

**Subject:** Recreation Reserve Leasing Decisions

**Prepared by:** Angus Glengarry (Community Property Officer)

**Meeting Date:** 25 March 2010

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## Report to COUNCIL for decision

### SUMMARY

The purpose of this report is to address the recent expiry of two Council lease agreements and to formalise a long term occupation of council reserve in Tokomaru Bay.

Leases for the sports pavilion on Harry Barker Reserve and the BMX track situated on Lytton Road Reserve have recently expired. It is proposed that the Council enters into new agreements with the occupants, the Poverty Bay Cricket and Hockey Associations' and the BMX Club.

Records received from the Office of the Maori Trustee indicate that the lease for the Tokomaru Bay Mayfair Store has recently transferred to the Muller Whanau Limited. The store adjoins a council recreation reserve and the new tenants wish to formalise their use of the reserve for the purposes of a camping ground with a lease agreement. These issues need to be decided by Council, as staff do not have the delegated authority to enter into lease agreements.

### RECOMMENDATIONS

#### That the Council

1. receives the report.
2. agrees to enter into a lease agreement with Poverty Bay Cricket and Hockey Associations' for Part Lot 67 DP 5189.
3. agrees to a lease term of 10 years with two 10 year rights of renewal expiring 30 September 2039. The annual rental shall be \$665 excluding GST, to be reviewed every five years in accordance with the GDC Rental Policy.
4. agrees to enter into a new lease agreement with Muller Whanau Limited for part of Section 20 Block IV Tuatini Maori Township.
5. agrees to a lease term of five years with three five year rights of renewal expiring March 2030. The annual rental shall be \$1,115 excluding GST, to be reviewed every five years.

## 1. BACKGROUND

### BMX Track

The Gisborne BMX Club has been registered as an incorporated society since 1985. The Club built and operated a BMX track on Alfred Cox Park before relocating to its current site on Lytton Road Reserve in 2004.

The lease for the Club's use of the reserve expired 28 February 2009 and it is proposed that the Council enters into a new agreement with the Club.

The term of the lease is for 10 years with two 10 year rights of renewal which is to be reviewed every five years.

### Harry Barker Reserve Pavilion

In 1983 the Poverty Bay Cricket Association worked with the Poverty Bay Hockey Association to erect a sports pavilion on the reserve adjacent to the existing grandstand. The Council granted the Clubs' a 10 year lease which expired on 30 September 2009. It is proposed that the Council enters into a new agreement to re-formalise the occupation of council reserve.

As Poverty Bay Hockey Association is currently seeking funding to locate to an alternative site, it may be necessary to include an assignment clause in the lease allowing Hockey and Cricket to assign the lease to the Poverty Bay Cricket Association alone.

The term of the lease is for 10 years with two 10 year rights of renewal, which is to be reviewed every five years. This is consistent with other recent leasing decisions for council reserve.

### Mayfair Store and Camping Ground

The Tokomaru Bay Mayfair Store is held in multiple Maori ownership and is administered by the Office of the Maori Trustee. The Office leases the store and the lessees have operated a camping ground on part of the council reserve located directly behind the store since 1962. The occupation of the reserve has been at the "Council's pleasure" with either party being able to determine the agreement by giving one month's written notice. The rental has remained at \$25 per annum. In the past a lease has not been able to be implemented as camping was not a permitted use under the local purpose gravel reserve classification. In 2002 the Council approved a change of reserve classification to recreation reserve<sup>1</sup> so that a lease may be affected.

In 2004 the Council confirmed its intention to enter into a lease with the lessees of the store provided that they agreed to the installation of a caravan dump station on the site. In anticipation of this lease being put in place, permission was given for the Mayfair Store to install a wastewater treatment and discharge system on the reserve provided the system complied with the resource consent applications and conditions. A new septic system was necessary as the existing system that serviced the kitchen and ablution block was discharging into an open council stormwater drain.

Delays occurred in the leasing process due to the ill health and subsequent passing of the previous lessee of the store.

In July 2008 the lease for the Mayfair Store was transferred to Muller Whanau Limited and the new lessees want to formalise their use of the reserve with a lease from the Council.

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<sup>1</sup> Report GDC2002/615

The term of the lease is for five years with three five year rights of renewal. The final expiry of the proposed agreement coincides with Muller Whanau Limited's 21 year agreement with the Office of Maori Trustee for the lease of the store. The rent is to be reviewed every five years.

Refer to the appendices for site plans of the leased areas.

## 2. DISCUSSION AND OPTIONS

The following options have been considered:

- Status quo and let the occupants continue to operate on land classified as recreation reserve without any formal agreement in place.

