

7.1 LEASE OF PART KORORIPO-KERIKERI BASIN RECREATION RESERVE - THE PEAR TREE RESTAURANT

File Number: A2153316

Author: Alice Astell, Property Legalisation Officer

Authoriser: Andy Finch, General Manager - Infrastructure and Asset Management

PURPOSE OF THE REPORT

To seek approval for a new lease of part of Kororipo-Kerikeri Basin recreation reserve comprising approximately 2054m² of the land contained in CFR NA836/15, to the existing tenant Pear Tree Kerikeri Limited.

EXECUTIVE SUMMARY

Bay of Islands-Whangaroa Community Board has been given delegated authority to consider all submissions and objections received in response to the public notification of a proposal for a new lease of part of Kororipo-Kerikeri Basin recreation reserve to Pear Tree Kerikeri Limited, and to make a recommendation to Council on whether the proposed lease should be granted. The land involved is shown outlined in green on the attached 'Aerial Plan of Pear Tree Lease Area' at **attachment 1**.

The Bay of Islands-Whangaroa Community Board at its meeting held on 2 July 2018 considered the submissions received and made the following recommendation to Council:

RECOMMENDATION

a) That the Far North District Council, pursuant to its powers under sections 53(1)(h) and 54(1)(d) of the Reserves Act 1977, grant a new lease of part of the Kororipo-Kerikeri Basin recreation reserve comprising approximately 2054m² of the land contained in CFR NA836/15, to the existing tenant Pear Tree Kerikeri Limited and that the terms of the lease shall be:

Term: 5 years

Rent: Commercial rate to be determined by valuation

Area: To be approximately 2054m² of the land contained in CFR NA836/15 as shown on the attached aerial plan (A2157837)

Right of Renewal: no right of renewal

b) Subject to all concept plans being approved by Kororipo Stone Store Basin Management Group.

1) BACKGROUND

Pear Tree Kerikeri Limited is the current lessee of the recreation reserve upon which the restaurant is located. The existing lease expires on 30 April 2022 and is for an area of 9073m². Last year the lessee applied for a new lease for a total of 15 years, comprising an initial term of 5 years followed by two rights of renewal of 5 years each. The lessee also asked that the area of the lease be reduced to the land immediately surrounding the restaurant, which is approximately 2054m² instead of the current area of 9073m².

The Council at its 14 September 2017 meeting resolved as follows:

THAT the Far North District Council recommends that the public consultation process is commenced, for a new lease of approximately 2054m² of the land contained in CFR NA836/15 being the restaurant building and the immediate surrounding land. The proposed lease is to the existing tenant, Pear Tree Kerikeri Limited, and the terms proposed are;

Term: 5 years

Rent: Commercial rate to be determined by valuation

Right of Renewal: Two further terms of 5 years if no alternative need identified

AND THAT the Bay of Islands-Whangaroa Community Board is appointed to hear any submissions and or objections received in response to the public process, and then to make a recommendation to Council in respect of the proposal.

The Reserves Act 1977 (RA) requires Council to consult with and have regard to the views of the public before undertaking certain actions in respect of reserves, such as when considering granting leases. The recreation reserve is vested in Council but does not have a management plan.

Public consultation on the proposed new lease ran from 30 October – 4 December 2017. Of the 8 submissions received, 4 were in favour of the proposed lease and 4 were opposed. Te Runanga o Ngati Rehia were one of the four submitters initially opposed to the proposed lease, however subsequently withdrew their objection following a series of discussions with key FNHL/Council staff and confirmed their full support for the lease as publicly notified.

On 2 July 2018 the Board, as the Council's delegate, considered all the submissions and objections, and made a recommendation to Council. A summary of those submissions and objections and a provisional statement as to the extent to which they have been allowed or disallowed is attached at **attachment 2**. The statement as to the extent to which the submissions and objections were allowed or disallowed by the Community Board is subject to change in accordance with the final decision of the Council.

The staff recommendation to grant a new lease on the terms as publicly notified was not adopted by the Board. Instead, the Board resolved to make a different recommendation which still involves granting a new lease but for a term of 5 years only and subject to concept plans being approved by Kororipo Stone Store Basin Management Group. All other essential terms remain as originally proposed and consulted upon.

Far North Holdings Limited (FNHL) has an interest in the management of the lease and the relationship with the lessee by virtue of a current Memorandum of Understanding (MOU) between Council and FNHL. This MOU provides that FNHL may enter into negotiations with the lessee on rent, lease terms, lease renewal and any other matter relevant to the lease with a view to make recommendations to, and seek approval from Council.

The Minister of Conservation has delegated to Council the power to grant leases of vested reserves for the purposes specified in section 54 of the RA. A decision on the submissions must be made by the Council as the administering body of the reserve. This decision also requires consent from the Minister of Conservation, however the Minister has delegated her role to the Council.

2) DISCUSSION AND OPTIONS

Relevant Legislation – the Reserves Act 1977 and the Local Government Act 2002

The RA provides a statutory framework for the management and preservation of areas of public land for the benefit of the public.

