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11 September 2017

Legal Manager
CE Office
Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN 9348

Attention: Alice Balme

Dear Alice

FRANKTON ZOOLOGICAL GARDENS – YOUNG FAMILY

As requested in accordance with your correspondence of the 30th day of August 2017, we now **enclose** submissions on the part of the Young Family with relevant **attachments**.

We look forward to receiving the submissions filed by other parties in due course noting that the matter will be addressed before full council on the 28th day of this month during the public forum.

Yours faithfully
BERRY & CO

R W Buckham
Partner

e-mail: rbuckham@berryco.co.nz

Encl.

11 September 2017

Queenstown Lakes District Council
1st Floor, 50 Stanley Street
PO Box 1586
QUEENSTOWN 9348

Re: Submissions in support of Grant of a Lease over Recreational Reserve to D, R and P Young

Introduction

1. By letter dated 22 March 2016, D, R and P Young (“the Youngs”) applied for a new lease over zoological gardens in Frankton. The zoological garden is located on part of recreational reserve land.
2. A hearing was held on 23 June 2016. After hearing submissions from all submitters, the Council’s Hearings Panel resolved to recommend to the full Council that the new lease be granted to the Youngs, subject to terms and conditions.
3. On 28 July 2016, the Council accepted that recommendation and resolved to grant the lease to the Youngs.
4. The only reason why this matter is before the full Council is because of a subsequent allegation from Remarkables Park Limited (“RPL”), the only submitter to oppose the grant of the lease, that natural justice principles were not followed when the Panel allowed the Youngs to file a submission after the hearing.
5. The Youngs’ submission is dated 30 June 2016 and it was filed in response to material presented by RPL on the day of the hearing that had not been circulated in advance to the Youngs, or indeed to the Council. To avoid potential prejudice, at counsel’s request leave was given to the Youngs to file submissions in reply to the new material presented by RPL.
6. In my submission, therefore, RPL’s allegation of breach of natural justice is unfounded. However, for the purpose of avoiding a potential application by RPL for judicial review, the Youngs have agreed for the matter to be reconsidered by the full Council.
7. A copy of the reply submissions filed on behalf of the Youngs dated 30 June 2016 is **attached**.

8. It is noted that the Council has directed that any submissions filed in response to the Youngs' reply submissions must be strictly within the scope of those submissions. It follows, therefore, that the parties are not able to present any new evidence or make submissions that extend beyond the scope of what has previously been submitted.

Discussion

9. The only submitter to oppose the Youngs' application is RPL. All other submitters were agreed that the use of the land as a zoological garden is a suitable use for the reserve and that the gardens provide a valuable educational and leisure activity for tourists and locals.
10. Essentially, RPL's opposition to the lease was based on the following:
 - a) The current and proposed use of the reserve for zoological gardens did not comply with the provisions of the Reserves Act 1977.
 - b) The proposed lease privatises the reserve land and river frontage.
 - c) The Youngs do not provide free access to the river.
 - d) The land is not stable.
11. The above matters comprise the full extent of RPL's opposition to the grant of a lease to the Youngs and it is not able to rely upon any new grounds for the purposes of this reconsideration.
12. The submissions filed on behalf of the Youngs for the Hearings Panel addressed all of the matters raised by RPL. A copy of those submissions is **attached**.
13. It is clear from the Hearings Panel's deliberations as recorded in the Council's Minutes of 23 June 2016 that the Panel accepted that the Council had the required statutory authority under section 54(1)(b) of the Reserves Act to grant the lease and that the proposed use was suitable, and that the only questions that remained were on what terms.
14. The specific power relevant to the Youngs' application is contained in section 54 of the Reserves Act. In particular, section 54(1)(d) authorises a proposed lease of a recreation reserve for:

... a trade, business or occupation necessary for the public to obtain the benefit and enjoyment of the reserve or for their convenience in using the reserve.