*It would be unfair to create an unjustifiable exception while other organisations have lease agreements in place and are paying a site rental under the GDC Reserves Rental Policy. The Council would be failing in its statutory obligations under the Reserves Act 1977 if it were allow this situation to continue. This option has been discounted for the above reasons.*

- Have a registered valuer ascertain a market rent for the sites and enter into a new agreement at a commercial level.

### BMX, Poverty Bay Cricket and Hockey Associations'

*This option has been rejected as the clubs' provide recreational opportunities for the community and are clearly not operating in a commercial way. It would therefore be inappropriate to apply strict market principles in this instance.*

### Mayfair Store and Camping Ground

*A market rental valuation was obtained in 2005. The rent was calculated at \$8,800 per annum which was based on a 5.5% return on a land value of \$160,000. Due diligence was undertaken with the tenants opening their accounts to Council staff. An examination of the accounts indicated that a commercial rental was not viable given the historical occupancy rates of the camping ground. A market rent would not be sustainable over the proposed term of the lease.*

- Enter into a new lease and determine the annual rental in accordance with GDC Reserves Rental Policy.

*This option is considered the most practical solution and is consistent with other recent leasing decisions for occupants of council reserve. The Council has a statutory obligation to comply with the Reserves Act 1977. The granting of new leases puts in place controls and measures that allow the Council to properly manage tenants on reserves in accordance with the Council's obligations under the Act. A lease would provide the tenants with security of tenure and allow them to plan with certainty over the long term.*

Currently there are many informal occupations of council reserves that are being progressively worked through. The review of these arrangements is part of the process of formalising all activities on council reserves.

## 3. SIGNIFICANCE

The leasing decisions have been assessed against the criteria and have been deemed not to be decisions of significance.

#### **4. CONSULTATION**

The proposed lease agreements were publicly notified in the Gisborne Herald on Wednesday, 27 January 2010. No written submissions were received for or against the proposed agreements.

#### **5. COMMUNITY OUTCOMES**

The leasing of council land for use as a BMX track, sports pavilion and camping ground contribute to the community's wellbeing through indirect investment in sports and recreation. This is consistent with the community's primary outcome for a Healthy Tairāwhiti.

#### **6. LEVELS OF SERVICE**

The proposed lease agreements will have no impact on levels of service.

#### **7. FINANCIAL**

The income from these leases is an operational income which is used to reduce costs associated with council's parks and reserves.

The lease conditions place all of the outgoings onto the tenants. This includes insurance fees, utility charges, building and grounds maintenance.

##### BMX Track

The annual rental shall be \$910, excluding GST.

##### Harry Barker Pavilion

The annual rental for the footprint of the pavilion has been assessed at \$665, excluding GST.

##### Mayfair Store and Camping Ground

The maintenance of the motor caravan dump station, including the periodic emptying of the holding tank, is the responsibility of the Council. The daily cleaning of the discharge facilities above the ground is the responsibility of the lessee. The lessee will provide water supply for this cleaning and shall permit motor caravans and campers to discharge liquid waste free of any charge during normal opening hours.

The annual rental of \$1,000 per annum was agreed when the lessees opened their accounts and took into consideration the cleaning of the dump station and the obligation to supply water to this public facility. The agreed rental has been inflation adjusted to \$1,150 excluding GST.

#### **8. LEGAL**

##### BMX Track

Occupies the area described legally as Part Lot 14 DP 4812. The Council is authorised pursuant to s 54. (1)(b) of the Reserves Act 1977 to lease recreation reserves for the purposes of outdoor sports, games or other recreational activities.

##### Harry Barker Pavilion

Occupies part of the area legally described as Lot 67 DP5189. The reserve was vested as recreation reserve in 1985 and subject to the provisions of the Reserves Act 1977. The Council may enter into an agreement pursuant to s 54. (1)(b) of the Act.

### Mayfair Store and Camping Ground

The camping ground is situated on part of the reserve described legally as Section 20 Block IV Tuatini Maori Township. The reserve was reclassified from Local Purpose (Gravel) Reserve to Recreation Reserve in 2002 to permit camping. The Council may enter into an agreement pursuant to s.54 (1) (d) of the Reserves Act 1977.

## **9. POLICY**

The leasing of recreation reserve for use as a BMX track, sports pavilion and camping ground is consistent with the Reserves Act 1977, the LTCCP and the Annual Plan. The options have been considered, together with the legal and financial implications, and there is nothing to impede the Council from entering into the lease agreements.

## **10. APPENDICES**

Plans.



BMX Track Site Plan



Mayfair Site Plan



Pavilion Site Plan