

9. SPORTS CLUB LEASES – EXISTING OCCUPATIONS

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The purpose of this report is to seek the Council's approval as lessor to put in place lease documentation for existing established sports clubs (including leisure/recreation organisations) that do not have a current lease of their premises. This task involves the granting of leases as well as renewal of expired leases that contain a right of renewal. This report is in relation to ground lease exclusive occupation of small areas (under one hectare) of reserve and/or land held for recreation purposes by sporting bodies/organisations. The Parks and Recreation Committee, at its meeting on 11 April 2001, endorsed the recommendation contained in this report. Presentation of the report to the Council was deferred pending consultation with Te Runanga O Ngai Tahu (refer to detail under heading Treaty of Waitangi).

BACKGROUND

Work has been on-going with the task of identifying current occupation by sports bodies, community groups and other leisure based groups of reserve and recreation land around the city. The objective of the exercise has been to establish where existing leases are current and those requiring renewal, variation or preparation of new documentation. With the implementation of SAP in April 2000, particularly the real estate module, progressive data entering on SAP from the AS400 financial database and the corporate property management system (CMPS) has helped highlight where lease documentation is neither complete nor current. SAP inputting has been essential ground work to establishing the current position in relation to leases (or lack of) of parks and reserves for sporting, community and leisure/recreational purposes. Further, key performance indicators in the Parks Unit annual plan (consents section) included completion of 30 leases to 30 June 2000 and a further 25 leases to 30 June 2001. These targets have not been met due largely to budgeting allocation, stretched resources and establishing a consultation process with Te Runanga O Ngai Tahu.

PRIORITISING

In discussions between Parks and Property staff it has been agreed to prioritise sports and community groups (small areas only) into the following categories:

- 1st priority – new/no existing and expired leases (where occupying)
- 2nd priority – renewal of existing expired leases with provision for renewal
- 3rd priority – variations to leases (i.e. legislation updates, liquor licensing, modification of conditions and deeds of renewal where appropriate)
- 4th priority – conversions of inappropriate leases (i.e. yearly permits) to generic documents.

This report addresses the 1st and 2nd priorities for sports groups

GENERIC LEASE DOCUMENT

Midway through 2000 a generic lease document was developed for sports groups either occupying land held as reserve under the Reserves Act or land held for recreational purposes under the Local Government Act. This document was completed by the Council's internal solicitor, Karilyn Shutt, with input from Property and Parks staff. The generic deed as drafted meets with the approval of the Department of Conservation as being consistent with the provisions of the Reserves Act where this is appropriate. The Council's external solicitors, Buddle Findlay have recently provided drafts of generic lease deeds that can be adapted for community occupations (scouts, plunket, surf lifesaving etc) and these documents are presently being examined by officers to confirm that they meet Council's requirements for these types of occupations.

SCHEDULES

Attached to this report are two schedules detailing the clubs/organisations occupying with no formal lease where it is proposed to put leases in place and those clubs whose existing lease terms have expired but the club is entitled to a renewal of the term. At this stage the schedules capture the first and second priorities for sports groups using the generic deed now developed. The task in bringing up to date all documentation for reserves/recreation ground occupation is substantial and will be on-going. Some community groups fall into the category of either having no lease or the agreement is either inappropriate or expired. These occupations will be the subject of a separate report to the Council to obtain approvals as appropriate when the generic documents and the task of capturing/ identifying these groups are finalised. This further report can also take in any omissions from the task at hand subsequently identified and those sporting/community groups that also have inappropriate tenure.

GROUND RENTALS AND RATES

The Council through the 2001/2 Annual Plan process has adopted a policy on rating provisions, ground and lease charges for recreation and sport organisations which is to be aligned to the proposed Recreation and Sport Strategy presently being developed by Leisure Unit.

The provisions of the new policy apply to all sport ground leases occupying up to approximately one hectare of Council reserve/park/open space land. The minimum annual rental under the policy is \$112.50 inclusive of GST.