15. The Hearings Panel and indeed the Council correctly found that the Youngs' activity falls within the phrase "business or occupation" and so within section 54(1)(d).
16. With respect to land stability, it is acknowledged that the area is subject to erosion. The Young family have been maintaining the land particularly against river erosion in excess of 33 years.
17. It is acknowledged that the Hearings Panel expressed some concern about public access to the leased area. The Minutes record that the Panel recommended the following condition be incorporated in the new lease:

"That free access for the public to the lease area be provided."

18. That condition is now included in the new lease at clause 7.1(f) in the following form:

7 USE OF PREMISES

7.1 Use to Which Premises May be Put by Lessee

...

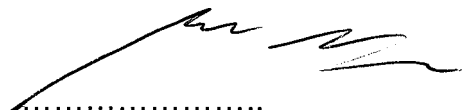
(f) The Lessee shall provide free access for the general public to the Premises at all times (excluding the Buildings). The Lessee may only make admission charges to the Buildings as the Lessor may from time to time approve. The Lessee will at all times observe a strictly uniform and impartial attitude as to admission rates and services and the Lessee will afford as efficient a service as is usual for operations similar to the Permitted Use. The Lessee shall be entitled to exclude dogs from entering the Premises.

19. It is therefore my submission that the claim that the proposed lease privatises the leased area cannot be sustained. The terms of the new lease make it clear that the public will have free access to the reserve land and river at all times.
20. The lease to the Youngs will encourage the public to visit the area by providing recreational facilities for their benefit and enjoyment, such as garden awareness and education, animal interactions and an open space for walking and exploring and fishing.

21. In addition, there are picnic facilities freely available for the public to enjoy.
22. Thus, rather than restricting public access, granting the lease to the Youngs will in fact enhance public access and enjoyment to the area.
23. In my submission, it is relevant that no party has suggested an alternative use for this reserve land.
24. Finally, it is relevant that the termination clause under the Deed of Lease provides the Council with the ability to terminate the lease upon giving two years' prior written notice to the Youngs (refer clause 12.1 of the Deed of Lease). Further, clause 12.4 provides that, upon a Reserve Management Plan being completed for the area, the Council must give the Youngs written notice and the lease will terminate on the date specified in the notice.
25. Those terms should alleviate any concerns that, in granting the lease to the Youngs, the Council has thereby committed itself for the long-term.

Conclusion

26. For these reasons, it is submitted that the decision of the Hearings Panel to grant the proposed lease to the Youngs should be confirmed, on the terms and conditions as set out in the proposed Deed of Lease.



Dated: 11 September 2017

Attachments

1. Application letter dated 22nd March 2016
2. Letter to Council dated 26th May 2016
3. Submission to Property Subcommittee
4. Letter to Council dated 30th June 2016

COPY

BERRY & CO
BARRISTERS & SOLICITORS

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

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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

NZLAW



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Matthew Edwards *J.L.B.*
Merrin Gill *J.L.B.*

Oamaru Partners
George Berry *MNZM, J.L.B.*
David Salter *BA, J.L.B.*
Michael de Buyzer *LL.B., Notary Public*
David Jackson *J.L.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

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

RA.

- (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.

BERRY & CO

BARRISTERS & SOLICITORS

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26 May 2016

FILE COPY

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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Michael de Buyzer LL.B., Notary Public
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

End.

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

Re: Further submissions in support of Grant of a Lease over Recreational Reserve to D, R and P Young

Introduction

1. By letter dated 22 March 2016, Daphne May Young and her two daughters, Rachel and Penelope, (the Youngs) applied for a renewal of their lease or a new lease over the recreation reserve legally described as Section 167, Block 1, Shotover District contained in CT 8C/594.
2. The Youngs maintain and operate a zoological garden on part of the reserve land at the end of Riverside Road, Shotover District.
3. On 27 April 2016, the Queenstown Lakes District Council (the Council) gave public notice of its intention to grant the lease under section 54(1)(d) of the Reserves Act 1977 (the Act) to the Youngs, and sought submissions from interested persons.
4. Four submissions were made, three in support of the proposed lease, and one, from Remarkables Park Limited (RPL), against.
5. The Youngs now wish to make submissions in response to the submissions made by RPL.
6. These submissions should be read alongside the submissions made in Berry & Co's letters to the Council dated 22 March 2016 and 26 May 2016.

