

27. 10. 2011



## 21. CANTERBURY HORTICULTURAL HALL LEASE RENEWAL

<b>General Manager responsible:</b>	General Manager, City Environment, DDI 941-8608
<b>Officer responsible:</b>	Greenspace Operations Manager, Transport and Greenspace
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### PURPOSE OF REPORT

1. The purpose of this report is to obtain the approval of the Council to a variation and renewal of the lease to the Canterbury Horticultural Society of its hall site on South Hagley Park.

### EXECUTIVE SUMMARY

2. The Canterbury Horticultural Society hold a ground lease of the Horticultural Hall on South Hagley Park, comprising approximately 1353.87 square metres, the first term of this lease having expired 30 September 2009. The lease provides for renewal of two further terms of 21 years each. The lessee gave notice within the timeframe required on 31 March 2009 to exercise the first right of renewal for a further term of 21 years from 1 October 2009.
3. A technical legal issue has arisen as a consequence of the enactment of the Resource Management Act in 1991 after the commencement of this lease. A detailed explanation of that issue is contained within the Legal Considerations section of this report. Extensive staff discussions have taken place over the last two years with the Society to explore options for dealing with the issue to enable their lease to be renewed.
4. It has been agreed with the Society that, subject to Council approval, the lease be renewed for 21 years with a variation to amend the second and last right of renewal for a reduced term of 14 years only so that the lease will finally expire on 30 September 2044.
5. In addition to the renewal clause, it has been agreed with the Society that the clauses relating to the Lessee's improvements should be deleted and replaced with a new clause to bring clarity as to how the tenant's improvements will be dealt with on expiry or earlier termination of the lease. The Society has agreed with the proposed amendments to these clauses which are consistent with the provisions of the current generic lease of occupations on parks and reserves.
6. Other options to address this issue were explored with the Society including a surrender and the grant of a new lease and obtaining a subdivision consent with mutual agreement being reached on the renewal / variation recommended.

### FINANCIAL IMPLICATIONS

7. Administration and internal legal costs will be incurred in relation to the preparation of the required Deed of Variation and renewal of lease. However, there are no financial implications of any significance for Council.

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

8. Not applicable.

### LEGAL CONSIDERATIONS

9. The lease to the Canterbury Horticultural Society was granted under Section 54 (1) (b) of the Reserves Act 1977 on 31 January 1991. Under the lease the tenant was granted a term of 21 years commencing on 1 October 1988 and expiring on 30 September 2009 together with two 21 year rights of renewal of the term. The leased premises form part of a legal allotment and are not separately defined on a survey plan.
10. Subsequent to the grant of the Lease the Resource Management Act 1991 ("RMA") was enacted and came into force on 1 October 1991. Section 218 of the RMA initially provided that the grant of a lease of part of a legal allotment for a term (including renewals) longer than 20 years was deemed to be a "subdivision" and would therefore require a subdivision consent under the RMA. This 20 year period has subsequently been extended to 35 years.

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11. Section 218 of the RMA had no effect on the initial 21 year term of the lease as the lease was granted before the RMA was enacted, and the RMA does not have retrospective effect. However, as a lease renewal in law effectively constitutes a fresh lease grant, and that grant is subject to a further right of renewal in favour of the tenant taking the potential term to 42 years, s218 of the RMA does apply. The effect of the RMA is that in order to grant the right of renewal a subdivision consent would be required.
12. Council staff have engaged with the Canterbury Horticultural Society Board over the issue and the Board have indicated that they do not wish to engage in a subdivision consent application process to facilitate the renewal of their lease. It has been agreed, subject to formal Council approval, that the way forward is to limit the extent of the renewed term and the final right of renewal to a period of 35 years so that a subdivision consent is not required.
13. Canterbury Horticultural Society is entitled as of right to renew the Lease term for 21 years from 1 October 2009. However, to achieve the agreed arrangements to limit the term of the first renewal and the final renewal to 35 years from the original 42 years it will be necessary for the parties to enter into a formal Deed of Variation of Lease. Staff have no delegated authority to agree to vary the Lease as proposed.
14. Hagley Park is a metropolitan asset and in those circumstances this is a matter that falls outside the delegated authority of the Hagley Ferrymead Community Board and therefore requires a Council decision.

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

15. Yes, as above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

16. Not applicable.

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

17. Not applicable.

**ALIGNMENT WITH STRATEGIES**

18. Not applicable.

**Do the recommendations align with the Council's strategies?**

19. Not applicable.

**CONSULTATION FULFILMENT**

20. Council staff have actively engaged with the Board of the Canterbury Horticultural Society over this issue and the proposed lease variation has been agreed to by that Board.

**21 Cont'd****STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Agrees to vary the terms of the Deed of Lease dated 31 January 1991 between the Council as landlord and the Canterbury Horticultural Society as tenant of their premises in Hagley Park to reduce the term of the tenant's final right of renewal from 21 to 14 years expiring on 30 September 2044;
- (b) Agrees to vary the clauses of the lease that relate to ownership / disposal and or removal of the Lessee's improvements on expiry or earlier termination of the lease to be consistent with the Council's standard conditions for leases of Park and Reserves;
- (c) Authorise the Corporate Support Manager in liaison with the Legal Services Unit to conclude the wording and form of the Deed of Variation and Renewal of lease and to enter into the same on behalf of the Council.