

**REPORT BY THE CHAIRPERSON OF THE
HAGLEY/FERRYMEAD COMMUNITY BOARD**

PART A – MATTERS REQUIRING A COUNCIL DECISION

1. ANTIGUA BOATSHEDS

General Manager responsible:	General Manager City Environment
Officer responsible:	Greenspace Manager
Author:	Lewis Burn, Property Consultant DDI 941-8522

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Council authorisation for the Corporate Support Manager to negotiate and conclude a new lease of the Antigua Boatsheds site when the existing lease expires on 31 March 2006.

EXECUTIVE SUMMARY

2. This report seeks approval to issue a further lease to the long established existing operator. This is necessary to give sufficient security of tenure to finance further expenditure on the reinstatement and repair of a building that has significant value as an historic Christchurch landmark which has provided for over 100 years the base for popular aquatic activities on the Avon River for both local residents and visitors to the city. It is not considered necessary to put this lease out to public tender when the current operator is of proven performance and is committed as well as passionate about continuing with the family business with the best outcome for the building in mind.
3. Considering the Council's current asset sales policy and a leasing policy under development there needs to be express consideration and resolution of the Council to unilaterally negotiate with the existing lessees. It is considered there is a case, given the family's long association with the boatsheds, their ownership of the building and the desire to make a commitment to reinstate and continue with the business for recommending that a new lease be granted in the name of Mr and Mrs Jones on expiry of the existing lease on 31 March 2006. This recommendation is subject to remedial, restoration and maintenance work identified in the Conservation Plan that is finally agreed being implemented in a staged manner. This is accepted by the applicant.

FINANCIAL AND LEGAL CONSIDERATIONS

4. Notwithstanding the reversion of improvement ownership clause in the lease, the Council's financial interest in the boatsheds is the site. The continuation of the business from this site will maintain a commercial rental revenue stream. For the long term, however, this is dependent on significant remedial work as it is apparent that without this work being done the building probably has a very limited life. There may be a cost to the Council through the heritage fund towards this work but detail on this has yet to be worked through and considered following finality of the Conservation Plan. No other cost to the Council of any significance (there is some processing costs) is envisaged.
5. The present lease was issued as a lease of recreation reserve under Section 54(1)(d) of the Reserves Act 1977 with the consent of the Minister of Conservation. On expiry the lease provisions provide for several scenarios:
 - (a) The building and all other improvements revert to the ownership of the Council with the Council under no obligation to pay compensation.
 - (b) The Council could require the lessee to remove some or all the improvements.
 - (c) The Council could pay the lessee the value of the improvements as determined by the Minister of Conservation.
 - (d) The Council could lease to another tenant with the incoming lessee to pay the outgoing lessee the value of the improvements as determined by the Minister of Conservation.

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6. The site of the boatsheds is a public riverbank reserve under Section 7(1) of the Christchurch City (Reserves) Empowering Act 1971. This Act provides for the reserve to be administered under the provisions of the Reserves Act 1977.
7. The Minister of Conservation has granted delegated authority to administering bodies to exercise his consent to grant leases of public reserves in cases where the activity is an existing use and the effects of the use will be the same or similar in character, intensity and scale.
8. Public notification under the Reserves Act will be required before the grant of a new lease is implemented.
9. The Community Board does not have delegated authority to authorise the leasing of metropolitan assets. The site along with the operation of the boatsheds is an important historical icon and asset to the city as a tourist destination and consequently this is a project which impacts on users across the city which is the responsibility of the Council.

POLICY

10. **Assets - Sale of** - Current policy provides for the disposal of Council property by way of public tender unless there is good reason for doing otherwise. Although this policy is written with sale specifically in mind the practice has been to apply the principle of not dealing unilaterally with long term leases offering commercial opportunity. Under a leasing policy currently being developed it is proposed that as a general principle existing lessees will not have preferential rights to new leases beyond the current lease expiry.
11. The exceptions to this principle being suggested could include the following criteria:
 - The tenant has proved to be a good operator and lessee.
 - The extension/new lease is required to provide for recovery of additional capital injected into the business and taking into consideration the extent and when.
 - The tenant has or is creating significant capital invested in non-transferable assets.
 - The renegotiation of new lease terms and conditions to facilitate business sale is not appropriate.

