

Deed of Rent Review and Variation of Lease

QUEENSTOWN LAKES DISTRICT COUNCIL

KIWI BIRDLIFE PARK LIMITED

PAUL STEPHEN JOHN WILSON AND IRENE SANDRA WILSON

QLD001832 8709526.1

DATE

16th February

2020

PARTIES

QUEENSTOWN LAKES DISTRICT COUNCIL at Queenstown (**Lessor**)

KIWI BIRDLIFE PARK LIMITED at Alexandra, company number 1024629 (**Lessee**)

PAUL STEPHEN JOHN WILSON and IRENE SANDRA WILSON of Glenorchy, Company Directors (**Guarantor**)

BACKGROUND

- A. By the Lease the Land is leased by the Lessor to the Lessee for the purpose of a nature park at the rent and on the terms and provisions contained in the Lease.
- B. The Lease provided for the rental to be reviewed on 1 July 2017 and the Landlord and the Lessee have agreed upon the rental to be paid for the remainder of the term of the Lease.
- C. The Lessee and the Lessor have also agreed to vary certain terms of the Lease.

THIS DEED RECORDS

1. Definitions and Interpretation

1.1 **Definitions:** In this Deed unless the context otherwise requires:

Community Facility Funding Policy means the policy annexed to this Lease at the First Schedule as amended or substituted and adopted from time to time by the Lessor;

Gross Receipts has the same meaning as set out in clause 3(e) of the Lease;

Land means part of the land comprised in Record of Title OT9B/770, 185161 and 185162 being recreation reserve administered by the Lessor and as further described in the Lease;

Lease means the Deed of Lease dated 1 July 1997 between the Lessor and the Lessee; and

Lessor and Lessee includes their respective successors, executors, administrators and permitted assigns.

1.2 **Interpretation:**

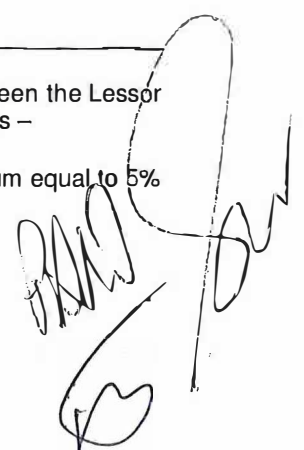
1.2.1 This Deed is supplemental to the Lease and expressions and definitions used in this Deed bear the same meaning given to them in the Lease.

1.2.2 In this Deed where obligations bind more than one person those obligations bind those persons jointly and severally.

2. Rent Review

2.1 In respect of the rent review which was due on 1 July 2017, it is agreed between the Lessor and the Lessee that the annual rent payable under the Lease shall be as follows –

2.1.1 For the period commencing on 1 July 2018 until 30 June 2019, a sum equal to 5% of Gross Receipts;

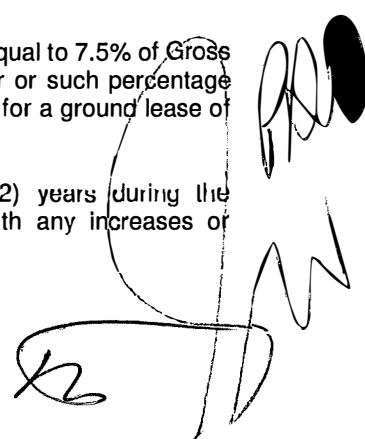


- 2.1.2 For the period commencing on 1 July 2019 until 30 June 2020, a sum equal to 6% of Gross Receipts;
- 2.1.3 For the period commencing on 1 July 2020 until 30 June 2021, a sum equal to 7% of Gross Receipts; and
- 2.1.4 For the period commencing on 1 July 2021 until 30 June 2032, a sum equal to 7.5% of Gross Receipts.
- 2.2 Immediately upon signing of this Deed, the Lessee shall pay to the Lessor such amount as is required to bring the rent up to date in accordance with the reviewed rent set out at clause 2.1.
- 2.3 In addition to the rent the Lessee shall continue to pay outgoings and other amounts as provided in the Lease.

