

18. EXTENSION OF THE CHRISTCHURCH MUSIC CENTRE LEASE AND SUB-LEASE



General Manager responsible:	General Manager Strategy & Planning, DDI 941-8281
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval to the extensions of the term done by variation to the current leases (the extensions) for the Christchurch Music Centre. The proposed extensions are for the Head Lease between the Institute de Notre Dame des Missions Trust Board and the Council and the Sublease between the Council and the Christchurch City Music Trust (site shown in **Attachment 1**).

EXECUTIVE SUMMARY

2. On 25 February 1994 the Council signed a Head Lease of the Christchurch Music Centre Premises with the landowner, the Institute De Notre Dame Des Missions Trust Board (Sisters of Our Lady of the Missions). The Head Lease granted to the Council, as Head Lessee, a lease of the Music Centre for 19 years and 364 days from 24 February 1994, and expiring on 23 February 2014. The Head Lease also granted the Council consent to Sublease the Music Centre premises to groups that had music as a core activity.
3. With the signing of the Head Lease on 25 February 1994 the Council entered into a Sublease with the Christchurch City Music Trust (the Trust) granting a sublease of the Music Centre premises for a term commencing on 24 February 1994 and expiring on 23 February 2014. The area of land was extended in 2001 to include the Pottery and Hostel.
4. The terms of the Head Lease and the Sublease were limited to 19 years and 364 days to avoid the provisions of the Resource Management Act 1991 that deemed a lease of 20 years or more to be a subdivision of land requiring a subdivision consent.
5. In 2003 the Resource Management Act was amended such that a deemed subdivision subject to a lease arrangement would only arise if the term of the lease and all renewals exceeded 35 years. This statutory change therefore permits the term of the Head Lease and the Sublease to be extended from 20 years to 35 years without the need to obtain a subdivision consent.
6. Both the Sisters of our Lady of the Missions and the Trust gave initial approval to the Council in 2008 for the extension of the Head Lease and the Sublease respectively, (on the same terms and conditions as the original Heads of Agreements) for a further 15 years to 2029. The Sister's solicitors have reconfirmed on 28 July 2010 of their written agreement to extend the lease with the Council to 2029. The Diocese provided written support for the Council lease extension on 20 July 2010. Reconfirmation to extend the lease the lease agreement was also obtained from the Trust on 30 June 2010.
7. The Council has a very good working relationship with the Trust. The building is fully occupied and all discussions with the Trust indicate it is likely to remain so. It is in the city's interests to retain the heritage buildings and to have a centre devoted to education and other activities in the music-related arts. It also contributes towards enhancing the city's reputation as a centre of the arts and of learning including the relationship with the Christchurch Polytechnic Institute of Technology. The Music Centre and the reuse of the heritage building also has a complementary relationship with the Central City Revitalisation Strategy and the Central City South Masterplan.
8. The Music Centre Trust Board intends to fund \$2 million for deferred maintenance and minor construction. This includes a \$750,000 grant contribution over seven years approved by the Council in the 2009-2019 LTCCP. The extension of the lease would provide additional security of tenure for the works to be undertaken.

9. Continued funding from sources such as the New Zealand Lottery Grants Board would benefit from the certainty of this lease extension. In the medium term, once the lease extension is resolved, it will be possible to investigate the most appropriate long-term lease arrangement with the Sisters of Our Lady of the Missions. This would require that the Council obtain a resource consent for the subdivision. The current lease between the Sisters and the Council provides for a lease extension to 2060, subject to the Council obtaining subdivision approval. The Catholic Diocese and the Trust have also indicated their support for investigating a longer-term lease arrangement.

