

**Full Council**

**4 April 2024**

**Report for Agenda Item | Rīpoata moto e Rāraki take [5]**

**Department: Community Services**

**Title | Taitara: Request to extend the lease to Kiwi Birdlife Park Limited**

**Purpose of the Report | Te Take mō te Pūroko**

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The purpose of this report is to consider granting Kiwi Birdlife Park Limited (**KBPL**) an extension of a further fifteen (15) years under their current lease for the Kiwi Birdlife Park.

**Executive Summary | Whakarāpopototaka Matua**

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Queenstown Lakes District Council (**QLDC**) is the administering authority pursuant to the Reserves Act 1977 of the freehold land held for the purposes of a recreation reserve comprised in Records of Title OT9B/770, 185161 and 185162 (**Reserve Land**).

KBPL has a lease over part of the Reserve Land, as further described in the Deed of Lease dated 8 March 2005 at **Attachment A (Lease)** in for the purpose of operating the Kiwi Birdlife Park. The lease is registered in a leasehold estate comprised in Record of Title 795902 registered under instrument 6359549.5 and renewed under instrument 10681701.1 (**Leasehold Estate and Leasehold Land**). The current term of the Leasehold Estate is 14 years, 364 days from 1 July 2017. The following ancillary easements are also granted to KBPL pursuant to the lease instrument 6359549.5:

- a. A Right of Way Easement over the area marked “A” on SO Plan 24407;
- b. A Right of Way Easement over the area marked “A” on DP 345184; and
- c. A non-exclusive Access and Parking Easement over the area marked “F” on DP 345184.

The current term of KBPL’s Lease expires on 30 June 2032 (**Current Expiry**). The Lessee has requested to extend the Lease for a total period of fifteen (15) years from 1 July 2032 to 30 June 2047 (**Extended Term**).

**Recommendation | Kā Tūtohu**

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That the Council:

1. **Note** the contents of this report;
2. **Agree** to the exercise of the Minister’s consent (under delegation from the Minister of Conservation) to the granting of the Extended Term to KBPL on the following terms:

- a. The total period of the Extended Term will be for fifteen (15) years being an initial term of five (5) years each from 1 July 2032 with two (2) rights of renewal for terms of five (5) years each.
  - b. The annual rent 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.
  - c. The annual rent payable shall be reviewed every two (2) years during the Extended Term at QLDCs election in accordance with any increases or decreases in the percentage amount for a ground lease of Council land as prescribed in the Community Facility Funding Policy or its successor policy.
3. **Approve** the registration of a new Lease Instrument to extend the Leasehold estate comprised in Record of Title 795902 created under instrument 6359549.5 and renewed under instrument 10681701.1, and approve the registration of an easement instrument creating rights of way appurtenant to Section 1 SO 24407, Lot 1 DP 345184 & Part Section 131 Block XX Shotover Survey District and an easement instrument creating an access and parking easement appurtenant to Lot 1 DP 345184 & Part Section 131 Block XX Shotover Survey District as granted under the Lease and created under instrument 6359549.5.
  4. **Delegate** authority to approve final terms and conditions and signing authority to the General Manager Community Services.
  5. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of the Extension to KBPL over the Reserve Land.

Prepared by:



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**Title:** Property Director  
**Date:** 07/03/2024

Reviewed and approved by:



**Name:** Tony Avery  
**Title:** GM Property and Infrastructure  
**Date:** 08/03/2024

## Context | Horopaki

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1. KBPL operates the Kiwi Birdlife Park wildlife sanctuary for native animals. This report deals with the request from KBPL to extend the term of their Lease.
2. The Lease to KBPL commenced on 1 July 1997 for a term of twenty (20) years, with a right of renewal for a term of fourteen (14) years and three hundred and sixty-four (364) days. The Leasehold Estate was renewed under instrument 10681701.1 on 8 August 2017 for a further term of 14 years, 364 days from 1 July 2017. The following easements are also granted to KBPL pursuant to the lease instrument 6359549.5:
  - a. A Right of Way Easement over the area marked “A” on SO Plan 24407;
  - b. A Right of Way Easement over the area marked “A” on DP 345184; and
  - c. A non-exclusive Access and Parking Easement over the area marked “F” on DP 345184, (together, the **Easements**).
3. During the COVID-19 local and international lockdowns there were limited visitors to Kiwi Birdlife Park. Through this time QLDC provided some rent relief and converted some payments to deferred native planting costs. This shows recent business support for KBPL by QLDC.
4. On 16 February 2021, QLDC and KBPL entered the Deed of Rent Review and Variation of Lease dated 16 February 2021 (**Deed**) at **Attachment B**. In summary, the Deed sets out the new rent review for the Leasehold Land, a variation of the health and safety provisions of the Lease and new terms regarding trees on site.
5. Pursuant to clause 3.2 of the Deed, QLDC agreed to provide a positive recommendation to the Chief Executive of Queenstown Lakes District Council to public notify the Lease for the Extended Term. KBPL acknowledged that the grant of the Extended Term is subject to and conditional upon:
  - a. QLDC undertaking all statutory processes immediately as required under the Reserves Act 1997, including (but not limited to) attending to public notification of the Extended Term; and
  - b. A resolution being passed at a full meeting of QLDC resolving to grant the Extended Term, such resolution being passed at the sole discretion of the Councillors of the QLDC, (the **Conditions**).
6. Per clause 3.5 of the Deed, the Conditions are to be satisfied by 16 February 2024, being the date, which is three (3) years following the date of the Deed (**Condition Due Date**).
7. Public notification took place between Thursday 13 May 2021 to Friday 11 June 2021 (**Notification Period**). On 16 June 2021, it was confirmed that no submissions were made during the Notification Period (see **Attachment C**). Accordingly, this matter was then to be considered by Full Council to finalise the conditions. It is apparent that this matter and achieving the Condition Due Date, was delayed due to COVID-19 related matters and rent relief sought by KBPL.

As the rent relief has been settled, with a new deed now being entered to record the terms, KBPL now wishes to progress the Extended Term.

8. If the conditions are satisfied (and the recommendation made by this report is followed), the following terms shall apply during the Extended Term:
  - a. The total period of the Extended Term will be for fifteen (15) years being an initial term of five (5) years each from 1 July 2032 with two (2) rights of renewal for terms of five (5) years each.
  - b. The annual rent 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.
  - c. The annual rent payable shall be reviewed every two (2) years during the Extended Term at QLDCs election in accordance with any increases or decreases in the percentage amount for a ground lease of Council land as prescribed in the Community Facility Funding Policy or its successor policy.
9. The land is not currently covered by a Reserve Management Plan. It should be noted that the Ben Lomond and Queenstown Hill Reserve Management Plan (**RMP**) is currently under review and QLDC's Parks Team are proposing that the land be subject to the RMP. Given the nature of the Lease, QLDC's Parks Team have stated that this should not pose any concerns.
10. The core land used by KBPL is just over 15 hectares of recreation reserve in central Queenstown. It accommodates a tourism enterprise focused on a wildlife sanctuary. The conservation efforts include breeding and releasing of native birds and planting native trees to rehabilitate the reserve land. This activity is broader than just the local activities. Birds are successfully released around New Zealand.
11. KBPL provides a unique offering both as a tourism activity that can be enjoyed by a diverse range of visitors. Also, as a valuable sanctuary facility breeding and releasing birds to support conservation efforts.

### **Analysis and Advice | Tatāritaka me kā Tohutohu**

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12. The KBPL activities strongly align with the QLDC Vision Beyond 2050 vision statements. In preparation of the new lease the QLDC Property and Parks teams have both given support for the continuation of the activities currently underway on the leased area.
13. A 15-year extension to the lease significantly improves the ability of KBPL to plan future developments and secure investment in the park. This can improve ability to finance capital improvements, as well as generate additional long-term certainty for the conservation activities carried out. For QLDC the long-term ability to plan around the known activities is an advantage.
14. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

15. Under the Reserves Act 1977, Ministerial consent is required before the Extended Term can be granted. This consent is now delegated to full Council.

16. **Option 1** Agree to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of the Extended Term to KBPL.

*Advantages:*

- Option allows KBPL to continue operation. KBPL conducts considerable conservation work which is only made possible under the Lease, through admission, souvenir sales and donations funded by visitors to the Kiwi Birdlife Park.
- Gives certainty to the Kiwi Birdlife Park tourist offering of Queenstown.
- Generates rental income for QLDC and ratepayers.

*Disadvantages:*

- The Leasehold Land is restricted to this use for the Extended Term of the Lease.
- This recommendation is being made well in advance and does not allow Council to consider other suitable uses of the Leasehold Land that may be relevant at the time of the current expiry.

17. **Option 2** Not agree to grant the Extended Term.

*Advantages:*

- Would free up the Leasehold Land for other potential pursuits from 30 June 2032.

*Disadvantages:*

- May result in the Leasehold Land being vacant, requiring QLDC to maintain it.
- Would decrease certainty of the Kiwi Birdlife Park as a tourist offering in Queenstown.
- Would likely require KBPL to cease its conservation work.