Background

7. The background is fully set out in Berry & Co's letter dated 22 March 2016.
8. Briefly, the area of land in question is part of a recreation reserve, administered by the Council under the Act. Daphne and her husband Ivan (now deceased) leased some of the land contained in reserve from the Council pursuant to a Deed of Lease dated 26 July 1984 for the purpose of operating a zoological reserve or "parkland" for the benefit of the community.

9. That lease expired on 1 April 2016 and the Youngs now seek a new lease for a further 33 years in order to continue Ivan's legacy. As stated in the application:

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 envisaged for the community's benefit.

10. As the scope of the Council's powers to grant a lease over reserve land is at issue, it will be useful to set out the relevant statutory framework.

Statutory framework

11. The general purpose of the Act is to provide areas of New Zealand possessing various attributes, for example recreational use, "for the preservation and management for the benefit and enjoyment of the public".¹
12. Section 16 of the Act provides for the classification of reserves according to their principal purpose. As already stated, the area in question has been classified as a recreation reserve. Section 16(8) of the Act provides that when classified under section 16, "each reserve shall be held and administered for the purpose or purposes for which it is classified and for no other purpose".
13. Section 17 of the Act sets out the purpose of recreation reserves. Section 17(1) states that recreation reserves have as their purpose:

17 Recreation reserves

- (1) ... **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.
[Emphasis added]

14. Section 17(2) of the Act requires recreation reserves to be administered so that certain objectives are achieved. They include freedom of entry and access to the reserve by the public and the conservation of those qualities that contribute to the "pleasantness, harmony and cohesion of the natural environment and to the better use and enjoyment of the reserve".

¹ Reserves Act 1977, section 3(1).

15. Section 40 provides that the Council, as the administering body responsible for the reserve, is tasked with the duty of managing the reserve in accordance with the Act "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".
16. It is quite clear that the original creation of the zoological reserve and the current running of it is consistent with providing an area for the public recreation and enjoyment.
17. The zoological reserve is visited and enjoyed by the public without hindrance.
18. The only submitter to oppose the Youngs' application is RPL. RPL is opposed to the proposal to grant a lease of the land to the Youngs because:
 - (a) It is undesirable from a public access perspective;
 - (b) It is contrary to the "principles" of the Reserves Act to "continue the privatization of this area of riverside land"; and
 - (c) The Council does not have statutory authority to lease the land for the proposed purpose.

Public access

19. RPL contends that granting a lease to the Youngs is undesirable from a public access perspective.
20. It is accepted that there is a strong theme of public access throughout the Act.
21. Having said that, RPL's contention is clearly flawed and seems to misunderstand the nature of the Youngs' operation.
22. The grant of the lease to the Youngs will not restrict in any way public access to the river. The public have free and unimpeded access to the river at all times. In addition, there is a picnic area available to the public where members of the public can relax, using the facilities provided.
23. The area is not fenced off and there is no Queen's Chain attached to the land.
24. The lease to the Youngs will in fact encourage the public to visit the area by providing recreational facilities for their benefit and enjoyment, such as garden awareness and education, animal interactions and an open space for walking and exploring.
25. In addition, there are picnic facilities freely available for the public to enjoy.

26. The point is that rather than restricting public access, granting the proposed lease will promote the purposes of the Act by providing activities so that the public will be encouraged to visit the area.

