

# Permission Decision Support Document

## Application Details

Decision Maker	Harry Maher, Director of Operations SSI
Applicant	Real Journeys Ltd
Permission Number	59942-SER
Permission Type	Lease/Licence - notified

## Context

### From Task Assignment

Real Journeys Limited is seeking a new lease/licence to enable the redevelopment of Cavell's Café and Bar.

This lease/licence needs to provide for existing activities, which include the current operation of a licenced café and bar plus the new activities applied for being the operation of the Brewhouse, the sale of beer for consumption off the premises, an outside eating area, car parking, new landscaping with children's play equipment, as well as pedestrian and vehicle access to the building.

Cavell's building has been located at this site for over 25 years. The ground floor of the building currently contains Cavell's Café & Bar. The upper floor is occupied by the Queenstown Rafting operation (Go Orange – owned by Real Journeys) and is Wakatipu District office premises. The proposal includes external alterations to the building and the construction of a building extension. No changes are proposed to the areas used by DOC or Queenstown Rafting (Go Orange) except for a minor modification to the pergola to screen the changing area used by Queenstown Rafting.

The requirement for a new lease has been prompted by the applicant's proposal to develop Cavell's Café and bar, specifically to establish and operate a new restaurant, bar and Brewhouse on the ground floor of Cavell's building, replacing the existing café/restaurant/bar.

There have been several conversations between the local Operations Manager, Community Ranger, building owner and the applicant. As such, legal advice was sought and has been received advising that a concession is required for this proposal and not allowed for under Real Journeys current concession.

The timeframe of this Task Assignment is 70 working days but an intention to grant decision must be complete within 20. Please note that if a hearing is required, an extension may be needed.

The authority for agreeing fees sits with PPL Director to ensure a consistent approach across the country. Where the fee setting is consistent with the Price Book, place based decision makers can incorporate this into their decision.

Additional information from context meeting:

There has been some confusion on the situation with the leases in place at the moment. We need to confirm what legal instruments should be put in place to secure RJ's future in the building, and secure use of the building for present users, being DOC, Queenstown Rafting and Cavell's Café (both the latter being RJs companies)

The confusion arose from the convoluted history of occupation of the building including head leases/sub-leases with the old owner and Qtn Rafting, then DOC purchasing the building. Discussions with the applicant have convinced them of the merit of applying for a concession – especially as what they are proposing to do in terms of the café is quite different to the present activity.

There needs to be some discussion around what to do with the 1<sup>st</sup> floor lease (Qtn Rafting). We need to determine on what basis they are occupying the building. In 2018, they will need to apply for a new concession anyway.

There has also been discussion with the applicant on the need for public notification. They have raised issues such as the historical occupancy of the building meaning that public notification is not necessary. However, they have been advised that the department will be publicly notifying the concession application (it is quite possible that other statutory processes such as RMA and liquor licencing will be publicly notified anyway). The applicant has raised the point that when they build the extension for the brewery they plan to gift it to the Department as part of the building, so have questioned the need for a lease for this.

Discussions with the applicant so far have made it clear that a new concession using the notified process is the departments intention. The use and extension of the building is for their benefit, so they need a concession.

Clarification on the users of the building- the building houses the DOC area Office and RJ's café and rafting operations (café on ground floor, rafting on 1<sup>st</sup> Floor). Shotover Jet also occupy part of the Morning Star reserve, but have a lease area entirely separate from the area under consideration in this application.

**Location/s**

Morning Star Beach Recreation Reserve, Arthur's Point, Queenstown

# Statutory Analysis: Notified Concession under Part 3B of the Conservation Act 1987

## Intention to Grant

### S17S: Contents of application

To be complete (s17S(1)), an application for a concession must include:

- A description of the proposed activity;
- A description of the locations for the proposed activity;
- A description of the potential effects of the proposed activity and proposed action to avoid, remedy, or mitigate adverse effects;
- The proposed term and reasons for that term;
- Relevant information about the application (as requested in the application form).

### Criteria for decision:

1. Does the application include all the required information as per s17S?

Yes / ~~No~~

### S17T: Process for complete application

The intention to grant a concession must be publicly notified if it meets any of the following criteria:

- The concession type is a lease – this is for exclusive use of public conservation land;
- The term of the concession exceeds ten years (unless it is an easement – an easement may be granted for a term exceeding ten years without public notification);
- The effects of the activity mean it is appropriate to do so.

### Criteria for decision:

2. Is public notification required?

Yes / ~~No~~

### Discussion:

*The applicant has applied for a lease area for exclusive occupation and for a term of 33 years. Both these factors require public notification under S17T.*

### S17U(1) and (2): Analysis of effects

Briefly discuss the positive and adverse effects of the proposed activity, drawing on information from:

- The application form, as provided by the Applicant;

- The contributions described in the context and check in meetings, and outlined in this document.

