

## COUNCIL 22. 3. 2012

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

14 MARCH 2012

#### PART A – MATTERS REQUIRING A COUNCIL DECISION

##### 1. CATERPILLAR TOURS OPERATING WITHIN CHRISTCHURCH BOTANIC GARDENS – PART 1

<b>General Manager responsible:</b>	General Manager City Environment Group, DDI 941 8608
<b>Officer responsible:</b>	Unit Manager Transport and Greenspace
<b>Author:</b>	Jeff Woodham, Leasing Consultant

#### PURPOSE OF REPORT

1. To present a recommendation from the Hagley/Ferrymead Community Board to the Council for decision on the continued operation of the Botanic Gardens Caterpillar Garden Tour.

#### EXECUTIVE SUMMARY

2. Caterpillar Tours Limited (CTL) were awarded the tender to operate a tour vehicle within the Christchurch Botanic Gardens after the activity was identified and added to the 2007 Botanic Gardens Management Plan review as a possible service. The Council entered into a License Agreement with CTL on 22 February 2009. The Agreement has a term of five years with an option to extend the licence period for a further two years.
3. CTL has operated this service for almost three years (34 months) delivering tours to both locals and visitors to the city. The operation of the tour has been affected by seasonal trends in visitation, and then subsequently the disruption caused by the series of earthquakes, which resulted in the operation route for the tours being closed due to damage of neighbouring buildings.
4. CTL has approached the Council to consider options to continue the service under a different model or terminate the licence. In a recent development, CTL have just entered negotiations with a view to sell its assets. The prospective purchaser wishes to enter into a License with the Council. This proposal looks promising and time is of the essence. To now deal with this, a resolution for a delegation to the Corporate Support Manager to manage this is sought. Depending on developments, further details may be able to be tabled at the meeting in the Public Excluded section of this agenda, clause 25.

#### FINANCIAL IMPLICATIONS

5. The financial information relating to this matter is provided in the Public Excluded portion of this report.

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

6. Yes.

#### LEGAL CONSIDERATIONS

7. CTL is currently bound under the terms and conditions of their Licence agreement which is due for renewal in 2014, and expires 21 February 2016.

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

8. Yes.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

9. Garden and Heritage Parks Activity Management Plan:

6.2.4.10 Operation of tour vehicle within Botanic Gardens (2011/12 service discontinued post-earthquake).

Rationale - Reintroduction of service by external provider at no cost to Council.

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

10. Yes.

**ALIGNMENT WITH STRATEGIES**

11. Yes.

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

12. Yes.

**CONSULTATION FULFILMENT**

13. None required.

**STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Grant Caterpillar Tours Limited a surrender of the Licence Agreement as a result of the extraordinary circumstances.
- (b) In respect of the licence to Caterpillar Tours Limited, that the Unit Manager Corporate Support be granted delegated authority to conclude any negotiated settlement with Caterpillar Tours Limited and/or the guarantors as she shall consider appropriate, and if necessary commence and pursue such enforcement action available to the Council as Landlord under the licence against Caterpillar Tours Limited and/or the guarantors as she shall consider appropriate in all of the circumstances for recovery of all rent arrears and compliance with the licence terms and conditions.
- (c) Delegate the Corporate Support Manager the power to negotiate the Licence to a new operator, on behalf of the Council, on such terms and conditions as they shall consider appropriate.

**BOARD CONSIDERATION**

The Board considered the report and members discussed the addition of the words 'at no cost to the Council' to recommendation (c). Staff provided advice that there was no concern with inclusion of these words.

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**BOARD RECOMMENDATION**

It was **decided** on the motion of Tim Carter seconded by Brenda Lowe-Johnson that the Board recommend to the Council that the staff recommendation be adopted, with the addition to recommendation (c) as detailed below:

- (c) Delegate the Corporate Support Manager the power to negotiate the Licence (at no cost to the Council) to a new operator, on behalf of the Council, on such terms and conditions as they shall consider appropriate.