Contrary to the principles of the Reserves Act

27. RPL also contends that it is contrary to the principles of the Act to grant a lease to the Youngs because it will continue the "privatisation" of land.
28. At page 2 of its submissions, RPL states that the proposed lease will be contrary to section 17 because:

It is apparent [from section 17] 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".**

[Emphasis added]

29. RPL repeats (at page 5 of its submissions) its claim that the current arrangement between the Council and the Youngs "effectively privatises a significant section of the Kowarau River".
30. This argument is based on a flawed factual argument. The zoological reserve itself provides both recreation and enjoyment to the public.
31. The public benefit of zoological reserves or similar has been recognised throughout the world in countless cities.
32. In my submission, the argument that the Youngs have "privatised" a large area of reserve land cannot be sustained. The fact is that the Youngs have always provided free access to the river, which was a requirement of the old lease. They will continue to do so under the proposed new lease.
33. In addition, the grant of the proposed lease to the Youngs will not be contrary to the principles set out in section 17, as contended by RPL.
34. The principles that govern recreation reserves are those set out in sections 3 and 17, in particular that recreation reserves be available for public enjoyment, with the public having freedom of entry and access for their "benefit or enjoyment".

35. As stated already, the grant will in fact promote the principles of the Act by providing for the better use and enjoyment of the reserve by the public in the following ways:
- (a) Making the area available for public enjoyment and use;
 - (b) Ensuring that the public have freedom of entry and access to the land at all times. The area is not fenced off.
 - (c) Providing recreational activities for the benefit and enjoyment of the community, including picnics, birthday parties, gardening awareness and education, children's recreation, animal interactions and an open space for walking and exploring.
36. In addition, the grant will contribute to the pleasantness, harmony and cohesion of the natural environment (section 17(2)(c)). The land is properly maintained, managed and supervised by the Youngs. All planting and landscaping associated with the zoological gardens is achieved at the Youngs' cost.
37. If the Youngs did not maintain the land, it would very likely lose its aesthetic appeal and revert to its original rough scrub.
38. As stated in the application, part of the Youngs' management programme is to assist and educate people in terms of organic systems (the project is practically 100% organic), soil creation, flora and fauna, and animal welfare. Particular features include the Bumblebee Hives and Butterflies programmes, which are very popular with the public.
39. In summary, it is submitted that the grant of the lease to the Youngs will in fact promote the principles of the Reserves Act.

Statutory authority to grant the lease to the Youngs

40. RPL's third argument is that the Council does not have statutory authority to lease the land for the proposed purpose.
41. The purpose stated in the proposed terms of the new lease as determined by the Property Subcommittee is "Gardens and Animal enclosures and associated buildings and activities".
42. The specific power relevant to the Youngs' application is contained in section 54 of the Act. Section 54 provides for four situations in which a lease of a recreation reserve can be granted. They are:
- (a) Baths, camping grounds, parking, mooring or any other facilities for public recreation or enjoyment (section 54(1)(a)). For an area of a

recreation reserve to be leased for any of these purposes, the area must have been set apart by the Council under section 53(1)(h)(ii).²

- (b) Stands, pavilions, gymnasiums and other associated buildings and structures necessary for use for outdoor sports (section 54(1)(b)).
- (c) For the playing of outdoor sports where the preparation of the area requires substantial expenditure (section 54(1)(c)).
- (d) For a trade, business or occupation necessary for the public to obtain the benefit and enjoyment of the reserve or for their convenience in using the reserve (section 54(1)(d)).

43. RPL contends (at pages 2-3 of its submissions):

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 authorised is S54(1)(a) ...

- 44. The Youngs agree that sections 54(1)(b) and (c) are not relevant. Nor, in my submission, is section 54(1)(a), which is primarily concerned with baths, camping grounds, parking and mooring places, although the Youngs' operation could easily fall within "other facilities for public recreation or enjoyment". It is conceded that if the Council wished to grant the lease under section 54(1)(a), it would have to set the area apart as required by section 53(1)(h) of the Act.
- 45. The Council has correctly, in my submission, relied on section 54(1)(d) for authority to grant this lease to the Youngs.
- 46. The zoological reserve is clearly either a business or an occupation, although it is one which is operated as a good corporate citizen and not as a cut-throat money-making operation.
- 47. It is clear that the Youngs' activity falls within the definition "business or occupation" and so is within section 54(1)(d).
- 48. It is also clear, in my submission, that the occupation of operating the zoological gardens is "necessary", in the sense of being expedient or desirable, to enable the public to obtain the benefit and enjoyment of the reserve, as required by the proviso to section 54(1)(d).³

² Section 53(1)(h)(ii) provides that, with the prior consent of the Minister, the Council may set apart any part of a recreation reserve for baths, camping grounds, parking places for vehicles, or mooring places for boats.

