

10. CHRISTCHURCH GONDOLA: ASSIGNMENT OF LEASE

General Manager responsible:	General Manager City Environment
Officer responsible:	Greenspace Manager
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PURPOSE OF REPORT

1. The purpose of this report is to present to the Council an application for consent, as the administering body, to an assignment of the lease of the Christchurch Gondola as it relates to the top station on Mount Cavendish Scenic Reserve. The lessor is the Department of Conservation for and on behalf of Her Majesty the Queen.
2. The Council's powers under the terms of the lease do not extend to consenting to an assignment of the lease or renewal of the term. The Council is also being requested to consent to the assignment of the lease of the airspace for the cableway over the Summit Road.

Application

3. Armada Tourism Ltd, the present owners and lessee of the Christchurch Gondola who acquired the lease in May 2001, have advised that they have entered into a sale and purchase agreement to sell the assets and the business of the Christchurch Gondola.
4. The sale and purchase agreement which also includes the Christchurch Tramway (the subject of a separate report for consent to assign this lease) is due for settlement on 31 March 2005. The Council is being asked to recommend as manager, to the Department of Conservation, that the department consent to the proposed assignment on behalf of the lessor, Her Majesty the Queen. The department is aware that the Council will be considering the matter and making a recommendation prior to settlement.

Proposed Assignee

5. The application is to assign the lease of the Christchurch Gondola (see details under background) to The Wood Scenic Line Limited (parent company) to trade under the name The Wood Gondola Limited. The Wood Gondola Limited is a 100% owned subsidiary of the parent company. In agreement with the outgoing lessee, Armada Tourism Ltd, the name of the subsidiary company is to be changed to the Christchurch Gondola Ltd at settlement.
6. Both of these companies were incorporated under the Companies Act 1993 on 25 January 2005. The directors and shareholding of the parent company/trading subsidiary are Michael Noel Esposito, Paolo Giovanni (John) Esposito and Anthony Romano. It is intended on settlement of the assignment that these parties hold a third share each of the share allocation, these shares to be owned by trusts set up/to be set up by the three principal parties.

EXECUTIVE SUMMARY

7. From an analysis of the material provided by the Assignee's Solicitors, Templetons Lawyers, there is no reason to believe that the proposed assignee is other than a suitable, respectable and responsible party to assume the obligations of the Council's lease.
8. There are no outstanding matters under the lease that would prevent or make an assignment consent conditional.
9. The parties that make up the proposed assignee company between them have considerable business experience and should be well placed in terms of expertise and complementary skills to grow the gondola business.
10. The same business operator will run both the gondola and tram (as is presently the case) and it is appropriate that these core Christchurch tourism attractions be operated together to achieve their full potential.
11. All staff are currently employed by Christchurch Gondola Ltd and/or the tramway except for the position of the Tram Operations Manager.

12. Evidence of public liability, emergency health and safety plans and financial forecasts have been provided together with references as to the character and credentials of the directors of the proposed assignee company.
13. In consultation with the Department of Conservation they advise that the application may first be considered by the Council for recommendation to the department to consent as lessor on behalf of Her Majesty the Queen.

FINANCIAL AND LEGAL CONSIDERATIONS

14. There are no financial considerations for the Council. The assignment provisions of the lease of the gondola provide that the Council as lessor will not unreasonably withhold an assignment of the lease provided however the transferee is suitable, respectable, responsible and solvent. It is customary when consenting to an assignment to a limited liability company that a Deed of Covenant is entered into by the assignee company to perform and observe the conditions of the lease and meet the rental obligations under that lease. It is also accepted practice that guarantees be taken from the directors of the assignee company.

STAFF RECOMMENDATIONS

It is recommended that the Council:

1. Endorse for approval by the Department of Conservation, the assignment of the lease of the Christchurch Gondola Top Station from Armada Tourism Ltd to The Wood Scenic Line Ltd trading on settlement 31 March 2005 as The Christchurch Gondola Ltd subject to:
 - (a) The costs incurred with the assignment being met by the applicant vendor/lessee.
 - (b) A Deed of Covenant being executed by the proposed transferee company and the Department of Conservation as lessor to pay the rent due under the lease and observe and perform all covenants and conditions of the lease.
 - (c) That personal guarantees be provided by the directors of the proposed assignee, being Michael Noel Esposito, Paolo Giovanni Esposito and Anthony Romano.
2. Subject to 1, the Council consent to the assignment of the cableway airspace lease from Armada Tourism Limited to The Wood Scenic Line Ltd trading on settlement 31 March 2005 as The Christchurch Gondola Ltd.

BACKGROUND

15. Armada Tourism Ltd, which is owned by Mr Martin Mongan and Queenstown businessman, Jim Boulton, purchased the lease with the Council's consent on 1 June 2001. The assignment at that time also included the lease of the cableway airspace over the Summit Road. Where the gondola cableway traverses land between the top and bottom stations this is covered by easement. The lease of the gondola takes in 1177m² of Mount Cavendish Scenic Reserve and was issued in 1994 pursuant to Section 56 of the Reserves Act 1977. The gondola lease runs until 30 September 2021 with one right of renewal for a term of 30 years. The airspace lease has a corresponding expiry date.
16. The rental for the gondola lease, which is a ground lease, is turnover based with an advance rental paid on a quarterly basis. The assignment provisions of the lease provide that the lessee shall remain fully liable to perform the terms and conditions of the lease provided that this liability shall be released after the third anniversary of the assignment if there has been no breach of the lease conditions by the transferee. The proposed assignee, The Wood Scenic Line Ltd, is owned and operated by New Zealanders based in New Zealand and Europe and the directors bring with them extensive marketing and financial experience. The solicitors acting for the transferee confirm that their clients have read the leases pertaining to the business. Settlement of the assignment is to take place 31 March 2005 subject to all consents being given.