

10. ASSIGNMENT OF LEASE – SCARBOROUGH FARE TEA ROOMS

General Manager responsible:	General Manager City Environment, DDI 941 8528
Officer responsible:	Transport and Greenspace Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is two-fold:
 - (a) To seek the Hagley/Ferrymead Community Board's approval to the Assignment of the Deed of Lease from Scarborough Fare Limited to Warren John Frith and Julie-Anne Pritchard, and
 - (b) To grant an additional term of six years to the lease for a final expiry of 24 October 2024, should that renewal be exercised.

EXECUTIVE SUMMARY

2. The current tenant must first obtain the written consent of the Landlord prior to assigning the Lease. This report deals with that request and recommends approval to the assignment.
3. The proposed Assignee has requested an extension to the lease term. The Council's practice at the final expiry of the lease term is to carry out a transparent process, calling for expressions of interest or a public tendering process. The current tenant, Scarborough Fare Limited, has advertised the business for sale in the public market and Council officers are satisfied that the process has been fair and transparent, open to all interested parties. Approval to the request is therefore recommended.

FINANCIAL IMPLICATIONS

4. The Assignor (Scarborough Fare Limited) has fulfilled their contractual obligations with the Council. Therefore consent to the assignment of the lease and agreement to lease cannot be arbitrarily or unreasonably be withheld.

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

5. Yes.

LEGAL CONSIDERATIONS

6. The premises is part of Scarborough Reserve and the Board has the delegated authority to approve an assignment of a lease and granting of leases on reserves pursuant to sections 54, 56, 58A, 61 73 and 74 of the Reserves Act 1977.

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

7. Yes, the original lease has been consented to by the Minister of Conservation pursuant to Section 54(1)(d) of the Reserves Act 1977.

CONSULTATION FULFILMENT

8. The current tenant has publicly advertised the sale of his business in The Press and on Trade-me. No other consultation is required.

STAFF RECOMMENDATION

It is recommended that the Hagley/Ferrymead Community Board:

- (a) Agree to the assignment of the Deed of Lease of the Scarborough Fare Tea Rooms situated at Scarborough Reserve from Scarborough Fare Limited to Warren John Frith and Julie-Anne Pritchard in the name of their registered company.
- (b) That the vendor and purchaser meet all costs of the assignment of the lease and agreement as agreed between the parties.
- (c) That the lease be varied by granting an additional term of six years thereby having a final expiry of 24 October 2024.

CHAIRPERSON'S RECOMMENDATION

That the staff recommendation be adopted.

BACKGROUND

9. In October 2008 the Council (the landlord) agreed to the assignment of the lease to Scarborough Fare Limited (the tenant).
10. The lease is to for an area of 162 square metres being part of the land described as Scarborough Reserve, The Esplanade, Sumner.
11. This existing tenant has been through a process to sell their business and as a result of that has requested the Landlord consent to the assignment of the lease to Warren John Frith and Julie-Anne Pritchard and their incorporated company (to be advised).
12. The assignment provisions of this lease are typical in terms as set out in the Auckland District Law Society lease document as used by the Council. The Council is required to consent to an assignment if:
 - (a) The proposed assignee is respectable, responsible and has the financial resources to meet the tenant's commitments under the lease.
 - (b) All rent has been paid and there are no other breaches of the tenant's covenants under the lease at the date of assignment.
 - (c) The assignee enters into a Deed of Covenant in a form acceptable to the Council.
 - (d) Where the assignee is a company, the company's obligations are guaranteed by the principal shareholder of that company, and if required by the Council, the Directors of the company.
 - (e) The assignee pays the Council's costs and disbursements in respect of the preparations and stamping of any Deed of Covenant of guarantee.
 - (d) The Assignor has fulfilled the obligations under the lease and agreement to lease to satisfy the assignment conditions above.
13. The Assignee, at the time of writing this report, is undertaking the necessary paperwork to register with the New Zealand Companies Branch. The lease will be in the name of that registered company.
14. The directors and shareholders are Warren John Frith and Julie-Anne Pritchard and they have provided to the Council a satisfactory statement of financial position and will be required to provide personal guarantees.
15. They have relevant skills with a good business background and specific restaurant experience, currently operating The Rose and Thistle Tavern.
16. In conclusion the proposed new tenant meets the requirements as set out under the assignment provisions in the lease. Consent is therefore recommended.
17. The initial term of the term of the lease was for six years commencing on 24 October 2006 with a right of renewal on 23 October 2012 and final expiry date of 24 October 2018 after which time under normal practice the lease would be retendered. This however provides insufficient unexpired term for the proposed incoming tenant (assignee) to recover the cost of their investment. They have therefore requested that a lease extension be considered to occur at the time they take the lease on assignment.
18. The assignees request for a lease extension is reasonable, reflective of what would be standard commercial practice and supported by similar previous council precedents. In addition the existing tenants marketing campaign meets the Council's requirements in terms of being readily available to the market, fair, transparent and open. The request is therefore supported and recommended.