The decision-making requirements of section 76 of the Local Government Act (LGA) overlay decision-making requirements under other Acts such as the RA and cover the need to take into account community views. This is being achieved by compliance with the RA's public consultation requirements as well as iwi consultation.

The Council is required to take into account the above legislation, including the functions and purpose of recreation reserves, when deciding on a recommendation.

Further, section 83 of the LGA covers the special consultative procedure. Subsection (3) states:

"This section does not prevent a local authority from requesting or considering, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any views on the proposal, or both."

Council policy

Council's Reserves Policy generally favours the preservation of reserves. In this case the Community Board has made a recommendation which would involve the continuity of an existing facility located on the reserve. Pear Tree Kerikeri Limited as the existing tenant is seeking to significantly reduce (not increase) the area of reserve land currently leased and, in accordance with the general purpose of the RA, seeks to continue providing a facility which enables the public to obtain the benefit and enjoyment of the reserve and provide for the convenience of persons using the reserve.

Iwi consultation

Section 4 of the Conservation Act 1987 requires that various Acts including the RA are to be administered so as to give effect to the principles of the Treaty of Waitangi. This requires decision-makers to seek comments from tangata whenua on proposals such as this proposed lease. The Council (and in this case the Board as the Council's delegate) is required to have consulted with and considered the views of tangata whenua or to have been able to make an informed decision in some other way.

This obligation has been met via the public consultation process with Te Runanga o Ngati Rehia as the recognised Tangata Whenua, Ahi-Kā and Kaitiaki of this area.

The role of Council

The full Council is required to consider the Board's recommendation and make the final decision regarding the proposal. This will involve two decisions: one from the standpoint of the Council as the Administering Body (AB) for the reserve, and the other from the standpoint of the Council as the Minister of Conservation's delegate.

Option 1

Council could accept the Board's recommendation and resolve as follows:

That the Far North District Council:

- a) in its role as administering body of the Kororipo-Kerikeri Basin recreation reserve and in its role as the delegate of the Minister of Conservation, subject to the provisions of the Reserves Act 1977, grants and consents to a new lease of part of the Kororipo-Kerikeri Basin recreation reserve comprising approximately 2054m² of the land contained in CFR NA836/15, to the existing tenant Pear Tree Kerikeri Limited and that the terms of the lease shall be:
- Term: 5 years
 - Rent: Commercial rate to be determined by valuation
 - Area: To be approximately 2054m² of the land contained in CFR NA836/15 as shown on the attached aerial plan.
 - Right of Renewal: no right of renewal
- b) Subject to all concept plans being approved by Kororipo Stone Store Basin Management Group.

Option 2

As provided for by s83(3) of the LGA (and stated above), Parliament decided that it was competent for a local authority to be able, following a special consultative procedure and before making a decision, to seek comment or advice from staff or any other person in respect of the proposal or any views on the proposal, or both.

As noted earlier, FNHL has an interest in the management of all aspects of the lease pursuant to an MOU between FNHL and Council. Therefore Council may, if it wishes, take into consideration the below information and comments provided by the Chief Executive of FNHL, Andy Nock, which were not available to the Board at the time of their deliberations in respect of the lease proposal:

"[Our] recommendation is that if Council are not prepared to grant the lease extension and right of renewal, as proposed, then the matter is re-directed back to the Community Board for their re-consideration..."

The decision the Community Board made was not based on the facts.

The Pear Tree will not give back to FNDC the land required for the wider basin development being proposed by Ngati Rehia, that would allow them to make a comprehensive application to the PGF [Provincial Growth Fund]..

A one year extension offers no tangible benefit to the Pear Tree, so everybody loses.

If the Pear Tree are not granted an extension and right of renewal, the land required for creating walkway connections to the Pa sites, developing a pear tree nursery using seed from the original pear tree, matching the old wooden fence that runs alongside the stone store, creating seating areas etc will all be lost. The Pear Tree will not relinquish the area required to carry out this work, by variation to the existing lease, unless the extension and right of renewal are granted.

This is about the wider opportunity for the development of the basin.

The Pear Tree, Ngati Rehia and the wider community will miss out on the opportunity that exists if the recommendation is not approved by Council, either with or without the support of the Community Board."

Should Council so decide, it may terminate the existing lease and enter into a new lease with the current tenant for a total of 15 years (assuming all rights to renew are exercised), and grant a new lease on the terms originally proposed and publicly notified. The Council may choose to include that part of the Board's recommendation to make the new lease subject to all concept plans being approved by Kororipo Stone Store Basin Management Group. The final recommendation would appear as set down in Option 1 except for the Right of Renewal which would instead state 'Two further terms of 5 years if no alternative need identified'.

Option 3 Continue under the existing lease arrangement

Council may choose to continue under the current lease arrangement which expires on 30 April 2022. At that point, a new lease made in accordance with the RA would be required. The advantage of continuing with the current lease is that the carpark associated with The Pear Tree restaurant will continue to be maintained by the lessee at no cost to Council.

Option 4

Council may choose to defer making a decision in respect of this matter until the next Council meeting scheduled to take place on 25 October 2018.