FINANCIAL IMPLICATIONS

10. There are no direct financial implications in extending the term of the Heads of Agreement to Lease for a further 19 years other than that the Council pays a nominal annual rental of \$1.00 to the Landlord under the Head Lease and receives a nominal annual rental of \$1.00 under the Sublease.
11. The proposed extension of the term of the Head Lease will involve the Council accepting the obligations of the Head Lessee under the Head Lease for the extended period. The obligations imposed on the Council under the Head Lease substantially relate to matters of repair and maintenance. Under the Head Lease the Council as Lessee is to “carry out, complete and meet all costs of all repairs, maintenance, strengthening, improvements and other works necessary to bring the premises to a standard required for the [business use] and in compliance with the Resource Management Act 1991, the Building Act 2004 and all other statutes ordinances regulations and by laws”. In addition the Lessee is required to “keep the exterior of the buildings and the grounds of the property in a neat and tidy and attractive condition throughout the term of the lease”.
12. However, it should be noted that the Trust, as subtenant under the Sublease, has agreed to be responsible for these repair and maintenance obligations. The risk of these arrangements is that if the Sublease was terminated for whatever reason the obligation for repairs and maintenance of the Music Centre buildings would fall to the Council.
13. However, the Head Lease makes provision that in such circumstances the Council could terminate the Head Lease on the giving of three months written notice. In addition the Head Lease contains an express provision excluding any right of the Head landlord (ie the Sisters) to make any claim against the Council as Head Lessee in the event that the premises are “in need of repair or structurally unsound”.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

14. Not applicable.

LEGAL CONSIDERATIONS

15. In 2003 the Resource Management Act was amended to provide that a deemed subdivision in respect of a lease arrangement would only arise if the term of the lease and all renewals exceeded 35 years. Previously the relevant period was only 20 years. This statutory change therefore permits the term of the Head Lease and the Sublease to be extended from 20 years to 35 years without the need to obtain a subdivision consent under the Resource Management Act.

Have you considered the legal implications of the issue under consideration?

16. Yes, see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

17. The Community Outcome 'An attractive and well-designed City' (LTCCP 2009-19, page 50). 'Community Outcome 9. Development' provides for, among other things, ensuring "our lifestyles and heritage are enhanced by our urban environment" (page 54). One of the success measure is that "Our heritage is protected for future generations" (page 54). "Progress will be measured using these headline indicators ... number of heritage buildings, sites and objects." (page 54). The lease extension will contribute towards the continuing protection of the heritage buildings, and site of the Music Centre which is the measure under the outcome. The Community Outcome 8 "A city of lifelong learning" (LTCCP 2009-19, page 54) includes a success measure – "A broad range of learning opportunities is available in Christchurch" which is supported by the continuing Music Centre activities.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

18. Yes.

ALIGNMENT WITH STRATEGIES

19. Council Strategies and Policies which are directly aligned with heritage conservation, the arts, culture and learning include:
20. Greater Christchurch Urban Development Strategy (UDS)
Heritage development projects provide opportunities for increased commercial and residential activity in the City while at the same time enhancing the heritage townscape. The UDS considers heritage as an integral part of Christchurch and an aspect of growth management provided for is through the protection, maintenance and enhancement of heritage.
21. Christchurch City Plan
Heritage redevelopment projects are consistent with the Heritage provisions of the City Plan: Volume 2, Section 4, City Identity, Objective 4.3 Heritage Protection provides for objectives and policies in relation to Heritage protection. It recognises that Christchurch is a cultural and tourist centre, a role mainly dependent on its architectural, historic and scenic attractions. Much of its distinctive character is derived from buildings, natural features, other places and objects which have over time, become an accepted part of the cityscape and valued features of the City's identity ... Protection of heritage places includes cultural, architectural, ... areas of character, intrinsic or amenity value, visual appeal or of special significance to the Tangata Whenua, for spiritual, cultural or historical reasons. This protection may extend to include land around that place or feature to ensure its protection and reasonable enjoyment. A heritage item may include land, sites, areas, buildings, monuments, objects, archaeological sites, sacred sites, landscape or ecological features in public or private ownership.
22. Central City Revitalisation Strategy
Inner city heritage improvement projects are consistent with the vision for the Central City to cultivate a distinct identity that is unique to the city's environment and culture. This strategy places particular emphasis on the heritage of our Central City. The Christchurch Central City contains over half of the city's entire heritage assets. The Vision for the Strategy includes the fostering of Christchurch as a place of culture, recreation, social interaction and learning. Implementation of the Strategy includes the development of central city precincts. Precincts identified in the Strategy in its priority projects and programmes include the Catholic Cathedral – Christchurch Polytechnic Institute of Technology (CPIT) and the Central City South precincts. The Strategy also recognises the importance of heritage conservation, and the adaptive re-use of heritage items.
23. Arts Policy and Strategy
The Christchurch City Council is committed to achieving an enlivened and creative city in which the arts are widely recognised as being essential. The Council's role includes being a planner, co-ordinator and facilitator of arts development and the provision of the arts in the City

24. New Zealand Urban Design Protocol

Heritage projects improve the quality and design of the urban environment by protecting the heritage of the city, which is stated in the Protocol as being an attribute of successful towns and cities. The extension of the lease period will contribute towards the continued implementation of the New Zealand Urban Design Protocol of March 2005 of which the Council is a signatory body.

