pursuant to this paragraph:
- provided that the trade, business, or occupation must be necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve:**
- [Emphasis added.]
- 2.5 The Zoological Garden is not a trade, business, or occupation. “Trade” is defined as “a business conducted for a profit (esp. as distinct from a profession); a skilled handcraft requiring an apprenticeship”¹. “Business” is defined as “one’s regular occupation, profession or trade”², implicit in which is the concept of remuneration or profit. “Occupation” is defined as a “person’s temporary or regular employment; a business, calling or pursuit”³. Again, in my submission, the concept of remuneration is implicit. The plain and ordinary meaning of the terms “trade, business, or occupation” includes the concepts of profit or remuneration.
- 2.6 Even if you consider that the Zoological Garden is a trade, business, or occupation, it is not one that is “necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve”. The Zoological Garden is an impediment to freedom of entry and access to the reserve and, for example, does not facilitate access to the riverbank (section 3 – purpose of the Act). Therefore, it cannot be necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve.
- 2.7 In **Summit Road Society v The Minister of Conservation**⁴ the High Court considered the meaning of “necessary”. The High Court held that necessary “is a

¹ The New Zealand Oxford Dictionary, Oxford Press, 2005.

² The New Zealand Oxford Dictionary, Oxford Press, 2005.

³ The New Zealand Oxford Dictionary, Oxford Press, 2005.

⁴ CP429/89, Holland J, High Court.

fairly strong word falling between expedient or desirable on the one hand, and essential on the other". The High Court found that a gondola on Mt Cavendish on the Port Hills in Christchurch was necessary in the context of a scenic reserve because it was satisfied:

"...that the view from this reserve is one of its intrinsic scenic qualities and further **that a much larger proportion of the public will be able to enjoy and benefit from the reserve by the provision of the gondola and its accompanying buildings than would otherwise be the case.** In those circumstances the grant of the lease was "necessary" both for the purposes of s.56(1)(b) and s.19(1)(a)."

[Emphasis added.]

Enabling greater use and enjoyment of the reserve was a critical reason of the High Court's conclusion.

- 2.8 In summary, the proposed lease is contrary to the purpose and principles of the Act. Notwithstanding, RPL acknowledges that the Zoological Garden may serve a public good and is enjoyed by some visitors. Given this, a suggested way forward that would open up much of the recreation reserve for unimpeded use but provide the Young's with sufficient space and certainty to continue the Zoological Garden is proposed as part of my conclusion below.

3. RESERVE MANAGEMENT PLAN

- 3.1 Section 41 of the Act requires the Council to prepare a management plan for a reserve under its control, management or administration within 5 years of its appointment or the commencement of the Act. The Council has not met this obligation.
- 3.2 There is no punitive consequence for failure to comply with section 41 and, in fairness to the Council, non-compliance is relatively common (as Mr Greenaway was attest). However, the failure to have a management plan indicates that the Council has not properly turned its mind to the strategic use and importance of this reserve and is simply deferring to the status quo. In my respectful submission, that is a dangerous approach in Queenstown where growth is rapid and numerous greenfields area zoned for urban development (Mr Vivian will comment further in evidence).
- 3.3 RPL appreciates that this Committee cannot address or remedy the lack of a management plan today. It can, however, ensure that free access to the reserve is provided and an arrangement is reached whereby a trail along the riverbank is enabled. In my submission, in the absence of a management plan it is not helpful to

disregard a trail along or near the river bank on the basis of flooding or instability⁵, which are threats to any activity on the reserve.

4. A TRAILS NETWORK SHOULD BE ENABLED

4.1 Both Mr Greenaway and Mr Vivian will address the significant recreational value of the trails network. Mr Fitzpatrick can also comment. It is, in my submission, irrefutable that it is a use of the recreation reserve that gives effect to the purpose and principles of the Act.

4.2 Mr Vivian also addresses future development in the locality and the considerable growth to be accommodated. There will be increasing pressure on public open space. He observes that the area in question is of significant strategic importance.

5. CONCLUSION

5.1 In my submission the proposed lease is contrary to the Act.

5.2 However, if the Committee is minded to grant a lease then it is submitted that:

- (a) The lease be granted for a much smaller area within the recreation reserve. Mr Vivian's evidence attaches a plan with his recommended area for the lease;
- (b) The lease be granted for a 1 year term and that the Committee members recommend to the Council that it commence preparation of a reserve management plan (noting that if the reserve management plan provided for the Zoological Park in a specific area a further lease could be granted without public notice – Section 54(2A)(a)); and
- (c) Should the lease be granted for a longer period than one year, the proposed 12 month termination clause be retained.

DATED the 23rd day of June 2016

J D Young

Counsel for Remarkables Park Limited

⁵ See paragraph 14 of Ms Conroy's Report.