Any adverse effects identified that are not managed by a standard condition for the activity may require a site/activity specific special condition to either avoid, remedy, or mitigate the adverse effect. Include the condition proposed and a description of how it avoids, remedies, or mitigates the adverse effect, and list the condition in the Proposed Operating Conditions section of this document.

Note that only information relevant to the activity on public conservation land can be considered – if information about effects of the activity is included in the above sources that is outside of this scope, note why it is not a relevant consideration under the Conservation Act (for example, economic benefits to an area).

**Criteria for decision:**

3. Is the activity consistent with s17U(1) and (2) of the Conservation Act?

Yes / ~~No~~

**Discussion:**

*Only those effects discussed in the application and District comments which require the inclusion of a special condition to mitigate the effect are included in this discussion. Factors identified in the application such as Didymo spread, effects on natural waterways, effects on archaeological sites where there are no significant effects to be mitigated are not discussed here. Factors regarding insurance, outgoings and other ‘tenancy’ arrangements which have no effect on the land or other users are also not discussed here.*

***Landscape and visual impacts:***

*There is the potential for the changes described to affect the landscape and visual aesthetics of the site. However, the application does not introduce elements inconsistent with the character of the site. The extension will be built of materials in keeping with the character of the surrounding landscape. Neither the decking or the brewhouse will compromise the remaining values of the site as they will be in an area already highly modified and used as a café.*

*The site is heavily modified, with parking, buildings and two workshops all in close vicinity to the site of the café. It is not considered that the proposal will have anymore effect on the landscape or visual aesthetic values of the site than is at present apparent if the build goes ahead as is shown in the plans attached to the application.*

*Conditions relating to landscaping have been included below (refer to conditions 35-38 in below).*

**Noise:**

*There is the potential for noise to be generated both from the build and from the use of the resulting brewhouse.*

*The noise from the build will be of short duration, and the applicant has indicated will only be occur working hours. It is unlikely that the build will cause any more significant impact on the noise environment than that already occurring given vehicle traffic into the site and the operation of the jetboats on the river during working hours.*

*It is suggested a condition is included restricting construction to working hours on weekdays only, that being 8am to 5pm (DOC office hours), Monday to Friday.*

*The District Office has identified that noise from events using the brewhouse has the potential to effect other users of the area (including DOC). To minimise the effect on the working environment, limiting events of more than 50 participants to outside working hours has been suggested unless prior approval of the Wakatipu Operations Manager is obtained.*

*This type of noise is likely to be addressed and regulated for under the resource consent, and there is no need to replicate this in the concession, however a condition regarding nuisance has been included (see condition 32) to allow the Department to address issues that arise should there be complaints regarding noise from use of the facilities.*

***Vegetation maintenance:***

*While the proposal will not result in significant disturbance of soils, vegetation, or native fauna, some management of vegetation will be required, mainly landscaping plants which will need to be trimmed back from time to time.*

*The landscape plans show the applicant intends to carry out plantings which will enhance the site but will require ongoing maintenance.*

*Where such landscaping and on-going maintenance has been used in other areas (such as lease areas in Milford Sound), a landscape/planting plan, including maintenance, agreed to by the District Office has been required to be in place after the completion of construction.*

*The landscaping conditions referred to above (35 to 38) will mitigate this issue.*

***Displacement of other users/ loss of public access:***

*The applicant states that the public will not be excluded from the outside deck and lawn area, and so should not be displaced. However, the District Office has raised concern of the higher density of tables over the existing outdoor area than at present. There is a lot of foot traffic to and from the viewing platform by the Cavell's Bridge and it is important for access to be maintained.*

*A condition requiring public access to be maintained to the lawn, decking area and viewing platform has been suggested, see condition 39 below.*

***Loss of natural light and view from the DOC District Office:***

*The District Office has raised the concern that the height of the brewhouse will affect the light entering the DOC offices above the brewhouse, as it will block light coming into a window at one end of the office. Consultation with applicant has resulted in an agreement to try to lower the height of the brewhouse roof from the 4.3m stated in the application to 3.8m. If this is not possible,*

*then the District Office feels that the applicant should pay for alterations to the affected office window to mitigate the effect of the roof blocking light into the office.*

*Subsequent correspondence with the application shows that they have changed the plans and will no longer be blocking the window. The conditions is therefore unnecessary.*

***Brewery odours entering the DOC District Office:***

*The District Office has raised a concern regarding odours relating to the brewery entering the DOC workspace above. The brewery will be located directly outside the main entrance to the District Office. The applicant has not raised this as a potential impact. The District Office would like to ensure that the build is completed with this problem in mind and that a ventilation expert be engaged by the applicant for advice on, and solutions to, odour control issues.*

*Subsequent correspondence with the applicant has revealed that this type of expert is not available. However, conditions 32 below refers to the concessionaire conducting the concession activity in a way which does not result in offensive odours.*