25. Heritage Conservation Policy

The need for Heritage Protection is recognised under Section 5 of the Heritage Conservation Policy. The Re-use of Heritage buildings provides for the adaptive re-use of heritage buildings as a means of heritage protection under Section 7 of the Policy. As noted above under the LTCCP heading, the Heritage Conservation Policy aligns with the Community Outcome "An attractive and well-designed City" through the indicator "Number of heritage buildings, sites and objects".

The Heritage Vision and Mission policy provides for the Council to provide support to the community for the protection of heritage.

26. ICOMOS New Zealand Charter

Heritage protection is aligned with the ICOMOS New Zealand Charter 1993 for the Conservation of Places of Cultural Heritage Value, which the Council has adopted. The concept of places incorporates landscape, buildings, archaeological sites, sacred places, gardens and other objects. ICOMOS considers that countries have a "general responsibility towards humanity" to safeguard their heritage for present and future generations.

Do the recommendations align with the Council's strategies?

27. Yes.

CONSULTATION FULFILMENT

28. As noted above, agreement for the lease extension has been obtained from the Institute De Notre Dame Des Missions Trust Board, the Christchurch City Music Trust and support from the Catholic Diocese.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Approves the extension of the term of the Head Lease of the Christchurch Music Centre premises from The Institute de Notre Dame des Missions Trust Board to the Council for an additional period of 15 years commencing on 24 February 2014 and expiring on 23 February 2029.
- (b) Approves the extension of the term of the Sublease of the Christchurch Music Centre premises from the Council to the Christchurch City Music Centre Trust Board for an additional period of 15 years commencing on 23 February 2014 and expiring on 22 February 2029.
- (c) Authorises and delegates to the Unit Manager, Corporate Support the power to enter into, on behalf of the Council, such documentation as is required to implement the above arrangements.

BACKGROUND

29. At its meeting of 10 August 1993 the Council agreed to the lease of the former Convent and Chapel vacated by the Sisters of Our Lady of the Missions (the Sisters). The buildings that now constitute the Music Centre had become too expensive to maintain and would have been demolished had it not been for public support to retain the buildings for re-use as a Music Centre. A Notice of Requirement for a Heritage Order was issued to prevent its demolition but subsequently lifted as a condition that a Head Lease was entered into between the Sisters and the Council.
30. On 25 February 1994 the Council signed a Head Lease (varied on 21 August 2001 to include the former Portery and hostel) of the Music Centre Premises with the landowner, the Institute De Notre Dame Des Missions Trust Board (Sisters of Our Lady of the Missions). The Head Lease granted to the Council, as Head Lessee, a lease of the Music Centre for nineteen years and 364 days from 24 February 1994 and expiring on 23 February 2014 and granted the Council consent to sublease the Music Centre premises to groups that had music as a core activity.
31. With the signing of the Head Lease on 25 February 1994 (varied on 21 August 2001) the Council entered into a Sublease with the Christchurch City Music Trust granting a sublease of the Music Centre premises for a term commencing on 25 February 1994 and expiring on 23 February 2014.
32. The Council agreed to pay the Sisters \$90,000 in consideration of the Sisters entering into the Agreement.
33. A further term under the Head Lease was that the term could be extended to a period of sixty six years from the commencement date if Council, at its own expense, obtained an appropriate resource consent for subdivision under the Resource Management Act 1991.
34. The Christchurch City Music Trust was formed to administer the buildings and the Music Centre with the Head Lessee being the Christchurch City Council. In August 2001 the Portery and Hostel buildings were offered for lease by the Sisters of our Lady of the Missions to the Council and were added to the Music Centre complex administered by the same Trust under the same terms with the same expiry date of 24 February 2014.
35. In 2006 the provisions of the Resource Management Act 1991 defining when a resource consent to subdivide land is required were amended. It is now possible to extend the terms of the Head Lease and the Sublease to 35 years without being required to obtain a subdivision consent. The Council has obtained the approval of the Institute De Notre Dame Des Missions Trust Board to extend the term of the head lease to 35 years. The Christchurch City Music Trust has also agreed to the extension of the term of the Sublease for the same period.