AUTHORITY TO LEASE

The authority of the Council to lease in relation to the clubs/organisations in the schedules 1 and 2 attached is in terms of:

- (a) Section 54 of the Reserves Act 1977 or,
- (b) Section 601 of the Local Government Act 1974 or,
- (c) Section 7 of the Public Bodies Leases Act 1969

It will be noted that some of the leases that have expired and have a right of renewal, were originally granted under the provisions of the Public Bodies Leases Act and that the lessee clubs' right of renewal is in terms of that Act. The provisions of the Public Bodies Leases Act are cumbersome and outdated and it is proposed that in negotiating the lease renewals that fall in this category, the generic Reserves Act lease will be offered in substitution for the Public Bodies Leases Act lease.

STATUTORY CONSIDERATIONS

Public Notification

The Reserves Act requires that before granting a lease of reserve the Council publicly notifies the intention to grant a lease and in so doing call for objections or submissions. This requirement can only be waived where:

- (i) The lease is in conformity with and contemplated by an approved management plan for the reserve.
- (ii) The lease proposal has been granted publicly notified resource consent.

The Department of Conservation advises that unless these criteria can be met, public notification will be required for all new leases notwithstanding that the lease is to formalise an established existing use. It is intended that one notice be published which would schedule the new leases intended to be granted that require notification.

Consent of the Minister of Conservation

This consent is delegated to the Council where the lease activity is an existing use and the effects of the use will be same or similar in character, intensity and scale. As the leases proposed are intended to give effect to occupations for the existing purpose/activity, the consent of the Minister of Conservation is not required as the Council is deemed to be the consenting authority in this situation.

Resource Management Act

As the clubs involved are existing established use it is likely that there may be few if any issues to address in terms of the Council's City Plan. To confirm this each club activity will need to be assessed against the City Plan rules to determine if any club requires further consents in addition to any existing consents/use rights etc to legitimise their occupation.

COST RECOVERY

The generic lease conditions provide that the lessee club pays for lease document preparation and any disbursement costs. It is proposed to set this cost at \$300 excluding GST per lease document (in accordance with the Council's notified charges) plus disbursement costs in obtaining consent, i.e. an apportionment of notification cost if appropriate.

TREATY OF WAITANGI

The Department of Conservation has interpreted Section 4 of the Conservation Act 1987 as requiring the Reserves Act to be administered so as to give effect to the principles of the Treaty. As part of this obligation, the Department states the Council is required to consult with and have regard to the views of the iwi when making decisions about reserves for which it is the administering body. Discussions between the Legal Services Manager and the Natural Resources Manager of the office of Te Runanga O Ngai Tahu were held in March this year, with a view to establishing a process for consultation on decisions by the Council affecting reserves. On 4 April Ngai Tahu were supplied with the schedule of parks and reserves which are the subject of this report, with an invitation to advise what (if any) interest they may have in the reserves concerned. This report has until now been held back from Council deliberation pending comment from Ngai Tahu. At the time of re-presenting the report no comment has been received from Ngai Tahu.

SUMMARY

SAP data entry has identified sports, leisure and community groups either without current lease documentation or with inappropriate tenure for their facilities on reserve and recreation land. Key performance indicators for the Parks Unit in the Annual Plans 2000/2001 included completion of some 55 leases. Funding and resources are now available to undertake this task in stages, the first and second priorities being sports and community groups (small areas only) with no current existing lease or the lease renewal has yet to be completed. A generic sports lease has been developed that will bring consistency with leasing terms for all sporting/leisure groups.

Leases to those community groups whose documentation is imperfect will be followed up with a separate report when development of generic documentation is finalised and the data check is complete.

Recommendation: That the Council approve the granting of ground leases in terms of the appropriate provisions under the Reserves Act 1977 and the Local Government Act 1974 to the clubs/organisations detailed in the schedules appended to this report for their respective occupations for terms up to a maximum duration of 20 years less one day subject to the following conditions:

- (i) The club being a bona fide incorporated society and the area to be leased being verified with the club on site.
- (ii) The lease being on the terms and conditions of the generic lease deed with modifications appropriate to each occupation, including the length of the term, being left to the discretion of the Property Manager in consultation with the Parks and Waterways Manager.
- (iii) The statutory provisions of the Reserves Act 1977, Local Government Act 1974, and the Resource Management Act 1991 being complied with as appropriate to each lease.
- (iv) Each lessee club being required to pay a lease preparation fee of \$300 plus GST and disbursements.
- (v) The lease rentals being in accordance with the Council's policy adopted with the 2002 annual plan.
- (vi) The Property Manager being authorised to administer the terms and conditions of the leases.