***Vehicle congestion in the service area at the back of the building:***

*The space at the rear of the building (on the same level as the DOC office) is used by Queenstown rafting, by vehicles servicing the café and for access to the DOC offices; in particular this is the disabled access point to the DOC offices. There is also a disabled car parking space for DOC visitors in this yard. The District Office do not want to see an increase to the size of the yard or to the number of parked vehicles in this yard, and also require that the disabled access and parking place be maintained. They state that in a meeting with the applicant, it was confirmed that here will be no increase in the size of this back yard, and that there will be no increase in the number of parking spaces in it. It is therefore unnecessary to include this as a condition, however maintaining the public disabled access to the DOC offices should be included as a special condition of the lease/licence.*

*This matter is covered in conditions 41 to 44 below.*

***Health and safety issues associated with the public accessing café via the service yard:***

*The District office has raised concerns with the public using the yard at the rear of the building to access the café. It is thought that improved signage for the café will mitigate this issue.*

*This mater is covered in condition 34 below.*

**S17U(3): Purpose for which the land is held**

A concession shall not be granted if the proposed activity is contrary to the purpose for which the land is held.

**Criteria for decision:**

4. Is the activity consistent with s17U(3) of the Conservation Act? (That is, not contrary to the purpose for which the land is held).

Yes / ~~No~~

**Discussion:**

*The applied for area is within the Morning Star Beach Recreation Reserve, administered under the Reserves Act 1977.*

*Section 17 of the Act describes the purposes of recreation reserves. It is not considered that this application is contrary to the purposes for which a recreation reserve is held.*

**S17U(4): Can a structure or facility be reasonably undertaken elsewhere?**

A concession to build or extend a structure or facility shall not be granted if the activity could reasonably be undertaken in another location that is outside conservation land or in an another conservation area where the potential adverse effects would be significantly less, or if the activity could reasonably be undertaken in an existing structure.

**Criteria for decision:**

5. Is the activity consistent with s17U(4) of the Conservation Act? (That is, the activity cannot reasonably undertaken at another location or in an existing structure?)

Yes/No / ~~NA~~

**Discussion:**

*The Café area the lease largely regards is in an existing structure and is an existing use of that structure. The addition of a brewhouse to the café is part of the overall experience of the café and as such cannot be located at a site that is outside public conservation land.*

*The area where the brewhouse extension is proposed is a highly modified area, at present used as a storage area for the café's rubbish. It is considered that the potential adverse effects to the reserve will not be significantly increased by the extension to the building.*

**S17W: Relationship between concessions and conservation management strategies and plans**

A concession shall not be granted unless the proposed activity is consistent with any established conservation management strategy, conservation management plan, and/or national park management plan.

**Criteria for decision:**

6. Is the activity consistent with all relevant statutory planning documents?

Yes / ~~No~~

**Discussion:**

*The relevant statutory planning document is the Otago Conservation Management Strategy, 2016.*

*Morningstar Beach Recreation Reserve falls within the Western Lakes and Mountains place (section 2.3). The CMS recognised the outstanding landscape, ecological, cultural and recreational values this place has.*

*The landscapes and history have long attracted people for recreation to this place. Outdoor recreation and tourism activities are highly valued.*

*Queenstown is recognised as a nationally important place for commercial tourism, with highly valued jet boating, rafting and other activities taking place on conservation land.*

*The outcomes for this place include:*

*“More people enjoy a wide range of recreational opportunities and experiences within the recreation settings across the Western Lakes and Mountains/Ngā Puna Wai Karikari a Rākaihautū Place, provided by the Department, the community and many commercial providers. The range of experiences and opportunities enables people to choose between remote, quiet and tranquil locations and busy, highly visited sites.”*

*There is nothing in the outcomes or policies for the Western Lakes and Mountains Place that suggest the application is inconsistent with the Otago CMS.*

## Operating conditions

### **Lease/Licence extent:**

It is proposed that a lease be granted for the foot print of the café and new extension to house the brewhouse, and a licence be granted over the area at the rear of the building to allow for continued vehicle access to service the café, and at the front of the café to allow for the outdoor patio and dining area. An indicative plan is shown below.

It should be noted that the existing lease agreement for Queenstown Rafting Limited includes ownership of the ‘common’ areas (toilets and stairwell) at the northern end of the ground floor of the building. This agreement allows for the use of the toilet by the café, but this area cannot be included in the café lease footprint.