³ In *Summit Road Society (Inc) v The Minister of Conservation* (HC Christchurch CP429/89, 18 May 1990) Holland J adopted the following definition of "necessary" for

49. For these reasons, it is submitted that that the Council has the statutory authority to grant the lease to the Youngs.

Conclusion

50. In conclusion, it is submitted that the grant of the lease to the Youngs will in terms of section 17 of the Reserves Act 1977 protect and preserve this area of land for the benefit and enjoyment and use of the public and so achieve the purposes of the Act.
51. The Council has the requisite statutory authority to grant the lease under section 54(1)(d) of the Act.
52. For these reasons, it is submitted that that the proposed lease to the Youngs should be granted on the terms as determined by the Property Subcommittee. However, for the reasons stated in Berry & Co's letter dated 26 May 2016, it is requested that that the proposed termination clause be amended to allow the Council to terminate the lease, but with five years written notice of its intention to do so.
53. If the Council wishes clarification on any aspect of these submissions, the Youngs would be happy to do so.

.....
[date]

the purposes of section 56(1) of the Reserves Act 1977: "... 'necessary' is a fairly strong word falling between expedient or desirable on the one hand, and essential on the other."

Attachment F: Right of Reply

BERRY & CO
BARRISTERS & SOLICITORS

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Phone: +64 3 441 0302 | Fax: +64 3 441 0307
Email: info@berryco.co.nz | www.berryco.co.nz

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 above mentioned 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.

Dunedin 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:

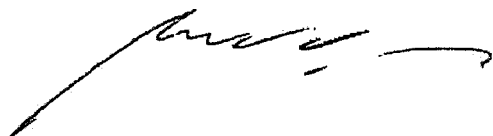
- (a) That a Lease for 10 years with 2 rights of renewal be granted to our client.
- (b) That our clients Lease can be terminated on giving 5 years notice after the expiry of the first period of 10 years. Such termination could be invoked in the event that any alternative proposed use would be of greater 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

e-mail: rbuckham@berryco.co.nz

27 September 2017

EMAIL: Alice.Balme@qldc.govt.nz

Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN 9348

ATTENTION: Alice Balme

Contact: John Young
Direct dial: +64 9 979 2155
email: youngj@brookfields.nz

YOUNG LEASE – SUBMISSION FROM REMARKABLES PARK LIMITED

We refer to the invitation from the Council to comment on the letter from Berry and Co dated 30 June 2016 (**Berry and Co Letter**) in respect of the proposed lease to D, R and P Young over public reserve land. RPL appreciates the opportunity to comment on the Berry and Co Letter. However, we are obliged to record at the outset that Remarkables Park Limited (**RPL**) have significant and justified concerns about the Council's decisions making process and reserves its rights in that regard¹. Having said that, we have endeavoured to be constructive. Our detailed comments follow the paragraphs in the Berry and Co Letter. In summary, RPL considers:

- (a) The Youngs have no proper basis for any procedural complaint;
- (b) The independent expert evidence for RPL was compelling. Mr Buckham's post-hearing challenges to the veracity of that evidence cannot be sustained.
- (c) Unlike RPL, the Young's choose not to call independent expert evidence;
- (d) The grant of the lease would be contrary to the Reserves Act 1977, in particular the overarching requirement to preserve free public access; and
- (e) The grant of the lease is inappropriate in the absence of a reserve management plan and/or in advance of the outcome of the hearings on submission on Chapter 38 "Open Space and Recreation".

¹ Those concerns have been communicated to the Council and need not be repeated here. However, it is important that we record that the Council has been put on notice of those concerns and RPL's participation on the further submission process is without prejudice to pursue its remedies in relation to those concerns.