HERITAGE CONSERVATION POLICY

12. The proposal to continue leasing the boatsheds site to the present operator aligns with the Council's Heritage Conservation policy (adopted in September 1998) in the following ways:

Conservation plans

Policy 4.1 "To promote the preparation of conservation plans for all other listed heritage buildings, places and objects".

Heritage Protection

Objective "The Council prefers to achieve heritage protection by working with owners and developers."

HERITAGE VALUES, VISION AND MISSION STATEMENTS

13. Under these statements endorsed by the Council on 22 April 2004 is:

Best Practice Management

"We envision a city committed to best-practice cultural heritage management and planning that advocates continuing use and compatible new uses that generate sustainable management and development outcomes."

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BACKGROUND ON ANTIGUA BOATSHEDS

INTRODUCTION

14. Discussions have been held with Mr Jones, and his solicitor over the future of the boatsheds and Mr Jones is anxious to endeavour to keep the building operating and to bring it up to a proper and permanent state of repair. The Jones' wish to do this not just for commercial reasons but because of the family's long association with the boatsheds and its status as a genuine Christchurch icon/landmark. To do this a new lease that would give security of tenure to encourage the expenditure required on the building is needed. The work will need to be staged to make the cost viable and he would be happy to enter into any new lease which provided for the work to be carried out over stages. This commitment to reinstate and continue has been demonstrated by the Jones given the expenditure to date on reports and investigation.

CURRENT LEASE (GROUND LEASE)

15. The lease commenced 1 April 1985 and is in the name of Antigua Boat Sheds (W.S. Dini) Limited. W.S. Dini and his wife owned and managed the boatsheds for 30 years from 1948. The lease term was initially for seven years intended to take effect as a lease of recreation reserve under Section 54(1)(d) of the Reserves Act 1977. Two rights of renewal have been exercised and documented for terms of seven years each to take the lease to its final expiry date of 31 March 2006. Rent is subject to three yearly reviews. A commercial rent review was carried out and settled for the three year period from 1 April 2003. Rent and rates payments are up to date.
16. The lease was varied in 1996 to extend the use clause to provide for the hiring of punts and the range of foodstuffs sold from the premises. The lessee is responsible for all maintenance and payment of insurance, rates, taxes and utilities. The situation with ownership of improvements is detailed under Financial and Legal Considerations.

OPERATION

17. The current lessee company is now wholly owned by Mrs Diane Phipps. This company was owned by Mrs Phipps and her late husband until his death in 1997. Since the death of Mr Phipps, Michael and Sally Jones (son-in-law and daughter of Mrs Phipps) have in effect operated the business. Michael and Sally have been involved with the boatsheds since December 1986 when they purchased what was at the time "Antigua Milk Bar".
18. The café is sublet from the company to Michael and Sally Jones. Effectively the Jones currently operate and manage all business actively from the premises. The boatsheds are open every day except Christmas day.

PROPERTY HISTORY AND SITE DESCRIPTION

19. The Antigua Boatsheds occupy a unique position on the southern side of Cambridge Terrace, nestled on the northern embankment of the Avon River. The building is a significant landmark of Christchurch in relation to the Botanic Gardens and the Avon River.
20. The boatsheds, built in 1882 are of considerable social architectural and historical value and are a listed building under the New Zealand Historic Places Act 1993 as a Category II place. The building is also listed in Appendix 10 of the Christchurch City Plan as a Group 2 protected heritage item.
21. The boatsheds originally consisted of six bays of single storey gabled/timber-framed construction with corrugated iron roofing and timber railed ramping down to the edge of the river. In 1907 fire destroyed the eastern end of the boatsheds. Soon after the two eastern bays were rebuilt in a two storey configuration as they exist to the present day.
22. Alterations and additions were carried out in 1993 (café fit-out of shop and deck extension) and in 1997 for disabled toilet facilities.