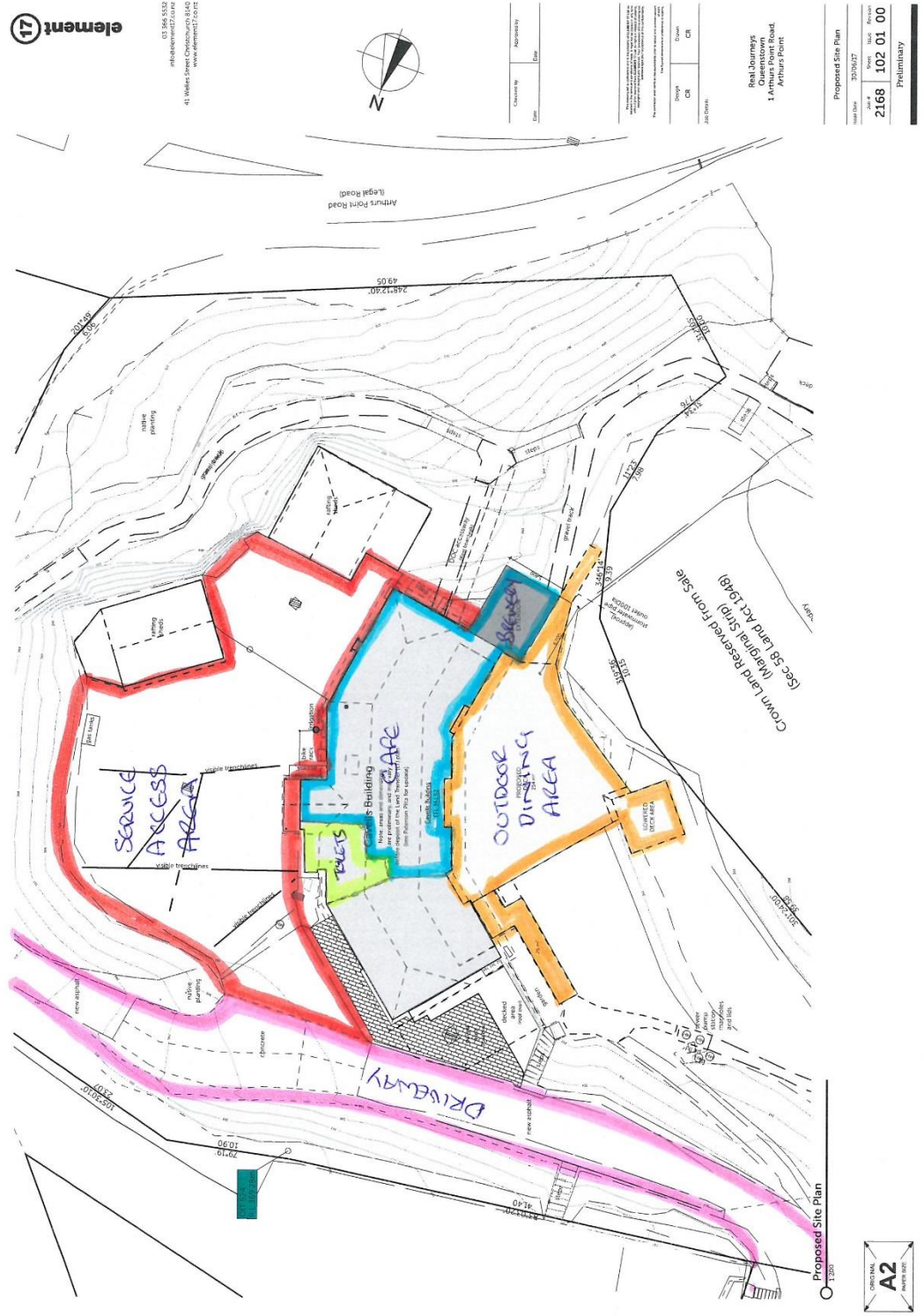
Queenstown Rafting Limited have an existing authorisation for the use of the area at the rear of the building for the rafting operations, in conjunction with the two storage sheds in this area. Any authorisation for the use of this area by the café for servicing of the café must be consistent with the parameters of this existing authorisation.

Access to the building from the legal road through the reserve is an existing driveway down from the road to the north end of the building. This driveway carries on past the building and joins with existing carparking in front of the Shotover Jet base building. Use of this track way to ensure access to and from the building needs to be included in the licence area, however it must also be consistent with any existing permissions/authorisation/ownership of the drive way.

Landscaping associated with the outdoor dining area is limited to that required within the extent of the licence area. The area on the map below is indicative only, based on the plans supplied



with the application. Any reasonable area of landscaping/planting that the applicant requires beyond the area indicated on the map below will be included in the final extent of the licence area.



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Client	Real Journeys Conservation Centre, Arthur's Point
Designer	Element 17
Checker	CE
Drawn	CE

Proposed Site Plan	
Scale	AS1474
Sheet No.	2168
Block No.	102 01 00
Preliminary	



Proposed Site Plan

**Standard conditions applicable to the proposed activity:**

As per the standard terms and conditions included in Schedule 2 of all concession documents refer to [DOC-3147514](#) or <http://www.doc.govt.nz/Documents/about-doc/concessions-and-permits/concessions/concession-contract-lease-licence.pdf>

**Special conditions relevant to this application:**

**DRAFT - Note the following Special Conditions and Definitions are provided as a working copy and do not reflect the Department's final position.**

**These special conditions reflect the Department's response to the applicant comments on conditions suggested in the analysis of effect above.**

**ADDITIONAL DEFINITION TO BE INSERTED INTO SCHEDULE 1**

**“Concession Activity**

Means those activities described below:

1. In respect of the Lease Land located on the ground floor of the Cavell's Building and marked in blue on the annexed plan:
  - a. initially to undertake construction works which are consistent, in all material respects, with those described in the Application to alter, develop and expand the existing facilities within the Cavells Building; and
  - b. following issue of the code compliance certificate for the construction work described in 1(a), to operate a public licensed restaurant together with associated bar and on/off-license brewery.
2. In respect of that part of the License Land marked red on the annexed plan and described as the “Service Access Area”:
  - a. to use that area for the purposes of taking deliveries and for staff parking or construction vehicle parking to the extent that those activities are necessarily connected either to the construction works described in 1(a) above or to the subsequent use of the Lease Land provided for in 1(b) above.
3. In respect of that part of the License Land marked orange on the annexed plan and described as the “Outdoor Dining Area”:
  - a. initially to undertake construction works and landscaping which are consistent, in all material respects, with those described in the Application to alter and develop the existing patio and outdoor seating areas to the front of the Cavell's Building; and
  - b. following completion of the construction work in 3(a) above, to use the area for the purposes of providing outdoor seating, tables and dining services to patrons using the public café and brewhouse.”

4. In respect of that part of the License Land marked yellow on the annexed plan and described as the “Shared Ground Floor Toilets”, to use the area as toilets.
5. In respect of that part of the License Land marked pink on the annexed plan and described as the “Driveway” area, to pass and repass on foot or by vehicle for purposes reasonably connected to the uses described in 1(a) and 1(b) above.

### **SCHEDULE 3 - SPECIAL CONDITIONS**

#### **Further definitions and effect of Special Conditions**

1. For the purposes of this Concession “Application” means the concession application initially lodged by the Concessionaire on 24 July 2017 (59942-SER) together with the Concessionaire’s supporting material.
2. To the extent that there is an inconsistency between the Special Conditions contained in this schedule 3 and the standard conditions contained in schedule 2 the Special Conditions will prevail.

#### **Surrender of Previous Lease/License**

3. Clause 4.1 of schedule 2 is amended such that this Concession will not commence on the date set out in Item 3 of Schedule 1 unless the existing sub-lease/sub-license dated 26 August 2008 held by Queenstown Rafting Limited in respect of parts of the ground floor of the Cavell’s Building and surrounding areas is first surrendered on terms acceptable to the Grantor and that written notice of that acceptance has been given by the Grantor.
4. A document, dated 6 June 2008, granted Queenstown Rafting Limited certain use and occupation rights in relation to parts of the Morning Star Breach Recreation Reserve, including parts of the Cavell’s Building “the Rafting Lease”. This Concession creates shared use rights in favour of the Concessionaire in respect of the License Land. For the avoidance of doubt, the Concessionaire’s use of the License Land pursuant to this Concession must not be construed as interfering with the rights granted to Queenstown Rafting Limited pursuant to the Rafting Lease.

#### **Outgoings**

[Note – clauses 5-11 are placeholders. Awaiting further internal feedback as to how expenses are presently divided among tenants and what arrangements will be made going forward.]

5. Clause 7.1 of Schedule 2 is amended to read:

“The Concessionaire must pay all levies, rates and other charges, including utility charges, payable in respect of the Land which relate to the Concessionaire’s use of the Land or the carrying on of the Concession Activity. For the avoidance of doubt, the following outgoings are payable under this clause and, where any outgoing is not separately assessed or levied, the Lessee will pay [x%] of those outgoings:

  - a) Rates and levies payable to the local or territorial authority;

- b) Charges for water, gas, electricity, telephones, and other utilities including line charges;
  - c) Rubbish collection and recycling charges;
  - d) Fire and Emergency New Zealand service in respect of all fire detection and fire fighting equipment;
  - e) Any insurance excess (but not exceeding \$500) in respect of a claim and insurance premiums and related valuation fees (clause X – landlord’s insurance);
  - f) Service contract charges for air conditioning, building services and security services charges;
  - g) The provisioning of toilets and other shared facilities;
  - h) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs, and the repair and maintenance of building services but excluding charges for structural repairs to the building (minor repairs to the roof of the building are not structural repairs);
  - i) Repair and maintenance charges in relation to the service access area located to the rear of the building; and
  - j) The costs incurred and payable by the Grantor in supplying to the territorial authority a building warrant of fitness and obtaining reports required by sections 108 and 110 of the Building Act 2004.
6. The Grantor will vary the proportion of outgoings to ensure the Concessionaire pays a fair proportion of the outgoing.
7. If any outgoing is rendered necessary by another concessionaire of the Morning Star Beach Recreation Reserve or that party’s employees, contractors or invitees causing damage to the Morning Star Beach Recreation Reserve or by another concessionaire failing to comply with that concessionaire’s obligations, then that outgoing will not be payable by the Concessionaire.
8. The outgoings will be apportioned between the Grantor and the Concessionaire in respect of periods current at the commencement and termination of the term.
9. The outgoings will be payable on demand or, if required by the Grantor, by monthly instalments on each Concession Fee Payment Date of a reasonable amount as the Grantor will determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it will be payable on demand.
10. After the 31<sup>st</sup> of March in each year of the term or other date in each year as the Grantor may specify, and after the end of the term, the Grantor will supply the Concessionaire reasonable details of the actual outgoings for the year or period then ended. Any overpayment will be credited or refunded to the Concessionaire and any deficiency will be payable to the Grantor on demand.
11. Any profit derived from the Grantor directly or indirectly from the management of the Land will not comprise part of the management expenses payable as an outgoing.