18. This report recommends **Option 1** for addressing the matter as this option will permit KBPL to continue its valuable conservation work on the Leasehold Land, provides certainty to KBPL and continues to generate rental income for QLDC over the Extended Term.

### Consultation Process | Hātepe Matapaki

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#### Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

19. This matter is of medium significance, as determined by reference to the Significance and Engagement Policy 2021 because it does not involve a QLDC strategic asset and the

recommendation does not appear to be inconsistent with existing policy and strategy. The recommendation does not impact on QLDC's capability and capacity.

20. The persons who are affected by or interested in this matter are ratepayers of the Queenstown Lakes district community, who, as stated **above** may be required to supplement any financial losses in rental revenue generated by KBPL. Other persons affected or interested in this matter include other potentially interested parties in the Reserve Land for occupancy.

21. QLDC has undertaken consultation with the wider community via the public notification of the intention to grant the Extension over the Leasehold Land. As stated above, no objections were recorded.

### **Māori Consultation | Iwi Rūnaka**

22. QLDC has not consulted with iwi regarding the proposed Extended Term.

### **Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka**

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23. This matter relates to the Community & Wellbeing risk category. It is associated with RISK10014 Ineffective Financial Strategy within the QLDC Risk Register. This risk has been assessed as having a high residual risk rating. The rental under the Lease is based on a percentage of the KBPL's Gross Receipts, with no base rent payable. The rent payable for the period commencing on 1 July 2021 until 30 June 2032 is a sum equal to 7.5% of Gross Receipts (see cl 2 in the Deed of Rent Review and Variation of Lease dated 16 February 2021 at **Attachment B**). This method of rental poses a financial risk for Council if the Kiwi Birdlife Park is unable to bring in rental return. If, for instance another lockdown was to occur or other event that required the Kiwi Birdlife Park to shut down for some period, this would place a financial strain on QLDC and require ratepayer funds to supplement the lost return (assuming no other adjustments in investment).

24. However, we propose that the recommended option mitigates the risk by securing occupancy of the Leasehold Land for up to an additional 15 years. The security of this term will enable KBPL to invest in the Kiwi Birdlife Park which could result in increased financial returns.

25. In addition to the financial risks, the recommended option will commit QLDC to an extended term of a Lease that may not be suitable to QLDC's objectives in future (given the date of commencement being in 2032). However, it is proposed that the environmental and tourist offering KBPL produces helps to offset and mitigate the financial risks of the recommended option. The Kiwi Birdlife Park is the only one of its kind in Queenstown, and the recommended option enables QLDC to keep the Kiwi Birdlife Park in operation.

26. The approval of the recommended option will support the Council by allowing us to retain the risk at its current level. This shall be achieved by:

- a. Providing QLDC the security that the Reserve Land will be leased for the Extended Term;
- b. Providing KBPL security to invest in the Kiwi Birdlife Park; and

- c. Retaining Queenstown's tourist offering.

### **Financial Implications | Kā Riteka ā-Pūtea**

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27. KBPL shall pay all costs in relation to the negotiation, preparation, and execution of the Deed of Extension of Lease and all associated LINZ costs associated with registering the new lease instrument and ancillary Easements.

### **Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera**

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28. The following Council policies, strategies and bylaws were considered:

- Vision Beyond 2050;
- The QLDC Disability Policy should be considered in most if not all cases. You can read a copy of the policy here: <https://www.qldc.govt.nz/media/kgzbbjgr/final-disability-policy-may-2018.pdf>
- Ben Lomond and Queenstown Hill Reserve Management Plan;
- Community Facility Funding Policy.
- Ben Lomond Reserve Management Plan

29. The recommended option is consistent with the principles set out in the named policies. We consider the recommended option aligns with the principles of the Vision Beyond 2050 as it will facilitate KBPL to carry out its mission of protecting and restoring native taonga species through managed conservation projects and education.

30. This matter is not included in the Long Term Plan/Annual Plan, but has no effect on it.

### **Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture**

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31. QLDC is delegated its authority as administering body of the Reserve Land under the Reserves Act 1977. Any decision must be made in accordance with the provisions of the Reserves Act 1977.

32. We consider that the recommended approach enables the Reserve Land to be utilised for wildlife conservation, in line with the purposes of the Reserves Act 1977.

### **Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka**

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33. The recommendation would enable QLDC to meet its obligations under Section 10 of the Local Government Act 2002 which states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act;

34. The recommended option:

- Can be implemented without funding under the Long Term Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

**Attachments | Kā Tāpirihaka**

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A	Lease to Kiwi Birdlife Park Limited dated 8 March 2005
B	Deed of Rent Review and Variation of Lease dated 16 February 2021