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23. The boatsheds carry significant "existing use rights" permitted by the Council for a long period of time as the current provisions of the RMA and Buildings Act would not allow construction of buildings close to the banks of the river in this position. This position significantly suits the current business operation, requiring the adjoining boat ramp for the launching of canoes and punts onto the Avon River. The viability of the business is supported with the cafeteria use.

Structural Repair and Waterproofing Works

24. Generally the Antigua Boatsheds building, which is wholly owned by the company, is in quite a poor state of repair requiring extensive reconstruction, restoration and maintenance work. Mr Jones has commissioned reports from Athfield Architects and Holmes Consultancy on remedial structural and restoration work and in addition a conservation plan is being developed by the Athfields (second draft completed) to assist with conservation, restoration, stabilisation and maintenance of the building. To date some \$15,000 has been spent by the Jones on reports on its condition and what needs to be done to the building.
25. Sketch design details have been provided by Holmes Consulting Group for the installation of new foundations and suspended timber floor, new timber cross-bracing to walls and roofs and additional connections to existing framing junctions for bays 3-6 of the Antigua Boatsheds. The cost estimate for this work (given September 2004) is \$155,000 excluding GST. In addition to this cost is a further \$35,000 excluding GST for re-cladding the walls of the entire building. These cost assessments do not take into account additional requirements imposed by the assessment of the cultural/heritage values. The works will require resource consent and building consent to proceed.

NEW LEASE (PRINCIPAL TERMS)

26. An agreement subject to Council consent has been entered into between the company and Mr and Mrs Jones to purchase the business in their own names. This agreement is also conditional upon a new lease being granted (on expiry of the current lease) by the Council on terms and conditions acceptable to the purchasers. Change of ownership has been deferred pending satisfactory arrangements regarding future tenure and upgrading work. Despite being an inter-family transaction, Mr Jones is understandably reluctant to commit funds to the purchase without knowing whether or not a new lease will be granted
27. The ground lease proposed would take in an area of approximately 628 square metres (shown as A on SM 1305-01). The site takes in the decking as redeveloped and the paved outdoor planters and seating area outside the main entrance to the café. (Redeveloped by the Council in 2001.)

Lessee: M J and SI Jones as a partnership. The Jones have signed a sale and purchase agreement with the current owner Mrs Phipps (mother/mother in law) subject to a new lease in their names being granted. The new lease to issue contemporaneously with expiry of the current lease which will remove the need for an assignment.

Term: Maximum term of 30 years including renewals to commence on 1 April 2006.

Rental: Commercial rental as assessed by valuation based on the traditional ground rental percentage approach.

Review: Provision for rent review at five yearly intervals. Rent holiday raised by applicant to enable (and conditional upon) carrying out of repair and remedial works on the building. Yet to be discussed in detail and agreed.

Assignment: Right of assignment only at the Council's discretion until repair and remedial work completed.

Outgoings: All outgoings including rates associated with occupation and use of premises.

Maintenance: All maintenance responsibility.

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Improvements: Reversion of ownership to the Council at end of lease or sooner termination.

Use Clause: For the business of hiring boats, canoes and punts to the public and operating a café in support maintaining a viable business. The applicant has mentioned the possibility of a change of use and /or hiring other products (eg bikes, skates) from the sheds should natural events occur that would make the boating operation difficult or impossible. Any change of use or extension of the business use should not be dismissed but considered on its merits at the appropriate time.

PAST WORK (MAINTENANCE/CAPITAL) BY M J AND SI JONES

28. 1992 commenced dairy conversion to a café creating outside seating overlooking the river. Fletcher Construction reinforced foundations under the two storey end of the building and a concrete pad was poured.
29. September 1993 work carried out by Belvue Development Co Ltd. Included in the extension and remodelling of the café was an outside toilet - cost \$100,000. There was no public toilet until this stage but unfortunately this toilet was constantly vandalised.
30. 1995 roof replaced over café.
31. 1997 outside public toilets relocated to inside facilities with separate conveniences for male and female and provision for disabled-cost \$15,000.
32. 2000 on - general maintenance and upkeep including:
 - Replacement of cladding of southern outer wall of building.
 - New rain heads and downpipes.
 - Repair and replacement of the bottom deck.