## Maintenance

### Concessionaire's maintenance obligations

12. The Concessionaire must, at its own expense and in a proper and workmanlike manner, keep and maintain the interior of the Lease Land, including the Grantor's fixtures and fittings, in the same clean order repair and condition as they were at the commencement of the Concession and, at the expiry or earlier termination of the Term, quietly yield up the same in the like clean order repair and condition. In each case the Concessionaire will not be liable for fair wear and tear arising from reasonable use.
13. Where the Land is damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is insured, then the Concessionaire is liable for the cost of making good that damage to the extent that:
  - a. The damage was intentionally caused by the Concessionaire or those for whom the Concessionaire is responsible;
  - b. The damage was the result of an act or omission by the Concessionaire or those for whom the Concessionaire is responsible and the act or omission:
    - i. occurred on or about the Land; and
    - ii. constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
  - c. Any insurance moneys otherwise payable are rendered irrecoverable because of an act or omission of the Concessionaire or those for whom the Concessionaire is responsible.
14. The Concessionaire must pay for the repair of all glass breakages and breakage or damage to all doors and windows, light fittings, and power points of the Land and will repair and pay for the repair of any drains that become blocked as a result of the Concession Activity.
15. The Concessionaire must keep that portion of the electrical system which the Concessionaire has installed or modified within the Land in good operating condition.
16. The Concessionaire must make good any damage to the Land or loss caused by improper, careless or abnormal use by the Concessionaire or those for whom the Concessionaire is responsible, to the Grantor's reasonable requirements.
17. The Concessionaire must paint and decorate those parts of the interior of the Lease Land which have previously been painted and decorated when the same reasonably require repainting and redecoration to a specification approved by the Grantor.
18. The Concessionaire must maintain all floor coverings within the Lease Land clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of a similar quality when reasonably required by the Grantor.

19. Notwithstanding any other provisions of this Concession the Concessionaire is not liable to repair any inherent defect in the Land or the Grantor's fixtures and fittings nor to pay any outgoings incurred by the Grantor in remedying any inherent defect.
20. The Concessionaire must give the Grantor prompt notice of any accident or defect to the Land of which the Concessionaire may be aware and, in particular, in relation to any pipes or fittings used in connection with the water, electrical, gas or drainage services.

#### **Grantor's maintenance obligations**

21. The Grantor will keep and maintain the Land and all services within the Land in good order and repair but the Grantor will not be liable for:
  - a. repair and maintenance that the Concessionaire is responsible for;
  - b. Want of repair or defect in respect of building services, so long as the Grantor is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Grantor;
  - c. repair or maintenance which is not reasonably necessary for the Concessionaire's use and enjoyment of the Land; and
  - d. loss suffered by the Concessionaire arising from want of repair or defect unless the Grantor has received notice in writing thereof from the Concessionaire and the Grantor has not within a reasonable time thereafter taken appropriate steps to remedy the same.

*[Note - further consideration is required as to maintenance obligations - for instance, whether there will be a service maintenance contracts that affect the building]*

#### **Construction Work**

22. The Concessionaire wishes to undertake internal alterations to the ground floor of the Cavell's Building and to extend part of the building to accommodate brewing equipment ("Extension"). The internal works and Extension are referred to collectively as the "Interior Works". The Concessionaire also wishes to undertake substantial landscaping and structural work to the Outdoor Dining Area including new decking, awnings, louvres, posts, pergolas, fireplace and similar structures (the "Exterior Works"). The Exterior Works and the Interior Works are more particularly described in the Application. The Concessionaire must supply the Grantor with detailed engineering and construction drawings and specifications and obtain the Grantor's written approval of those drawings and specifications prior to commencing construction of the Interior Works and/or the Exterior Works. Clause 11 of schedule 2 applies to all other structures, or alterations to the Land.
23. Clause 11.1 of schedule 2 is amended to read:
  - "11.1 Save to the extent provided for in clause 22 of schedule 3, the Concessionaire must not:
    - a) erect, alter or remove any structure or improvement on the Land, whether that structure or improvement existed prior to the commencement of this Concession or was introduced during the Term;
    - b) bring any new structure onto the Land; or

c) alter the Land in any material way;

without first obtaining the Grantor's written approval."

