

REPORT BY THE CHAIRPERSON OF THE  
BURWOOD/PEGASUS COMMUNITY BOARD  
27 FEBRUARY 2012

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. PARKLANDS COMMUNITY CENTRE - TEMPORARY PHYSIOTHERAPY FACILITIES

<b>General Manager responsible:</b>	General Manager Community Services Group, DDI 941-8607
<b>Officer responsible:</b>	Unit Manager, Recreation and Sports
<b>Author:</b>	Derek Roozen, Parks and Waterways Planner

PURPOSE OF REPORT

1. For the Council to consider a recommendation from the Burwood/Pegasus Community Board that approval be given for the temporary use of a room in the Parklands Community Centre for the purposes of operating a sports-focused physiotherapy/medical health clinic by Active Health Canterbury Limited, pursuant to the Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011.

EXECUTIVE SUMMARY

2. Active Health Canterbury Limited ("Active Health") is an holistic physiotherapy and medical practice that advocates 'Active Health for an Active Life'. Active Health operated a full time clinic at the Queen Elizabeth II Park Recreation and Sport Centre ("QEII") under the trading name Active Health QEII prior to the 22 February 2011 earthquake. It provides a range of services, including physiotherapy for sports injuries, muscle balance assessments, post-surgical rehabilitation, aquatherapy and acupuncture.
3. Active Health's presence at QEII, dating back to 1999, was formalised through a lease for part of the premises there, the deed of lease dated 25 June 2010, final expiry being 31 May 2015. Notice of termination of the lease because of the extensive damage caused to the QEII building (including Active Health's leased premises) by the 22 February 2011 earthquake, making it un-tenantable, was given to Active Health on 17 May 2011.
4. The QEII facility is now closed for the foreseeable future because of the earthquake damage. The QEII Fitness Centre, which operated at QEII, has been re-located to the Parklands Community Centre.
5. Active Health is currently operating from temporary premises in St Albans (39A Rutland Street) and is also working out of Durham Health in Rangiora and has just opened a clinic in Montreal Street within the Reebok CrossFit Canterbury fitness studio. The latter two facilities operate by appointment only for eight hours per week each. Active Health would prefer to be located at a centre where they could provide services to the community using sports facilities at that centre, as was the case at QEII. Now that the QEII Fitness Centre is relocated to, and operating from the Parklands Community Centre as QEII Fitness at Parklands, Active Health believes it would be beneficial for both it and clients of the fitness centre to temporarily locate at the community centre. Active Health is motivated to continue its relationship with the Council at the Parklands Community Centre by providing treatments to community residents via QEII Fitness at Parklands.
6. The Parklands Community Centre is a Council owned facility sited on land at 75 Queenspark Drive, Queenspark, acquired by the government in 1988 and vested in the Waimairi District Council at the time as a local purpose (community centre) reserve (New Zealand Gazette 1988 p654). The land is comprised in one title, being Lot 1 DP 51630, contained in CT 30B/207 and totalling 3614 square metres in area. **Attachment A** has a location plan and a plan of the Parklands Community Centre reserve and facilities.

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7. The above-mentioned reserve fronts on to Queenspark Drive and is surrounded on all other sides by the Council owned Parklands Reserve, which is a recreation reserve. The community centre has a large sports hall, a sports lounge, meeting rooms and offices. The fitness centre now occupies the sports hall. The sports lounge and ancillary rooms are leased to the Parklands United Sports Club. The Club, in turn, licences back to the Council, for a term expiring on 30 June 2012, the right to use the same area as the Club's leased premises for sport and recreation purposes at the times the Club is not using the area (which is Monday to Friday). An office room adjacent to this leased/licenced area is assigned by Community Facilities to the Recreation and Sports Unit ("RSU") to use. **Attachment B** shows the location of these spaces in the community centre.
8. Active Health has requested that it be able to provide physiotherapy services at the Parklands Community Centre temporarily until such time it is able to relocate to a permanent location, ideally in conjunction with the fitness centre when that eventually relocates to a new, and possibly Council owned recreation and sport centre, facility in the city's eastern suburbs. The office room used by RSU, referred to in paragraph 7 of this report above, is proposed to be used by Active Health, with the room to be set up as a full time treatment room. Treatments, though, may only be provided a few afternoons per week, depending on demand.
9. The rationale for Active Health using the said room at the Parklands Community Centre includes:
  - Being able to provide treatment services to community residents who are using sports facilities at the centre, such as QEII Fitness at Parklands.
  - Continuing the relationship the Council established at QEII.
  - Contributes to re-establishing Active Health's pre-February earthquake activity. However, this will still not be at the pre-earthquake service offering, even with the use all the locations occupied, including at the Parklands Community Centre, as listed in paragraph 10 of this report below.
  - Their current temporary premises are not ideal, being at the back of a residential property.
  - A suitable room being available.
10. Active Health has investigated other options for temporary or longer term relocation. It has entered into two new part time arrangements. These evaluated and discounted or supported in the table below.

