

Mayor and Councillors
COUNCIL

26 APRIL 2018

Meeting Status: **Public**

Purpose of Report: For Decision

LEASE CONCESSION FOR HARUATAI PARK, ŌTAKI SPORTS CLUB

PURPOSE OF REPORT

- 1 This report seeks approval to enter into a new lease concession with the Ōtaki Sports Club Inc (the Club) at Haruatai Park, Ōtaki.

DELEGATION

- 2 Council has the authority to consider this matter.

BACKGROUND

- 3 This agreement would be for part of the land area known as Haruatai Park and more particularly the area shown in red in Appendix 1 and being part of the land comprised and described in Section 88 Block IX Waitohu Survey District and being all of the land comprised and described in Certificate of Title Volume 17A Folio 62 (Wellington Registry).
- 4 This particular portion of the land is owned by the Department of Conservation (DOC). The Council has been appointed to control and manage this portion of the Reserve which is classified as Recreation Reserve. The proposed concession would come under Section 59A(1) of the Reserves Act 1977 (the Act). The remaining land at Haruatai Park is also Recreation Reserve but vested in the Council.
- 5 The original lease with the Club (formerly Ōtaki Tennis and Squash Club Incorporated) expired on 31 October 2009 after a 33 year term commencing 1 November 1976 with no right of renewal. This lease was granted by the Crown in the form of a Deed of Lease under Section 27(9) of the Reserves and Domain Act 1953.
- 6 The Club has since developed and now coordinates tennis, squash and football activities for the Ōtaki community.
- 7 On 28 March 2013, Council was presented a report with the intention to enter into a new concession with the Club. The Council resolved that a new concession may be entered into, which included the requirement that the courts are open for public use.
- 8 Council Officers have subsequently ascertained that:
 - a) Although the proposed 2013 concession was approved, it was never formalised; and

- b) The 2013 report did not specify the section of the Act in which the concession was to be granted or address the necessary considerations.
- 9 Accordingly it is necessary for the process to be recommenced with the concession being granted pursuant to Section 59A.
- 10 The Club has subsequently applied to Council, requesting a new concession for a further 10 years with two rights of renewal.
- 11 The proposed concession only includes the land on which the club rooms are situated. This differs from the 2013 proposal, which also included the courts. There is agreement with the Club for this arrangement. The Club owns the building.

ISSUES AND OPTIONS

Issues

- 12 There are limitations on activities that are permitted on this site subject to the Act. The activities proposed are consistent with the Act. It is proposed that the Club continue to occupy this space by way of a concession solely for the purposes associated with the Club.
- 13 The courts are currently closed to the public. The proposed concession will ensure that the courts are available for public casual use and that like any other public facility, the courts can be booked for organised tournaments and practises through Council's standard booking process. For recurring bookings, a sign will be installed advising members of the public when the courts are unavailable for public use.
- 14 Council has previously contributed funds towards fencing and resurfacing of the tennis courts. The courts are scheduled to be resurfaced in 2018/2019 and there is currently \$157,000 set aside for this in the Long Term Plan.
- 15 The courts will be locked each night by either an Ōtaki Pool staff member or Main Security and unlocked every morning by Ōtaki Pool staff.

CONSIDERATIONS

Policy considerations

- 16 There are no policy issues arising from this decision.

Legal considerations

- 17 The Council is able to grant a concession, which includes a lease, a permit or licence under section 59A of the Act, in accordance with Part 3B of the Conservation Act. While section 59A specifically states that the "Minister" may grant a concession, in the present circumstances, the Minister has delegated his power to grant a concession to any territorial authority appointed to control and manage a reserve.
- 18 While the Minister has delegated the power to a local authority, there are matters that the Council must consider before the concession is granted. These matters are set out in section 17U of the Act, and can be found in appendix 2 of this report.

- 19 Part 3B of the Conservation Act sets out the process to be followed in granting a concession. The Council must publically notify its intention to grant the concession and allow time for submissions to be received and considered.
- 20 If the proposal is approved, new concession documentation will be drafted and will be reviewed by the Council's legal counsel before being presented to the Club for signing.

Financial considerations

- 21 The concession will include annual rental to be paid at the appropriate rate set annually by the Council in either the Long Term Plan or Annual Plan. Costs associated with a new concession are required to be covered by the Lessee.