24. All building work, including erection, repair, maintenance, alterations, and removals performed by the Concessionaire either under clause 22 of this schedule 3 or pursuant to clause 11 of schedule 2 must comply with all statutory requirements, including the Concessionaire obtaining building consents and code compliance certificates under the Building Act 2004.
25. Further to clause 20 of schedule 2, from the date the code compliance certificate issues for the building consent that relates to the Extension ("Vesting Date"), the Extension (but excluding the Concessionaire's fitout and chattels within the interior of the Extension) will vest in the Grantor for nil consideration and will be deemed to be part of the Cavells building.
26. From the Vesting Date the Grantor will be responsible for insuring and maintaining the Extension on the same terms as other parts of the Land for which the Grantor is responsible.
27. The Concessionaire is not entitled to any payment, compensation or reduction in rent for the Extension either during the Term or upon expiry or termination.
28. Further to clause 20 of schedule 2, the Concessionaire agrees that the structural elements that will form part of the Exterior Works (including, but not limited to, new decking, louvres, posts, pergolas and fireplace) will, upon practical completion of those construction works, form part of the Land. The Concessionaire is not entitled to any payment, compensation or reduction in rent for those structural elements either during the Term or upon expiry or earlier termination of the Term.
29. The Concessionaire will properly maintain, and pay for the maintenance of the Exterior Works.
30. Construction of the Exterior Works and the Interior Works must be completed no later than [insert date].
31. All construction work carried out on behalf of the Concessionaire, including the Interior Works and Exterior Works, must be done in a workmanlike manner and unreasonable interference with (including by noise), or obstruction of, the use of the Morning Star Beach Recreation Reserve by other parties, including by the Grantor, must be avoided.

#### **Odour, Contamination and Noxious Use**

32. The Concessionaire must not allow any act or thing to be done which is, or may grow to be, a nuisance, disturbance or annoyance to the Grantor or to other users of the Morning Star Beach Recreation Reserve, including other Concessionaires. The Concessionaire

must, conduct the Concession Activity in a clean, quiet and orderly manner and must not allow the Land to be used for any noisome, noxious, illegal or offensive activities and, for the avoidance of doubt, activities that create unreasonable odour are deemed to be an offensive activity.

33. The Concessionaire must not contaminate the Land. If the Land is contaminated by an act or omission of the Concessionaire's or its employees, contractors or invitees the Concessionaire will undertake all works necessary to remove the contamination and to restore the Land (including the structures upon the Land) and affected parts of the Morning Star Beach Recreation Reserve if the contamination has spread to areas of the reserve beyond the boundaries of the Land.

### **New Signage**

34. A plan for improved directional signage to the café must be prepared by the Concessionaire and submitted to the Grantor for prior approval. The Concessionaire will procure, install and pay for the approved signage within 1 month of the café and brewhouse being re-opened to the public.

### **Landscaping**

35. The Concessionaire will procure and pay for a landscaping and planting plan prepared by a qualified landscape architect (the "Landscape Plan"). The landscape plan will relate to the Outdoor Dining Area which comprises part of the License Land. The landscape plan must be presented to the Grantor for approval within 1 month of the date of grant of this Concession. The Grantor may require reasonable alterations to the Landscape Plan and those changes, once notified, will be binding upon the Concessionaire.
36. The landscape plan must:
  - a. List the plants and materials to be used;
  - b. contain a maintenance schedule;
37. The Concessionaire must perform the landscaping work in accordance with the approved landscaping plan within 3 months of the date of practical completion of the Interior Works and Exterior Works.
38. The Concessionaire must maintain, at its own cost, the landscaping in accordance with the approved Landscaping Plan and maintenance schedule throughout the Term.

### **Public access to the Outdoor Dining Area**

39. Public access to and through the Outdoor Dining Area must not be unreasonably hindered by the Concessionaire's structures or fittings including its tables, chairs and other similar items and the Concessionaire must not conduct its activities in the Outdoor Dining Area in a manner that indicates to the public that they are excluded from that area.



40. The public will be entitled to make reasonable use of the Concessionaire's equipment, in the Outdoor Dining Area, including its tables and chairs, irrespective of whether they are paying customers of the Concessionaire's.

*[Note - the Rafting Lease to QRL makes it clear that this area is also meant to be shared with the rafting business.]*

#### **Use of the Service Access Area**

41. The Concessionaire is entitled to make reasonable use of 2 car parking spaces within the Service Access Area for the purposes of taking deliveries, for staff parking or construction vehicle parking to the extent that those activities are necessarily connected either to the Interior Works or the Exterior Works or to the subsequent use of the Lease Land as a public café and brewhouse.
42. The Concessionaire must not unreasonably occupy or obstruct the Service Access Area or otherwise interfere with the existing rights of the rafting lessee pursuant to the Rafting Lease.
43. The Concessionaire will not allow its employees, contractors or invitees to leave vehicles overnight in the Service Access Area except that, while the Interior Works and Exterior Works are undertaken, the Concessionaire may place a construction waste skip in the Service Access Area and must ensure that the skip does not unreasonably hinder the use of the Service Access Area by other users.
44. The Concessionaire must not use the Service Access Area in a manner that hinders disabled access to the Cavell's building and must not use the DOC disabled parking place.