The role of Council as Minister's Delegate

The majority of the content of this report involves the Council in its role as AB of the reserve but the Council also has a role as the Minister of Conservation's delegate. The decision making function whereby the merits of a proposal are considered is the responsibility of the AB. The Minister is not the decision maker but has instead a supervisory role which has been delegated to Council. In ensuring the decision is arrived at in compliance with the requirements of the RA, staff can confirm that the status of the land involved has been correctly identified; the particular classification and purposes of the reserve have been taken into account; the necessary statutory processes have been followed; public submissions on the proposal have been considered, and the AB has the power and authority to make the decision.

Reason for the recommendation

The original (commercial) Auckland District Law Society Lease was entered into in 1990 when the land was still in private ownership. A variation to the lease occurred in 2008 and the land was then jointly acquired by Council and DOC and was vested in Council as recreation reserve. A new lease

prepared in accordance with the RA would enable the lease to accurately reflect this change in land status. The existing lease also prevents access to the Kororipo Pa from being developed and the remainder of the reserve being opened up to the public.

As referred to above, the staff recommendation to grant a new lease on the terms as publicly notified was not adopted by the Board. Instead, the Board resolved to make the recommendation at Option 1. The Board's recommendation still involves the granting of a new lease which can reflect the requirements of the RA and allows for future development of this significant site by the Kororipo Stone Store Basin Management Group (comprised of representatives from the Council, DOC, Heritage New Zealand Pouhere Taonga to tangata whenua). However, this recommendation does not provide the lessee with the security of tenure it sought to enable them to invest in the business and plan long-term and on the information provided by FNHL the lessee *"will not relinquish the area required to carry out this work, by variation to the existing lease, unless the extension and right of renewal are granted"* as per Option 2.

The Board followed due process in making the recommendation it made based on the information available to the Board at that time. However, as the information and comments from FNHL were not available to the Board at the time of their deliberations, Option 2 is included in this report as an alternative option, as Council may also wish to take this new information into consideration when making its decision.

The final decision on the submissions must be made by the Council as the AB of the reserve.

3) FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION

Option 1

Council would continue to receive a commercial rental with future rent review dates to be negotiated, however the repair and maintenance of the gravel carpark would become the responsibility of the Council at an estimated cost of \$2,600.00 plus GST per annum. It is proposed that this relatively small amount be met from the existing reserves maintenance budget. The new lease would expire in 2023.

Option 2

Again, Council would continue to receive a commercial rental with future rent review dates to be negotiated and the repair and maintenance costs of the gravel carpark would revert to Council at an estimated cost of \$2,600.00 plus GST per annum. It is proposed that this relatively small amount be met from the existing reserves maintenance budget. The new lease would expire in 2033.

Option 3

Council currently receives a commercial rental with the next rent review due in 2020. The advantage of continuing with the current lease is that the carpark associated with The Pear Tree restaurant will continue to be maintained by the lessee at no cost to Council.

ATTACHMENTS

1. **Pear Tree Lease Aerial Plan - Document number - A2157837**
2. **Pear Tree Lease copy of Submissions - A2157836**

Compliance schedule:

Full consideration has been given to the provisions of the Local Government Act 2002 S77 in relation to decision making, in particular:

1. A Local Authority must, in the course of the decision-making process,
 - a) Seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
 - b) Assess the options in terms of their advantages and disadvantages; and
 - c) If any of the options identified under paragraph (a) involves a significant decision

in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water sites, waahi tapu, valued flora and fauna and other taonga.

2. This section is subject to Section 79 - Compliance with procedures in relation to decisions.

Compliance requirement	Staff assessment
State the level of significance (high or low) of the issue or proposal as determined by the Council's Significance and Engagement Policy	This has a high level of significance due to the heritage of the reserve and the public interest in the location and activities undertaken in the area
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	Reserves Act 1977 Council's Reserves Policy
State whether this issue or proposal has a District wide relevance and, if not, the ways in which the appropriate Community Board's views have been sought.	The Bay of Islands-Whangaroa Community Board were given delegated authority to consider all submissions received regarding the proposal, hold hearings (if required) and make a recommendation to Council
State the possible implications for Māori and how Māori have been provided with an opportunity to contribute to decision making if this decision is significant and relates to land and/or any body of water.	Extensive consultation has been undertaken with Te Runanga o Ngati Rehia as the recognised Tangata Whenua Ahi-Kā and Kaitiaki of this area. Ngatia Rehia withdrew their initial objection submitted during the consultation process and support the original proposed lease (Option 2 in this report).
Identify persons likely to be affected by or have an interest in the matter, and how you have given consideration to their views or preferences.	The statutory public consultation process under the RA has been undertaken. All submissions received were considered and formed part of the deliberations prior to a recommendation being made. As FNHL have an interest in this matter under the MOU, their comments have been included in this report for Council's information and consideration.
State the financial implications and where budgetary provisions have been made to support this decision.	Carpark maintenance approx. \$2,600.00 plus GST per annum reverts to Council. It is proposed that this relatively small amount be met from the existing reserves maintenance budget.
Chief Financial Officer review.	The Chief Financial Officer has reviewed this report