Location	Benefits	Reasons to Discount
Room in Parklands Community Centre (Queenspark) – <b>Preferred Location</b>	<ul style="list-style-type: none"> <li>• Available space.</li> <li>• Client base through QEII Fitness at Parklands.</li> <li>• Continues the arrangement that worked at QEII.</li> <li>• Prime community location, across the road from the Parklands Mall.</li> <li>• Continue to provide physiotherapy services to the community</li> </ul>	
Rutland Street (St Albans) – <b>Current Location</b>	<ul style="list-style-type: none"> <li>• Allows continuation of business post-February earthquake until a permanent location is found.</li> </ul>	<ul style="list-style-type: none"> <li>• Working out the back of a staff member's residential property - not ideal long term.</li> </ul>
In the Reebok CrossFit Canterbury fitness studio, Montreal Street (Sydenham)	<ul style="list-style-type: none"> <li>• Contributes to re-establishing the pre-February earthquake level of service.</li> </ul>	<ul style="list-style-type: none"> <li>• Run by appointment only, eight hours per week – therefore, business not sustainable on the operation of this clinic alone.</li> </ul>
In Durham Health (Rangiora)	<ul style="list-style-type: none"> <li>• Contributes to re-establishing the pre-February earthquake level of service.</li> </ul>	<ul style="list-style-type: none"> <li>• Run by appointment only, eight hours per week – therefore, business not sustainable on the operation of this clinic alone.</li> </ul>

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11. Officers consider the proposed temporary use by Active Health of a room at the Parklands Community Centre to provide physiotherapy services will be largely of benefit for the users of the centre and the local community. An assessment of effects is given in the following table, along with comment on how each of these may be mitigated.

Area of Effect	Effects	Comment on Effects and how they can be mitigated
Public Access	Increased accessible service, as adding a new public accessible facility.	
Loss of Existing Use	Room currently used by RSU.	There is another meeting room next door that adequately copes with RSU use.
Impact on User Experience and Recreational Activities	Enhanced, as providing complementary service to recreational facility users, especially clients of QEII Fitness at Parklands.	
Visual	N/A	
Vehicle Access and Parking	No significant or determinable additional vehicle parking requirements as clientele probably largely that of clients of QEII Fitness at Parklands who are already visiting the centre.	-
Level of compliance with reserve classification/ City Plan zoning	The proposed facility/use is not consistent with that promoted for a local purpose (community buildings) reserve, nor is it consistent with the City Plan zoning the site is in. This is the Open Space 2 (District Recreation and Open Space) Zone.	The proposed facility/use is contained within an existing community building facility that is provided for in the classification of the reserve. The building is also not inconsistent for the City Plan zoning the reserve is in. This is the Open Space 2 (District Recreation and Open Space) Zone, which does provide for community facilities to be present in some places.

**FINANCIAL IMPLICATIONS**

12. There are no financial cost implications for the Council arising from granting permission for Active Health to temporarily occupy a room in the Parklands Community Centre for the purpose of running a commercial business to provide physiotherapy services, predominantly to sports users at the centre. Active Health will meet all costs associated with the establishment and operation of the proposed facility, including all costs to reinstate the room, to the satisfaction of the City Housing and Community Facilities Manager or his designate, at the end of the occupation by Active Health.
13. Officers propose that a market commercial rental is charged for the temporary occupation of the room, as determined by an independent registered valuer approved by the Council.