**BACKGROUND (THE ISSUES)**

- 14. Botanic Gardens staff report that Caterpillar Tours Limited (CTL) has operated this service in a positive and professional manner with no negative comments or feedback received. The comments from guests who have undertaken the tour has been positive. The tours and the gardens have been marketed overseas through joint marketing programmes with the International Antarctic Centre, which has undoubtedly resulted in additional profile and exposure for the Gardens.

The customer mix for CTL is approximately 63% visitors (non Christchurch residents) and 37% locals who enjoy an ongoing 33% discount off the visitors' price. CTL also introduced a Family Pass for locals this year.

- 15. CTL has been operating at a loss over the last two years. Details of the patronage and the last two year's Statement of Financial Performance are included in the Public Excluded portion of this report.
- 16. CTL accepted when it commenced its operations that the first few years would not provide a return as the business built its place in the market and became an icon in the gardens and the city. Since it recommenced its operations on 1 September 2011 it has experienced the following drop in customers:
  - (a) September 2011 – 70% drop
  - (b) October 2011 – 86% (to date).
- 17. Botanic Gardens visits had declined since February 2011. Currently visitor numbers entering the gardens are just below the average for the time of year, with latest figures for October seeing 62,000 visits, and the trend is steadily increasing.
- 18. CTL has undertaken marketing programmes with particular emphasis on attracting local residents by the following:
  - (a) early bird promotions for the Ellerslie Flower Show
  - (b) free transport from car park at Ellerslie to the show
  - (c) Kidsfest
  - (d) two for one specials
  - (e) discounted coupons
  - (f) Santa Parade
  - (g) hosting of dignitaries

**1 Cont'd**

- (h) transport for museum openings
- (i) disabled transport for Classical Sparks
- (j) disabled transport for Christchurch Earthquake Memorial Service
- (k) disabled transport for Bledisloe Cup
- (l) transport for Council's Children Day at the Groynes
- (m) transport for Band Together Party
- (n) annual family passes.

Details of the values of work performed by CTL for Christchurch City Council have been included in the Public Excluded portion of this report, clause 17.

**THE OPTIONS**

**OPTION 1**

- 19. CTL request Council to release it from the Licence Agreement as a result of the extra-ordinary circumstances. CTL request Council to consider entering into a new License Agreement with the prospective purchaser.

**OPTION 2**

- 20. Council acquire the assets of CTL and operate the business as an extension of the garden services. There is the possibility of reduced operating costs under council ownership, occupation and license costs in particular.

**OPTION 3**

- 21. Council acquire the assets of CTL through one of its operating businesses, for example Redbus, who currently are not able to operate the free shuttles may find some synergy in operating this service, again at reduced costs than currently operated.

**OPTION 4**

- 22. Council make an annual operating grant of approximately \$130,000 to CTL. Waiving the licence fee is insufficient to ensure viability. As a condition of the grant Council would share in future net profits of the business.

**OPTION 5**

- 23. Hold CTL to the current licence terms and conditions, enforcing any breaches under the remedies provided.

**THE PREFERRED OPTION**

**OPTION 1**

- 24. CTL request Council to release it from the Licence Agreement as a result of the extra-ordinary circumstances. CTL request Council to consider entering into a new License Agreement with the prospective purchaser.

**1 Cont'd**

**ASSESSMENT OF OPTIONS**

25. Advantages and Disadvantages of each Option.

**Option 1**

Advantages

Council would stay removed from the day to day operation of the Gardens Tour service.

Resolves the current unsustainable situation for CTL.

Allows for a fresh revisit of the activity with a new operator.

Maintains revenue from the operation.

Disadvantages

Loss of service until such time as a new provider is found.

Council could be seen as setting a precedent when dealing with tenants who wish to be released from their contractual obligations.

**Option 2**

Advantages

Council would control the provision of the Gardens Tour service.

Disadvantages

Council does not have funding available to pursue a purchase option.

Council would commit to a non-core activity which would appear to be contrary to the Garden and Heritage Parks Activity Management Plan.

Council could be seen to be competing with private sector tour operators who could add the service to their range of services.