3. Extension Request

- 3.1 The current term of the Lease expires on 30 June 2032 and the Lessee has requested the Lessor extend the Lease for a total period of fifteen (15) years from 1 July 2032 (**Extended Term**).
- 3.2 The Lessor agrees to provide a positive recommendation to the Chief Executive of Queenstown Lakes District Council to publicly notify the lease for the Extended Term.
- 3.3 The Lessee acknowledges and agrees that the grant of the Extended Term is subject to and conditional upon:
- 3.3.1 The Lessor undertaking all statutory processes immediately as required under the Reserves Act 1977, including (but not limited to) attending to public notification of the Extended Term;
- 3.3.2 A resolution being passed at a full meeting of Queenstown Lakes District Council resolving to grant the Extended Term, such resolution being passed at the sole discretion of the Councillors of the Queenstown Lakes District Council,

(the **Conditions**).
- 3.4 The Lessee acknowledges that nothing in this Deed can by law fetter, restrict, or bind the Lessor in its regulatory capacity and any consents, acknowledgements or agreements given by the Lessor in this Deed shall not be construed as consent, acknowledgement, or agreement by Queenstown Lakes District Council in its regulatory capacity.
- 3.5 The Conditions are to be satisfied by the date which is 3 years following the date of this Deed.
- 3.6 If the Conditions are satisfied then the Lessor and Lessee agree that the following terms shall apply during the Extended Term:
- 3.6.1 The total period of the Extended Term will be for fifteen (15) years being an initial term of five (5) years from 1 July 2032 with two (2) rights of renewal for terms of five (5) years each.
- 3.6.2 The annual rental payable from 1 July 2032 shall be a sum equal to 7.5% of Gross Receipts for the period from 1 July to 30 June in each year or such percentage amount prescribed by the Community Facility Funding Policy for a ground lease of Council land, whichever is the greater.
- 3.6.3 The annual rent payable shall be reviewed every two (2) years during the Extended Term at the Lessor's election in accordance with any increases of



decreases in the percentage amount for a ground lease of Council land as prescribed by the Community Facility Funding Policy or its successor policy.

4. Variations

4.1 It is agreed between the Lessor, Lessee and Guarantor that from the date of this Deed the Lease shall be varied by including the following new clauses to the First Schedule:

"38 HEALTH AND SAFETY

38.1 *The Lessee must exercise any rights granted by this Lease in a healthy, safe and reliable manner and must comply with all aspects of the Health and Safety at Work Act 2015 (HSWA), any Regulations, Codes of Practice, Guidelines, Factsheets and any amendments to the legislation.*

38.2 *The Lessee shall:*

- (i) *Notify the Lessor of any situation, occurrence, activity or event at the workplace, which may endanger the health and safety of occupants, workers or the public;*
- (ii) *Take all reasonably practicable steps to eliminate, or if not possible, minimise any risks/hazards, and to manage risks/hazards and protect the health and safety of all persons present at the workplace; and*
- (iii) *Record and report to the Lessor all notifiable events occurring on, or resulting from, the workplace, as soon as reasonably practicable and forward an investigation report with subsequent corrective actions identified."*

"39 TREES

39.1 *The Lessee shall be responsible for the identification, monitoring and removal of hazardous trees located within the Land where such trees present an unacceptable risk to persons and property (tree risk to be assessed and quantified using the 'QTRA' system). Prior to 1 October 2020 the Lessee at its cost shall commission a plan (to be prepared by a suitably qualified, experienced and QTRA registered professional arborist approved by the Lessor) of all trees located within the Land identifying those which pose an unacceptable risk to persons or property both within and outside of the Land (the **Tree Management Plan**). The Lessee shall arrange for the Tree Management Plan to be updated every five (5) years during the term of this Lease unless requested earlier by the Lessor (or upon demand in the event of a severe weather event) to ensure that at all times there is a current plan identifying hazardous trees within the Land. If a tree is identified in the Tree Management Plan as presenting an unacceptable risk, at the election of the Lessor, either:*