Cost \$3,500

Total cost \$121,000

STAGING OF WORK

33. The staging of work will be dictated by the availability of funding and when this can be drawn down. Over year 1 consents and permits necessary would be sought. If sufficient funds are available for the most immediate work to arrest settling (installation of timber piles and bearers) this could be carried out in that year. The remainder of the work identified in the conservation plan and structural report would follow years 2-3 with all remedial and reinstatement work estimated to be completed by the end of year 4. Understandably the Jones are reluctant to commit further capital expenditure on the building until a new lease in their names is confirmed

FUNDING

34. It is proposed that applications for assistance towards the costs of the reinstatement work be made to both the Historic Places Trust and the Council's Heritage Fund once a final conservation plan is in place. As the building is in private ownership and accommodates a commercial business funding sources outside traditional borrowing are limited.

CONSERVATION PLAN - ATHFIELD ARCHITECTS LIMITED (SECOND DRAFT OCTOBER 2005)

35. A plan has been prepared for Mike Jones to assist with conservation, restoration, stabilisation and maintenance of the boatsheds. The plan evaluates the historical, social, architectural, technological and townscape/landmark significance of the boatsheds. The significance of each of these components assists with the establishment of a conservation policy. The plan also reports on the cultural significance of the building and its current condition and status. Within the plan is a chronological summary of events from 1862 (when the Christchurch Public Hospital was built) through to 2001. The plan draws the conclusion that the overall assessed heritage value of the boatsheds can be assessed as being of considerable value.

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36. This assessment under the plan determines the extent to which changes are allowed. For the boatsheds this means the conservation, restoration and reconstruction of the fabric should be carefully carried out to ensure the heritage value is kept intact and to allow compatible new uses.
37. The report summarises the current condition of the building and makes detailed recommendations on future work and use of the building with actions listed in order of highest priority, the installation of timber piles and removal of rotting wall studs/installing new studs on a timber bearer on piles topping the list of actions. A detailed exterior and interior photographic record has also been compiled in addition to historical photographs.

OPTIONS

38. Option 1
Do nothing. Let lease expire with improvement/ownership reverting to the Council.
39. Option 2
Put the lease out for public tender on expiry.
40. Option 3
Negotiate a new lease with the current operator (Michael and Sally Jones) to commence from expiry of the existing lease.

PREFERRED OPTION

41. Option 3 is put forward as the recommendation.

Advantages

- Maintains continuity of service and operation of a Christchurch icon to locals and visitors.
- Sets a path for reinstatement work to the boatsheds to arrest further deterioration.
- Minimises the Council's processing costs.
- Produces ongoing revenue for the Council.
- Performance and commitment of existing operator known.
- Does not undermine existing reports and investigations undertaken into upgrading work.
- Is fair and reasonable given the applicants' long family association with the building and capital investment.
- Gives security of tenure sufficient to encourage the expenditure required on the building.

42. **Disadvantages**

- Slight risk of controversy over dealing unilaterally with an incumbent tenant.
- Market conditions/ideas not tested.

43. **Other options**

The do nothing option 1 is not considered in the best financial and practical interests of the Council in maintaining the ongoing function of the boatsheds as a Christchurch landmark and tourist destination. Option 2 while consistent with Council practice for disposal of Council assets would slow the impetus in measures that have been taken towards the reinstatement of the boatsheds to a proper and permanent state of repair without any guarantee of securing another good operator as committed to the building as the applicant and is likely to push the full costs and responsibility for this work onto the Council.