Tāngata whenua considerations

- 22 There are no known tāngata whenua considerations for the lease of the building.

SIGNIFICANCE AND ENGAGEMENT

Significance policy

- 23 This matter has a low level of significance under Council policy.

Consultation already undertaken

- 24 The Ōtaki Community Board Chair has been advised of the proposed concession and is supportive of the concession, including the requirement that the courts are open for public use.

Engagement planning

- 25 An engagement plan is not needed to implement this decision.

Publicity

- 26 As this is technically a new concession, a 40 day public notification is required by the Conservation Act.

RECOMMENDATIONS

- 27 That the Kāpiti Coast District Council authorises the Chief Executive to undertake the required public notification process for the concession proposal as outlined in this report (CS-18-409) for the land at Haruatai Park, Ōtaki, shown in appendix 1, to the Ōtaki Sports Club.
- 28 If any objections are received, these are considered at the Council meeting of 28 June 2018.
- 29 If no objections are made, that the Kāpiti Coast District Council authorises the Chief Executive to enter into a concession for ten years with two further ten year rights of renewal commencing 1 July 2018 with the Ōtaki Sports Club, for the land at Haruatai Park, Ōtaki shown in appendix 1 to report CS-18-409 at an annual rental set by the Council in the Long Term Plan or Annual Plan.

Report prepared by	Approved for submission	Approved for submission
Mark Hammond Parks Officer	Sarah Stevenson Group Manager, Strategy and Planning	Max Pedersen Group Manager, Community Services

ATTACHMENTS

- Appendix 1: Aerial map of leased area.
- Appendix 2: Section 17U (Matters to be considered by Minister), Conservation Act 1987
- Appendix 3: Application received from Ōtaki Sports Club

Appendix 1:



Appendix 2:

Section 17U Matters to be considered by Minister

(1) In considering any application for a concession, the Minister shall have regard to the following matters:

- (a) the nature of the activity and the type of structure or facility (if any) proposed to be constructed:
- (b) the effects of the activity, structure, or facility:
- (c) any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity:
- (d) any information received by the Minister under sections 17S, 17SD, and 17SE:
- (e) any relevant environmental impact assessment, including any audit or review:
- (f) any relevant oral or written submissions received as a result of any relevant public notice issued under section 49:
- (g) any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.

(2) The Minister may decline any application if the Minister considers that—

- (a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or
- (b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.

(3) The Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.

(4) The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—

- (a) could reasonably be undertaken in another location that—
 - (i) is outside the conservation area to which the application relates; or
 - (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or
- (b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.

(5) The Minister may grant a lease or a licence (other than a *profit à prendre*) granting an interest in land only if—

(a) the lease or licence relates to 1 or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and

(b) in any case where the application includes an area or areas around the structure or facility,—

(i) either—

(A) it is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or

(B) it is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and

(ii) the grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.

(6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for—

(a) the protection of public safety; or

(b) the protection of the physical security of the activity concerned; or

(c) the competent operation of the activity concerned.

(7) For the purposes of subsection (6), the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.

(8) Nothing in this Act or any other Act requires the Minister to grant any concession if he or she considers that the grant of a concession is inappropriate in the circumstances of the particular application having regard to the matters set out in this section.

Appendix 3:
Application received from Ōtaki Sports Club

To whom this may concern,

Otaki Sports Club Incorporated wishes to apply to the Kapiti Coast District Council for the lease of the land that the Tennis Courts and Otaki Sports Club Building sits on. This is requested due to the current lease having expired.

The club offers the sports of tennis, squash and football to our members. We have a midweek, interclub and social tennis members, social and competitive squash members and junior and senior football players.

The facilities that we use allow us to run these activities (3 squash courts, 4 tennis courts and clubrooms). The club is situated at Haruatai Park in Otaki.

The potential effects of proposed activity that the lease will cover are minimal as all infrastructure and courts are already in place. We don't envision any adverse effects from the proposed activity.

We hope to continue to use the tennis and squash courts for the same purpose that they have been used for in the past – to offer our members the ability to play their chosen sport. The duration of our concession is 10 years with two 10 year rights of renewal to give our club some stability going forward.

Our members have nurtured our club over the last 35 years and have taken pride in maintaining the facilities. This will be a high priority for the continued use of the facility.

Kind regards,

Catherine Page and Hannah Grimmett

On behalf of Otaki Sports Club Management Committee