- (i) *The Lessee shall arrange for immediate removal of the relevant tree (including stump removal to below ground level) at its cost. The Lessee shall, prior to arranging for removal of the relevant tree notify the Lessor and seek its written approval (to be given or withheld in its sole discretion) to the methodology of tree removal, the specialist engaged by the Lessee to attend to the removal, and any proposed replacement plantings. The Lessor shall be entitled to engage a third party arborist or Council employee to review the Lessee's proposal (at the Lessee's cost); or*
- (ii) *The Lessor shall arrange for removal of the relevant tree (including stump removal to below ground level) and all costs incurred by the Lessor shall be recoverable upon demand from the Lessee.*

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39.2 The above process for identification, monitoring and removal of hazardous trees may be updated by the Lessor during the term of this Lease by notice in writing to the Lessee. The Lessee from the date of notification shall comply with the new process.

5. Confirmation of other Lease Covenants


- 5.1 The Lessee and Guarantor acknowledge and covenant with the Lessor that the Lessee shall:
- 5.1.1 use the Land on the same terms and provisions expressed or implied in the Lease subject to the variations set out in this Deed; and
 - 5.1.2 duly and punctually perform and observe the covenants and provisions of the Lease as varied by this Deed.

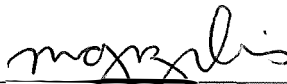
6. Costs

Each party shall pay their own costs in relation to the negotiation, preparation, and execution of this Deed.

EXECUTED as a Deed

SIGNED for and on behalf of)
QUEENSTOWN LAKES DISTRICT COUNCIL)
as LESSOR by its Chief Executive under)
delegated authority in the presence of:)


Signature



Signature of Witness

MELITA GAZILIS

Full Name of Witness

10 GORGE ROAD, QUEENSTOWN 9300

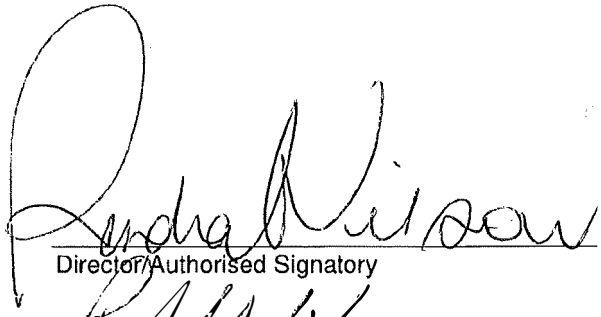
Address of Witness

EXECUTIVE ASSISTANT

Occupation of Witness



Executed by
KIWI BIRDLIFE PARK LIMITED
as **LESSEE** in the presence of



Director/Authorised Signatory



Director/Authorised Signatory


Witness signature

Full name

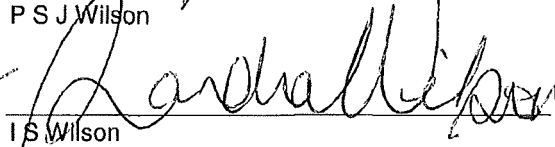
Occupation

Address

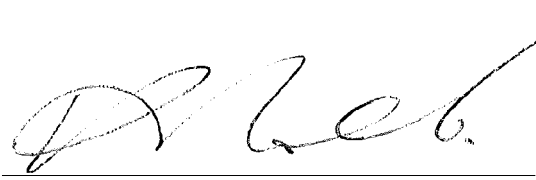
Executed by
**PAUL STEPHEN JOHN WILSON AND
IRENE SANDRA WILSON**
as **GUARANTOR** in the presence of



P S J Wilson



I S Wilson



Witness signature

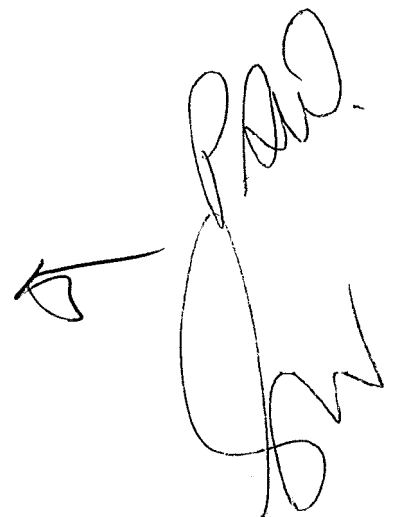
Full name **Vanessa Jean Robb**

Occupation **Solicitor**

Address **Dunedin**



FIRST SCHEDULE – COMMUNITY FACILITY FUNDING POLICY

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Community Facility Funding Policy