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STAFF RECOMMENDATIONS

1. That the Corporate Support Manager be delegated authority to negotiate and conclude a new lease to Michael James Jones and Sally Jones of the Antigua Boat Sheds site, comprising approximately 628m² as shown on SM1305-01, under Section 54(1)(d) of the Reserves Act 1977 for a term not exceeding 30 years to commence contemporaneously from the expiry of the existing lease on 31 March 2006 subject to:
 - (a) The adoption of the Conservation Plan (prepared by Athfield Architects Ltd) in its final form by the Planning Strategy Manager.
 - (b) An agreement to lease prepared by the Council's Legal Services Unit being entered into between the Council and Mr and Mrs Jones conditional on:
 - 1(a) above.
 - A programme being agreed that provides for staging of the remedial work identified in the conservation plan and structural report by Holmes Consultancy Group.
 - Funding arrangements being made satisfactory to both the Council (Heritage Fund) and the lessee.
 - Consultation as appropriate being undertaken with Iwi and the New Zealand Historic Places trust in accordance with the conservation plan.
 - All statutory consents necessary being obtained by the applicant under the Resource Management Act 1991 and the Building Act 2004.
 - The public notification of the new lease in accordance with the Reserves Act 1977 and no sustainable objections being received and upheld.
 - Each party meeting their own legal costs in putting the agreement to lease and subsequent deed of lease in place. The lessee to meet all other disbursements and consent costs.
2. Subject to 1, the Council resolve to exercise its power under delegation to grant the Minister of Conservation's consent to the lease.
3. The Corporate Support Manager be authorised to conclude the agreement to lease and approve/administer the terms of the subsequent lease on behalf of the Council as lessor.

BOARD RECOMMENDATION

That the above recommendation be adopted.

2. ASSIGNMENT OF LEASE GOOD TASTE CAFE TO J & K COMPANY LIMITED

General Manager responsible:	General Manager Corporate Services
Officer responsible:	Corporate Support Manager
Author:	Bill Binns, Property and Leasing Adviser, DDI 941-8504

PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council approve the assignment of the lease of the "Good Taste Café".

EXECUTIVE SUMMARY

2. The Council is obliged to consent to the assignment as both parties have fulfilled their obligations under Clause 35.1 of the Deed of Lease as set out in the background of this report.

FINANCIAL AND LEGAL CONSIDERATIONS

3. The Board does not have delegated authority to authorise the leasing of land - such a decision needs to be made by the full Council. The Board, however, does have recommendatory powers to the Council.

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BACKGROUND ON ASSIGNMENT OF LEASE GOOD TASTE CAFE TO J & K COMPANY LIMITED

4. On 28 February 2004 the Council "the landlord" entered into a Deed of Lease with Good Taste Cafe "the tenant" for the premises at 196 Tuam Street. The initial term of the lease was for two and half years commencing on 28 February 2004 with one right of renewal of two and half years with the final expiry to be 27 February 2009 a total of five years.
5. The tenant has requested the landlord to consent to the assignment of the lease to J & K Company Limited.
6. The assignment provisions of this lease follow the standard Christchurch City Council terms as set out in the Auckland District Law Society lease document.
 - (a) The proposed assignee is respectable, responsible and has the financial resources to meet the tenant's commitments under the lease.
 - (b) All rent has been paid and there are no other breaches of the tenant's covenants under the lease at the date of assignment.
 - (c) The assignee enters into a Deed of Covenant in a form acceptable to the Council.
 - (d) Where the assignee is a company, the company's obligations are guaranteed by the principal shareholder of that company, and if required by the Council, the Directors of the company.
 - (e) The assignee pays the Council's costs and disbursements in respect of the preparation and stamping of any Deed of Covenant of guarantee.
7. The assignor has fulfilled its obligation under the Lease and Agreement to Lease to satisfy the assignment conditions above.

IN SUMMARY

8. The assignee, J & K Company Limited, still has to be registered with the Companies Office. This is being carried out by the company's accountants. Its shareholders are Janice Thornton and Keith Alderson.
9. The capital for the project is being raised in the following way: Mortgage 100%.
10. Ms Thornton has relevant skills with a good business background and some specific catering experience.
11. For the past eight years Ms Thornton has been the Food and Beverage Manager at the Russley Golf Club.
12. Prior to this she held various catering positions.

STAFF RECOMMENDATIONS

- (a) That the Council approve the assignment of the Deed of Lease for the café situated at 196 Tuam Street from Good Taste Cafe to J & K Company Limited.
- (b) That the vendor and purchaser meet all the costs of the assignment as agreed between the parties.

BOARD RECOMMENDATION

That the above recommendations be adopted.