**Option 3**

Advantages

Council would gain control of providing the Gardens Tour service through one of its CCTOs.

Disadvantages

Council nor it's CCTOs would have provided for such a purchase in their business or financial plans. Council could be seen to be competing with private sector tour operators who could add the service to their range of services.

**Option 4**

Advantages

Council could gain significant influence and control of providing the Gardens Tour service.

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Disadvantages

Council does not have funding available for such a grant.

Council would commit to a non-core activity which would appear to be contrary to the Garden and Heritage Parks Activity Management Plan.

Council could be seen as setting a precedent when dealing with tenants who are also struggling.

**Option 5**

Advantages

It is possible the operation will continue and therefore the service/activity maintained.

Disadvantages

Perpetuates a situation that is clearly unsustainable.

Could result in additional unproductive costs e.g. litigation and enforcement.

Could result in an uncontrolled exit by the licensee or cessation of the activity/service.

**The Preferred Option**

26. Option 1 – CTL request Council to release it from the Licence Agreement as a result of the extra-ordinary circumstances.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	Nil	One less service provider
<b>Cultural</b>	NIL	No mobile visitor tour within Gardens
<b>Environmental</b>	Less vehicular movements within the Gardens	Nil
<b>Economic</b>	No contribution of council monies	Reduction of income for Botanic Gardens

1 Cont'd

**Extent to which community outcomes are achieved:**

Primary aligned with community outcome a city for recreation, fun and creativity.

**Impact on the Council's capacity and responsibilities:**

Nil.

**Effects on Maori:**

Nil.

**Consistency with existing Council policies:**

Within current Activity Management plan for Garden and Heritage Parks if no cost to Council.

**Views and preferences of persons affected or likely to have an interest:**

CTL preference is Council acquire the assets of CTL at original cost price only, and pay CTL an operating fee of \$60,000 a year to manage the business, net of all operating and fixed costs. CTL have advised that if they were to be released from the Licence Agreement they would then place the company into liquidation or sell the assets to a new operator. A recent development has arisen whereby CTL have found a prospective purchaser of their assets.

**Other relevant matters:**

Nil.

**Maintain the Status Quo (if not preferred option)**

27. No status Quo option as operator unable to maintain current levels.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>		
<b>Cultural</b>		
<b>Environmental</b>		
<b>Economic</b>		

1 Cont'd

<p><b>Extent to which community outcomes are achieved:</b></p> <p>Nil.</p> <p><b>Impact on the Council's capacity and responsibilities:</b></p> <p>Nil.</p> <p><b>Effects on Maori:</b></p> <p>Nil.</p> <p><b>Consistency with existing Council policies:</b></p> <p>Within current Activity Management plan for Garden and Heritage Parks if no cost to Council.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>Caterpillar Garden tours do not wish to operate under current agreement.</p> <p><b>Other relevant matters:</b></p> <p>Nil.</p>
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**At Least one Other Option (or an explanation of why another option has not been considered)**

28. Option 2 - Council acquire the assets of CTL and operate the business as an extension of the garden services. There is the possibility of reduced operating costs under Council ownership, occupation and license costs in particular.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	Continued tour service for visitors to Gardens	Nil
<b>Cultural</b>	Continued visitor service	Nil
<b>Environmental</b>	Nil	Nil
<b>Economic</b>	Nil	Capital cost to council acquiring assets, no facility to house vehicles



1 Cont'd

**Extent to which community outcomes are achieved:**

Primary aligned with community outcome a city for recreation, fun and creativity.

**Impact on the Council's capacity and responsibilities:**

Resourcing and training of Council employees to operate service.  
Financial outlay in purchase of assets, ongoing maintenance and storage.

**Effects on Maori:**

Nil.

**Consistency with existing Council policies:**

Within current Activity Management plan for Garden and Heritage Parks if no cost to Council.

**Views and preferences of persons affected or likely to have an interest:**

CTL believe this option would possibly return reduced costs.

**Other relevant matters:**

Council does not currently have funds available to pursue a purchase option.