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

14. Not applicable.

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**LEGAL CONSIDERATIONS**

15. Ordinarily, the grant to a party of a right to occupy a local purpose reserve (including part of an existing building on that reserve) would be by way of a lease granted by the Council under section 61 of the Reserves Act 1977 if the proposed use was consistent with the purpose for which the reserve is held. In addition, if Section 61(2A) of the Reserves Act does not apply, the granting of the lease would also be subject to the requirements of the Public Bodies Leases Act 1969, which requires that leases for more than a five year term must be publicly tendered. Section 61(2A) of the Reserves Act confers a leasing power on local authorities to grant leases for "community building, play centre, kindergarten, plunket room, or other like purposes" and for "farming, grazing, cultivation, cropping, or other like purposes ". However, in the view of the Council's Legal Services Unit ("LSU") the operation of a medical/physiotherapy practice is not a use contemplated by the classification of the reserve as a local purpose (community buildings) reserve, nor does it accord with the specific uses defined in section 61(2A). On this basis, the premises could not be leased to Active Health using the standard section 61 powers under the Reserves Act.
16. In response to the circumstances arising from the 22 February 2011 earthquake, the Government made the Canterbury Earthquake (Reserves Legislation) Order 2011 to enable reserves to be used for certain purposes that would not ordinarily be permissible under the Reserves Act. The Canterbury Earthquake (Reserves Legislation) Order 2011 was revoked and replaced by the Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011 ("Order") with effect from 10 November 2011.
17. The Order currently expires on 18 April 2016. It will not be possible for the Council to authorise the use of part of the Parklands Community Centre for the purpose as requested beyond this date. In addition, any such use beyond that date would not be able to be authorised using the 'business as usual' processes available under the Reserves Act, for the reasons given in paragraph 15 of this report above.
18. Clause 5(c) of the Order empowers the Council to "use a reserve or erect a structure on a reserve for any purpose ..., if the use or structure is necessary in the opinion of the council or the chief executive of the council to respond in a timely manner to any circumstances resulting from the Canterbury earthquakes". This clause does not limit uses of reserves to non-commercial uses. Although the proposed activity by Active Health at the Parklands Community Centre, whilst medical in nature, is primarily commercial, Active Health was previously a tenant of QEII and has been displaced from its tenancy there due to the February earthquake. Furthermore, the purposes detailed in section 3 of the Canterbury Earthquake Recovery Act 2011, which authorised the making of the Order, include "to provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes" and "to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities". The view of LSU is, therefore, that clause 5(c) of the Order does empower the Council, or the chief executive, to authorise Active Health to occupy part of the Parklands Community Centre.
19. The Order provides that when the Council authorises any use of a reserve, or the erection of any structure on a reserve, it does not need to comply with any relevant management plan or the usual Reserves Act processes. However, the Council is required to take all reasonable steps to protect the integrity of the reserve and to ensure that the reserve is reinstated at the end of the use or when the structure is removed.
20. In addition to Council authorisation under the Order, the applicant will also need to enquire about and obtain, where required, all necessary resource and building consents.

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21. If the Council approves the proposed occupation under the Order then a formal written occupation agreement in the form of a warrant issued under the Order will be entered into by the applicant. The agreement will contain the provisions that would ordinarily be included in a lease to protect the Council's position, including an obligation on the occupier to remove its improvements and fixtures and to return the room to its former condition, or as otherwise required by the City Housing and Community Facilities Manager or his designate.

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

22. Yes, see above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

23. Not applicable.

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

24. Not applicable.

**ALIGNMENT WITH STRATEGIES**

25. Not applicable.

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

26. Not applicable.

**CONSULTATION FULFILMENT**

27. Clause 6 of the Order expressly provides that the Council may act under the Order without complying with the Reserves Act 1977 (including any provision relating to public notification or the hearing of objections).
28. Clause 7 of the Order requires the Council to give notification to parties who have an easement, lease, licence, covenant or other legal right over the area of reserve to be temporarily occupied under the Order. RSU has been assigned the room proposed to be used and is in support of the proposed use of it by Active Health.
29. In addition, the Canterbury Earthquake (Local Government Act 2002) Order 2010 exempts the Council from compliance with some of the decision-making processes set out in the Local Government Act 2002. These include the requirement that the Council considers community views and preferences.
30. The exemptions can be relied upon in this case because it is necessary for the purpose of ensuring that Christchurch, the Council, and its communities respond to and recover from the impacts of the Canterbury earthquakes.

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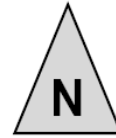
**STAFF RECOMMENDATION**

It is recommended that the Council resolve as follows:

- (a) Pursuant to clause 5(c) of the Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011, and having formed the opinion that such is necessary to respond in a timely manner to circumstances resulting from the earthquake of 22 February 2011 and subsequent aftershocks, that Active Health Canterbury Limited be authorised to use that part of the Parklands Community Centre situated on local purpose (community buildings) reserve, shown as the hatched area labelled "Active Health facility" on the plan attached to this report as **Attachment B**, for the purpose of operating a temporary sports-focused physiotherapy/medical health clinic.
- (b) That the period for which the authority referred to in paragraph (a) of this resolution shall apply is that period commencing on the date of this resolution and ending no later than the cessation of the Council's Recreation and Sports Unit's exercise classes held in the Sports Lounge in the Parklands Community Centre or the date on which the Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011 shall expire (18 April 2016), whichever is sooner.
- (c) That the Corporate Support Manager be delegated the power to negotiate and enter into on behalf of the Council such occupancy agreement, warrant or similar document on such terms and conditions as he shall consider necessary to implement the authority referred to in paragraph (a) of this resolution.