Paragraph 1

1. There was no proper basis to object to the conduct of RPL's counsel or its experts at the Council hearing. RPL lodged a comprehensive submission raising all issues pursued at the hearing. There was no direction to pre-file evidence. RPL agreed that Mr Buckham should have a right of reply following the presentation of submitter's cases. That right was exercised by Mr Buckham at the hearing.² It is noted that Mr Buckham also provided a written response to RPL's submission by letter dated 22 June 2016.
2. RPL did not agree that Mr Buckham should have a further right of reply (in writing or orally) at a subsequent meeting of the Full Council following the adjournment of the hearing before the Committee.

Paragraph 2

3. The material adduced by Mr Vivian and Mr Greenaway (the experts engaged by RPL) was not a submission. It was independent expert evidence.
4. In terms of the Queenstown Trails Trust (**Trust**), it is noted that:
 - (a) Mr Vivian was a Trustee of the Trust at the time of giving his evidence. While his evidence was provided on behalf of RPL³, Mr Vivian had direct knowledge of the views and aspirations of the Trust;
 - (b) Mr Vivian addressed urban growth and pressure on reserves⁴;
 - (c) Mr Vivian addressed the Trust's document "Queenstown Trails for the Future 2015 to 2025" in detail at section 4 of his evidence;
 - (d) That detailed analysis led him to conclude that the lease area should be significantly reduced to "safeguard the potential to relocate the Queenstown Trail through the reserve" and "maintain...the reserve for the benefit of the existing and future population growth"; and
 - (e) Mr Greenaway emphasised the importance of enhanced public access as part of an integrated plan for the reserve.
5. These matters were not meaningfully addressed in the material adduced by the Young's or their counsel. In fact, the Berry and Co Letter appears to assert that they are irrelevant matters (see the second section of paragraph 2). The evidence was not "speculative". It was carefully considered expert opinion that appropriately considered the relevant statutory requirements (Reserves Act 1977) and policy documents (district plan and the Trust's strategy).

² See page 1, 5 and 6 of the Minutes of the Hearing of Submissions (noting that the pages are not numbered).
³ Mr Vivian expressly recorded that he was not giving evidence for the Trust.
⁴ Section 3 of his evidence.

6. **Attached** and marked "A" is a letter from the Queenstown Trails Trust recording its view that public access to the reserve is supported and emphasising the importance an off road commuter link in this location.

Paragraph 2(a) and (b)

7. It is accepted that the Reserves Act 1977 (**Act**) provides authority to grant a lease over public reserve land. However, the powers under the Act should be exercised in a manner that gives effect to the purpose and principles of the Act, which is another matter that was never satisfactorily addressed in the application for a lease or any subsequent material.

8. Section 3 of the Act states one of its purposes as:

"ensuring, as far as possible, the preservation of access for the public to and along...lakeshores and riverbanks"

The reserve land in question has its western boundary on the lakeshore and riverbank. Access should be preserved.

9. It is quite clear that the manner in which the existing lease has been used is an impediment to public access. Signs at the entrance of property state that there is "No Exit", advise whether the area is "OPEN" or not, and state hours of 10am to 4pm. There is a "No Dogs" sign⁵. For all intents and purposes, the area is presented as private land.
10. The original submission lodged by RPL addressed section 17 in detail, as did the legal submissions provided at the hearing. It was emphasised that:
- (a) Section 17 requires that recreation reserves retain "open spaces" and "outdoor recreational opportunities, **including recreational tracks in the countryside**" (section 17(1));
 - (b) Section 17 also requires that the public have "freedom of entry and access" (section 17(2)); and
 - (c) The specific powers under section 54 (to which reference is made in the Berry and Co Letter) expressly states leases may be granted "...to the extent necessary to give effect to the principles set out in section 17".⁶

Paragraph 2(c)(i)

11. While the absence of a management plan doesn't preclude the granting of a lease, it is a relevant factor in deciding if it is desirable to grant a lease and, if it is considered desirable to do so, on what terms a lease may be granted.
12. It is RPL's view that the recreation reserve land is extremely valuable to the public from an amenity and recreation perspective. It will adjoin the high density urban development