January 2019

Prepared by the Queenstown Lakes District Council

Review Date: Next Review due January 2022

QLDC, Private Bag 50072, Queenstown



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Our approach to funding community facilities

The Council provides a wide range of community facilities including parks, halls, pools, venues and sports fields. It also provides leases and licences to enable clubs to develop their own facilities for their members. The community's use of these facilities is vital for the health and well-being of our community.

Council is able to fund the cost of providing and maintaining these facilities via user charges and rate payer funding. This funding policy seeks to strike the right balance of rates funding and direct user charges for the various facilities provided by the Council.

In striking this balance the Council wants to ensure that:

- Community, sporting and cultural groups prosper and deliver services and facilities to their members and the wider community
- Groups share facilities to maximise their efficient use and reduce the cost to the community
- Using community facilities is affordable (particularly for youth) and is not a barrier to participation.
- When public facilities are used for private commercial gain, the community should receive a fair return for the use of the communities' facilities.

This policy includes both long term leases and licences of land and short term facility hire.

How fees and charges are set

This policy has been adopted by the Council in accordance with Section 102 (4)a of the Local Government Act 2002 and provides specific detail concerning fees and charges for reserves and community facilities under Council's general Revenue and Financing Policy. In setting this policy the Council is required to act in a manner that promotes the current and future interests of the community including:

- the community outcomes to which the activity primarily contributes
- the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals
- the period in or over which those benefits are expected to occur
- the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity
- the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community

Having adopted this Policy, the Council requires:

- APL (as Council's property management contractor) to administer leases and licences and:

Fees and charges will be reviewed by Council via the Annual Plan in accordance with this policy. Steps should also be taken to introduce greater consistency, including review dates in new leases.

This policy should be reviewed every three years.

The following sections regarding rates, leases and licences have not been updated:

- Rates
- Principles
- Costs
- Benefits
- How the policy works
- Rental policy for leases and licences.

Rates

The Council imposes rates in accordance with the Local Government (Rating) Act 2002. The Act describes the categories of land and activities which are rateable and those which are partially or non-rateable. The information below is summarised from the Act as it is interpreted to relate to likely scenarios under this policy.

Non Rateable Land

In summary the following is non-rateable:

- A Reserve held under the Reserves Act 1977 or crown managed foreshore
- Land used by the Council for a public garden or reserve for sports, public halls and swimming pools
- An early childhood centre under section 308 (1) of the Education Act 1989, excluding any early childhood centres that operate for profit.

Where non-rateable land is used by a tenant primarily or exclusively for private or commercial purposes under a lease or licence, that area of the land is rateable land. Licensed food and beverage vending associated with a club is considered commercial activity in respect to rates and clubs will be rated for the licensed portion of the tenancy.

Land 50% non-rateable

In summary the following land is 50% non-rateable:

- Land used by a society incorporated under the Agricultural and Pastoral Societies Act 1908 as a showground or place of meeting
- Land used by a society for games or sports
- Land used by a society for the purpose of any branch of the arts.

Where non-reserve land is used for the private pecuniary profit of members or where non-reserve land is used for which a club licence under the Sale of Liquor Act 1989 is held, that area of land is rateable land.

Effect for Tenants

Generally, most clubs occupying land for a charitable purpose will be occupying non-rateable land and therefore will not be charged general rates. The exception to this is where clubs use part of the premises for commercial activities or hold a liquor licence for the premise. In these cases rates will be payable on that portion of the leased area. Tenants will also pay the relevant targeted rates for water, sewage and waste collection where these services are provided.