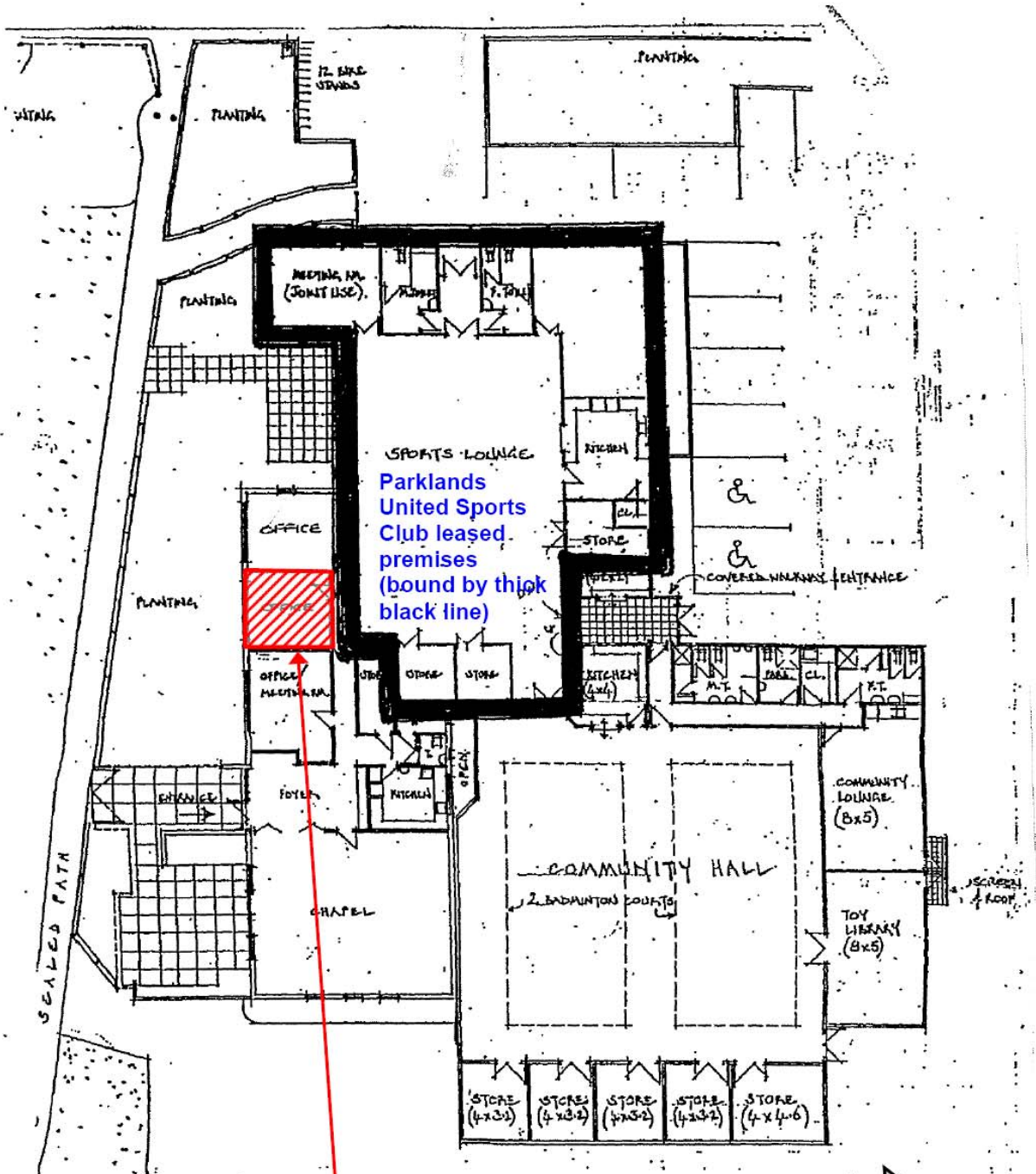
**BOARD RECOMMENDATION**

That the staff recommendation be adopted.





Queenspark Drive



Active Health facility - proposed room for physiotherapy clinic to be operated by Active Health (approximately fifteen square metres in floor area)