⁵ See the photos attached to the RPL's original submission.
⁶ Section 54(1).

within the Remarkables Park Zone (RPZ), including 5 and 6 star accommodation. It bears emphasis that the RPZ enables a wide range of activities with Activity Area 3⁷ such as a ferry terminal, visitor accommodation and retail (up to 21m in height). Activity Area 2 (which adjoins the proposed lease area) is intended to be developed for public open space and river access under the RPZ⁸. RPL has vested land as reserve that consolidates and expands the existing reserve area. The public reserve is a large area of waterfront land that should be integrated with the RPZ and available to the public without impediment.

13. Mr Greenaway considered that achieving an integrated and properly planned outcome for the reserve was a sufficient reason to not proceed with the lease. There was a fear that a further long-term lease would discourage and delay the development of a proper reserve management plan.
14. Furthermore, the Council has recently commenced consultation on how its reserves will be managed in the future. As part of Stage 2 of the District Plan review, the Council is proposing to introduce a new chapter – Chapter 38 “Open Space and Recreation”. This is also a relevant factor in deciding if it is desirable to grant a lease. RPL considers that it would be prudent to not grant a further lease prior to completion of a reserve management plan or the hearing of submissions on proposed Chapter 38.

Paragraph 2(d)

15. Mr Buckham has accepted that there is a strong theme of public access throughout the Act.⁹ He initially maintained that the “Young’s operation” would not “unreasonably” restrict public access¹⁰. The “unreasonably” qualifier places an inaccurate gloss on the plain words of the Act. There is no “reasonableness” test in the Act in relation to public access. An argument was then developed in the letter of 22 June 2016 that without the Youngs’ operation members of the public would not use the reserve at all. This line of argument is pursued in the Berry and Co Letter where Mr Buckham suggests that “No other realistic recreational use of the land was tabled at the hearing”. This is something of a straw man argument. A proposal that does not meet the principles of the Act and will have adverse implications for the future use of public land cannot be validated by the absence of a counter proposal. Further, Mr Buckham’s reasoning completely ignores the zoning of adjacent land which anticipates high density development and access to the public reserve land and river edge.
16. Furthermore, the Act does not require an evaluation of alternatives. It requires that any lease give effect to the principles of the Act.
17. RPL advised at the hearing that it would be prepared to maintain the reserve. This includes further landscaping. A park like reserve for passive and active recreation would be delivered unencumbered by structures and signs that discourage public access. In fact, RPL’s proposal would encourage public access and use in a manner similar to the Botanical Gardens in Queenstown Bay. Further, trails are also an obvious option for the

⁷ Activity Area 3 of the RPZ is near the public reserve land.

⁸ Mr Vivian’s evidence addresses the RPZ and Activity Areas 2 and 3 at paragraphs 3.8 to 3.12.

⁹ Paragraph 20 of his letter dated 22 June 2016.

¹⁰ Paragraph 22 of his letter dated 22 June 2016.

land (as addressed in RPL's evidence). RPL already maintains the trails in the vicinity for the Queenstown Trails Trust under an agreement with the Trust.

18. RPL also has plans to establish a ground and flood protection wall around the lake and river edge of the reserve. The lease could be an impediment to that project and the significant public benefits it will deliver. **Attached** and marked "**B**" is a plan showing the proposed location of the ground and flood protection wall. RPL's experts have advised that it is desirable to construct the wall on the river's edge where it can have the dual function of providing flood protection and protection against subsidence.
19. It is RPL's view (and that of its independent experts) that the lease will be an impediment to public access generally and the development of an integrated plan for the reserve. It will also impede the planned uses (trails) and projects (ground and flood protection).
20. For completeness, it is noted that the offer of a "stile" and "enhancing public access from the legal road" (see paragraph 35(b) of the 22 June 2016 letter) is a tacit acknowledgment that public access is currently impeded. As far as RPL is aware, no actual or formal steps have been advanced as to how access will be enhanced. The reality is that if a further lease is granted the vast majority of the public will continue to see the land as under private control.