Principles

In considering the Council's approach to fees and rentals the Council has adopted the following principles:

- Council supports community groups who provide public good services, facilities and recreation opportunities by funding via the general rating base.
- Council encourages the sharing and optimisation of facilities by subsidising fees and charges.
- Council ensures that the community receives a fair return when the community's assets are used for private gain.
- Where coaching and tuition for profit occurs, Council will permit this where there is a contractual relationship with the host club that is beneficial to the not-for-profit objectives of the club.
- The level of subsidisation will be proportional to the degree of public good, cost of provision, level of commercial activity and private benefit.
- Capacity and peak demand may be managed via price mechanisms when required to ensure efficient use of facilities and to minimise the cost to ratepayers.
- Costs incurred through misuse or neglect should be borne by the persons or group who caused the damage.
- Individuals and groups should not profit from the on-sale or sub-letting of rights provided by the Council
- Fees and charges should be applied consistently. There will occasionally be circumstances however when administrators will need to have a degree of discretion to manage unusual situations.
- A current schedule of fees and charges will be made widely available including online.

Agreements should manage risk to Council, the parties, other users and the general public and ensure the proper and appropriate use of public facilities in accordance with relevant Bylaws and legislation including Health & Safety at Work Act (HSWA) 2015, Reserves Act and Resource Management Act. These should be simple plain language agreements.

Costs

Occupation of land and facilities imposes a cost on the community. These costs may be direct costs or indirect costs.

Rates

Properties are rated to provide a contribution to services provided to the community including water, sewage, refuse and other community services. Many activities place additional demand on these services and the community incurs additional costs.

Repairs and maintenance

Facilities such as sports grounds, halls, car parks etc all require repairs and maintenance to keep them in an acceptable condition that is safe and fit for purpose.

Insurance

Buildings require insurance in case of loss or damage.

Operating Costs

Some facilities incur direct operating costs proportional to use such as energy, cleaning and compliance costs like maintaining a building warrant of fitness.

Administration

All facilities require administration including answering enquiries, preparing agreements, collecting revenue and taking reservations, opening facilities, inspections, complaints and general property management.

Damage

Properties sometimes sustain damage due to misuse or accident. These incidents incur additional repair and or cleaning expenses.

Depreciation

The Council has made significant capital improvements to the facilities and needs to budget for the eventual replacement of these facilities when they reach the end of their life.

Opportunity Cost

Some properties occupied by one use could be occupied by other public uses or commercial paying tenants (where this is consistent with the purpose of the land). As such this represents an opportunity cost in that the occupation by the existing use prevents the opportunity for an alternative use.

Benefits

Occupation of land and buildings by sporting and cultural groups provides a number of community benefits.

Healthy Community

Clubs provide an important function in the provision of recreation and social opportunities within the community.

Facility Development

Clubs can through the voluntary efforts of their members raise significant capital for facility development and maintenance.

Amenity Provision

Where clubs occupy land they can often manage and maintain land for the benefit of the wider community via the provision of improved amenity.

How the policy works

There are two types of occupation of public space addressed in this policy. The first is long term occupations requiring a lease or licence and the second is short term hire of facilities and/or services.

Leases and Licences are provided to formalise the long term occupation of land managed by the Council. These provide the lessee or licensee with security and certainty over the use and development of the assets created on the Council's land. As many leases have long terms, this policy will only come into effect if the lease has reached expiry or the Council is able to review the rental in accordance with this policy. A club may also wish to voluntarily move to the terms and conditions offered under this policy if they are more favourable to the club when the lease rental comes up for review.

Licences for special situations

In some instances, such as golf clubs in the small communities, a licence to occupy may be more appropriate than a lease. This reflects the fact that in small communities like

Kingston and Glenorchy club facilities are developing, membership numbers are small and the land occupied is used by the wider community for a variety of purposes. Rentals will not be charged in these instances at the discretion of the Council.

Leases

This policy seeks to provide a fair and equitable basis for establishing a rental. Rentals have in the past been set in a variety of ways including valuation of market rentals. This practice is both costly to administer, often is of little relevance and is open to interpretation. As such it is recommended that rentals be charged on land area combined with a discounting and levy approach. The following table provides the rationale for the rentals.