THE OBJECTIVES

36. The continuing support of the music related cultural activities of the Christchurch Music Centre and the protection and maintenance of the significant heritage buildings of the former Convent, Chapel and Portery on the site.

THE OPTIONS

37. There are relatively few options for the Council. Doing nothing would result in the existing Head Lease and Sublease expiring in 2014. The option of undertaking a subdivision of the site to enable a longer term lease of the site and heritage buildings is a medium term option which will require further investigation and negotiation with the Sisters of our Lady of the Missions and the Catholic Diocese.

THE PREFERRED OPTION

38. To extend the Head Lease and Sublease to the maximum period of 35 years allowed under the amended Resource Management Act 2003 to 2029. To extend the leases of the buildings for a further 15 years will enable the existing arrangement to extend for that period and will provide greater security for planned expenditure of \$2 million by the Christchurch City Music Trust for improvements to the buildings. It is sensible to make use of the current provisions of the Resource Management Act. It is an easier option administratively to extend the lease rather than subdivide earlier than would otherwise be required.

ASSESSMENT OF OPTIONS

The Preferred Option

39. To extend the term of the lease with the Sisters of our Lady of the Missions and the Sublease to the Christchurch Music Centre to 35 years.

	Benefits (current and future)	Costs (current and future)
Social	Supports the well-being of the Christchurch music community including school children.	Nil
Cultural	Benefits the continuation of Christchurch music related cultural activities.	Nil
Environmental	Supports the retention and continuing use of the heritage buildings and site.	Nil
Economic	Direct economic benefits would be insignificant.	Continuing financial support for maintenance and administrative assistance.
<p>Extent to which community outcomes are achieved: This option supports the Community Outcome 'An attractive and well-designed City' and the success measure that "Our heritage is protected for future generations" and the Community Outcome "A city of lifelong learning" and the success measure "A broad range of learning opportunities is available in Christchurch".</p> <p>Impact on the Council's capacity and responsibilities: Support for the social, cultural and environmental benefits and possible continued financial assistance would be for a longer period than for which the Council is currently committed.</p> <p>Effects on Maori: Not applicable.</p> <p>Consistency with existing Council policies: Supports continuing use and protection of heritage buildings and the re-use of heritage buildings for cultural purposes. Consistent with the priority actions identified in the Central City Revitalisation Strategy.</p> <p>Views and preferences of persons affected or likely to have an interest: Agreement has been reached to extend the lease with the Sisters of our Lady of the Mission as owners, and the Christchurch Music Centre Trust as sub-lessee for the heritage buildings and site.</p> <p>Other relevant matters: Nil.</p>		

Maintain the Status Quo (if not preferred option)

40. To leave the term of the lease with the Sisters of our Lady of the Missions and the Sublease to the Christchurch Music Centre unaltered.

	Benefits (current and future)	Costs (current and future)
Social	Nil	Loss of support to the community for an extended period.
Cultural	Nil	Loss of support for cultural activities at the Music Centre for an extended period.
Environmental	Nil	Limiting the period for protection of heritage buildings on this site for the future.
Economic	Limiting Council financial support to the shorter current term.	Ability of Music Centre to attract external funding likely to be impacted.
<p>Extent to which community outcomes are achieved: A reduction in the continuing achievement of Community Outcomes for <i>'An attractive and well-designed City'</i> and the success measure that <i>"Our heritage is protected for future generations"</i> and a reduction in the activities for the Community Outcome <i>"A city of lifelong learning"</i> and the success measure <i>"A broad range of learning opportunities is available in Christchurch"</i>.</p> <p>Impact on the Council's capacity and responsibilities: Not extending the lease could leave the Music Centre, a successful adaptive reuse of a heritage building, without a home.</p> <p>Effects on Maori: Not applicable.</p> <p>Consistency with existing Council policies: Does not support current Council policies for heritage protection or Central City Revitalisation Strategy</p> <p>Views and preferences of persons affected or likely to have an interest: A loss of support and the expectations of the Sisters of the Lady of the Missions, the Christchurch Music Centre Trust.</p> <p>Other relevant matters: Nil</p>		