Conclusion

21. RPL seeks that the lease application be declined.
22. If the Council is minded to grant the lease, RPL seeks that:
 - (a) The land area subject to the lease be reduced to that land containing the aviaries and carpark;
 - (b) The lease be for a 2 year term, but with a right to terminate with 3 months notice at any time during the period lease. This term would broadly align with the completion of the reserve management plan (which should take no more than 2 years) and/or district plan review processes; and
 - (c) That the measures to "enhance" public access be formally described and imposed as conditions of the lease.
23. RPL also seeks the immediate removal of the fence south of the aviaries which currently prevents public access to the reserve land. It was suggested at the Committee hearing that this fence was erected by RPL. The fence was upgraded by RPL when it actively farmed the land. Since then, RPL has vested in the Council over 10,600m² of land adjoining the reserve. If it is considered that RPL owns or controls the fence, RPL will remove it at its cost.

24. A representative(s) for RPL will speak to this letter at the Council meeting.

Yours faithfully
BROOKFIELDS



John Young
Partner

Direct dial: +64 9 979 2248
email: youngj@brookfields.nz

Copy to: Client



QUEENSTOWN TRAILS TRUST

7 August 2017

RE; Frankton Zoological Gardens – Reserves Act Lease

To whom it may concern;

The Queenstown Trails Trust is currently investigating a proposed cycle/pedestrian route to provide an essential commuter linkage for the growing populations South of the Kawarau River to access Frankton and the new Wakatipu High School.

This link requires the provision of a pedestrian overbridge from a willowed gulley on the south bank of the river to the peninsula of council reserve on the north bank which is currently leased to the Frankton Zoological Gardens.

The Trails Trust is committed to providing off-road commuter routes and connecting our communities as outlined in our 10-year plan 'Trails for the Future'. This link is especially important in providing a means for students to cycle to the new school, as well as allowing public access to a stunning part of Queenstown Reserve land which could become a major tourist attraction.

Wherever possible, we would welcome public access to this council reserve for the benefit of the community via the provision of a riverside trail, and would like the suggestion of a pedestrian bridge to be considered in any lease negotiations regarding the site.

Kind regards

Mark

Mark Williams | CEO | Queenstown Trails Trust

M: +64 (0) 27 5540941 | **E:** mark.williams@queenstowntrail.org.nz

www.queenstowntrail.org.nz



[REDACTED]

From: [REDACTED]
Sent: Tuesday, 12 September 2017 3:29 PM
To: Alice Balme
Subject: RE: FW: Frankton Zoological Gardens - Reserves Act Lease [MC-MCDMS.FID597722]

Good afternoon Alice

Thank you for your advice and I note your later email regarding the matter being deferred to the October 10 meeting in Queenstown.

In the circumstances as you have outlined them please advise Council that I stand by my original submission and fully support the decision to grant a 10 year lease.

Dr Neil Clayton
[REDACTED]
Queenstown 9300
[REDACTED]

> Neil,
>
> Apologies for the delayed response.
>
> The concerns raised by RPL are not relevant to the submissions we have
> called for. Your submission should be strictly limited to responding
> to the matters raised in the Young's late submission of 30 June 2016.
>
> For background only, RPL advised the Council that it would seek
> judicial review of the Council's decision to grant a lease for a
> period of 10 years. They expressed concerns about the Councils
> decision making process and whether the Council could have made the
> decision it did based on the information before it (i.e. it did not
> have all relevant information before it when making the decision).
>
> We do not agree with these concerns. However, in order to ensure that
> no one is prejudiced by this process, we have agreed to have the
> Council consider the information again and make a decision.
>
> I realise this email is reaching you after the end date for submission.
> However, I am happy to receive your submission before close of
> business tomorrow.
>
> Please give me a call if you would like to discuss this further.
>
> Kind regards,
> Alice
>