User Description	Definition	Rationale
Service group in Council building	A voluntary charitable organisation providing community services in support of Council's Community Outcomes.	No rental is charged as the use provides an open community service. (e.g Citizens Advice Bureau)
Service group in own building on Council land	A voluntary charitable organisation providing community services in support of Council's Community Outcomes.	No rental is charged as the use provides an open community service.
Sporting, Arts or Culture groups occupying Council building	A voluntary charitable organisation providing sporting, arts or culture opportunities in support of Council's Community Outcomes.	A nominal rental is charged to recover 50% of the average cost of building maintenance. (e.g Queenstown Arts Society)
Sporting, Arts or Culture groups occupying Council land	A voluntary charitable organisation providing sporting, arts or culture opportunities in support of Council's Community Outcomes occupying land with or without buildings for members	A nominal rental is charged only where the area of land leased exceeds 1 ha. For areas beyond 1 ha. a nominal rental will be charged for the additional area on a square meter basis. This rental for large land users reflects the largely exclusive use of the land, the ability for such users to have recourse to revenue particularly from non-members and the opportunity cost of the occupation to the community.
Sporting, Arts or Culture groups occupying Council land – non-exclusive use	A voluntary charitable organisation providing sporting, arts or culture opportunities in support of Council's Community Outcomes occupying land for open free and unencumbered use by public	No rental is charged as the facility is open to the public at no cost (e.g. Queenstown Mountain Bike Club)

User Description	Definition	Rationale
Education	An early childhood centre under section 308 (1) of the Education Act 1989, excluding any early childhood centres that operate for profit.	A nominal rental is charged to reflect the opportunity cost of the land
Above with retail sales, catering, bar or gaming facilities	Retail sales, food and beverage retailing exceeding gross turnover of \$300,000 excluding GST per annum	Food and beverage sales in support of not- for profit club fundraising efforts are an important part of club revenue and social activity. Where such activity reaches a commercial like scale the club should provide some return to the community just as a commercial operator would be required to. A threshold of \$300,000 trading turnover has been established as a point where activity would be considered to be commercial in nature.

Leases and licences are managed on behalf of Council by APL in accordance with Council's Revenue and Financing Policy and the applicable legislation.

Coaching

Some non-for-profit clubs and societies have professional coaches and teachers operating within the facilities leased from the Council. In other cases professional coaches and teachers are operating independently of the club.

The Reserves Act 1977 Sec 94.1 (k) prohibits any trade, business, or occupation without the appropriate licence. Where coaches, personal trainers, teachers etc. are operating independently within a reserve or on land administered by the Council, the Council will require a licence and the payment of a fee as set by this policy as it would for any other trade or business. Such fees are applied to the maintenance and improvement of the reserves within the District.

Where coaches, personal trainers, artists in residence and teachers are operating a trade or business in close association with the club or society, the Council will authorise this via the lease or licence and will not charge any licence fee as long as the Council is satisfied that the relationship between the trade or business and the club is symbiotic and in the best interests of the club or society.

The Council will work with the club/society to document the terms of an agreement between the club/society and coach/tutor/artist.

Lease of Council Buildings by sports, art and cultural groups

Clubs who lease Council buildings receive a greater level of support/subsidy from the Council than groups who have fund raised, built and maintained their own club rooms. As such the Council should seek some recovery of the direct costs of maintenance and insurance from tenants in Council buildings. Ideally this should be on a full cost recovery basis as the costs of maintenance and insurance are fully funded by clubs who own their own building.

However, in reviewing the level of rental that this would impose on existing tenants, the Council has elected to charge 50% of the budgeted maintenance rate per square meter of building. The maintenance cost is calculated by the following formula to arrive at an annual rental:

$$0.5 \times \text{Total Annual Maintenance Budget for Tenanted Buildings} = \text{Annual rental m}^2$$

The rental represents an average cost as is not calculated on a per building basis. It is assumed that all buildings will receive a similar level of maintenance over the life of the tenancy.

The Council will need to review the rental in accordance with the amount budgeted for maintenance at least every three years. Council should over time seek to move towards full recovery of maintenance costs.