*[Note - This Concession must harmonise with the Rafting Lease so far as that relates to the Service Access Area.]*

#### **Use of Common areas**

45. The Concessionaire does not have exclusive possession of License Land nor does it have a right to use land outside the envelope of this Concession.
46. The Concessionaire must not park vehicles in, or otherwise obstruct, the Driveway.
47. The toilets, sinks and drains situated on the Land must be used for their designed purposes only and no substance or matter may be deposited in them that may block them.

#### **Concessionaire's fittings and chattels**

48. The following items will remain the Concessionaire's throughout the Term notwithstanding that the items may be fixed to the Land:
- c. *[items to be added by RJs - anticipating the list would include the beer vats, sales counters, ventilation cupboards, lighting]*
49. Upon the expiry or earlier termination of this Concession the Concessionaire must remove items listed in clause 48 of this schedule 3 and make good any resulting damage to the Land, including damage to the structure of the Cavell's building.

### Community Contribution Clause

50. Section 17ZH of the Conservation Act 1987 permits the Grantor or the Director-General of Conservation to recover contributions from the Concessionaire in respect of facilities or services provided by the Grantor for the benefit of a concessionaire(s) whether or not those facilities or services are located on the Land. A public carpark located uphill and to the east of the Cavells building serves the building and supports the Concession Activity. The Grantor anticipates that maintenance, expansion, upgrading or modification of the carpark may be required during the Term. In accordance with section 17ZH, the Grantor may from time-to-time assess the contribution to be paid to the Grantor by the Concessionaire towards the costs of the carpark and the Concessionaire will be required to pay those costs in accordance with the provisions set out in section 17ZH.

### Insurance

[Note - insurance matters require further consideration - the following ADLS provisions are inserted here as placeholders pending further instructions.]

Note - ownership of the Extension will pass to the Minister on the Vesting Date but RJs will need to insure during the construction phase.]

**14. LANDLORD'S INSURANCE:**  
(subclause 23.1)  
(Delete or amend extent of cover as appropriate)

(Delete either (a) or (b): if neither option is deleted, then option (a) applies)

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:
- (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);
- OR**
- (b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).
- (2) Cover for the following additional risks:
- (a) (i) 12 months
- OR**
- (ii)        months
- indemnity in respect of consequential loss of rent and outgoings.
- (b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.
  - (c) Public liability

## INSURANCE

### Landlord shall insure

- 23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. If insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.
- 23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule

### Tenant not to void insurance

- 24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:
- (a) Shall make void or voidable any policy of insurance on the property.
  - (b) May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.
- 24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

### When Tenant to have benefit of Landlord's insurance

- 25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:
- (a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or
  - (b) The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
    - (1) occurred on or about the property; and
    - (2) constitutes an imprisonable offence; or
  - (c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

## **Monitoring**

None required.

## **Term**

The applicant has requested 33 years, to reflect the high capital investment in the site. They have also requested the ability to give 12 months notice of their intention to terminate the lease.

Under section 17Z of the Conservation Act 1987, a lease or licence may be granted for a term not exceeding 30 years, unless there are exceptional circumstances.

The life of the building may not warrant a term of this length.

The final term is yet to be negotiated, but will be up to a maximum of 30 years.

## **Fees**

Removed for public notification

## **Recommendations**

The application is consistent with the legislation and relevant statutory planning documents.

The most appropriate form of authorisation is a lease/licence (lease for the café and brewhouse, and licence for the patio area and service area to the rear of the building).

Any effects can be mitigated by the standard terms and condition of the concession or by the special conditions listed in section 7 above.

It is recommended that the application is approved in principle, and is publicly notified in the Otago Daily Times and on the DOC website.

## Decision: Notified Concession under Part 3B of the Conservation Act 1987

### Decision in Principle

1. Deem this application to be complete in terms of s17S of the Conservation Act 1987:

Agree / ~~Disagree~~

2. Agree that if this application is approved in principle then the intention to grant the concession will be publicly notified:

Agree / ~~Disagree~~

3. Approve in principle the granting of a lease/licence for up to a maximum term of 30 years to Real Journeys subject to the standard concession contract and the special conditions listed below:

Approve / ~~Decline~~

4. Having regard to s49(1) of the Conservation Act 1987, agree that any intent to grant the permission would be of local or regional interest only, in which case the publication of public notice on this matter be limited notice in the Otago Daily Times and on the DOC website:

Agree / ~~Disagree~~

Special conditions to be included:

*Conditions 1 to 49, and also an appropriate condition relating to insurance*



Signed by Harry Maher, Director of Operations, Southern South Island  
Pursuant to the delegation dated 8<sup>th</sup>/9<sup>th</sup> September 2015

Date:

\_\_12/9/2017\_\_