

Chairperson and Committee Members
ENVIRONMENT AND COMMUNITY DEVELOPMENT COMMITTEE

16 JUNE 2016

Meeting Status: **Public**

Purpose of Report: For Decision

**LEASE TO OCCUPY COUNCIL ADMINISTERED LAND AT
TASMAN ROAD RESERVE, ŌTAKI, BYRON'S RESORT**

PURPOSE OF REPORT

- 1 This report seeks approval for a new lease agreement with Byron's Resort Motels & Campground (Byron's) on Council administered land at Tasman Road Reserve, Ōtaki (Appendix 1).

DELEGATION

- 2 The Environment and Community Development Committee (ECD) has delegated authority to make a decision on this matter under Part B, Paragraph 7.3 of the Kāpiti Coast District Council Governance Structure and Delegations 2013-16 Triennium:

"Authority to exercise the functions, powers and duties of the Council under the Reserves Act 1977 including those delegated from the Minister of Conservation, or any other statute, regulation or bylaw relating to the management and control, maintenance and operation of parks and reserves, except as delegated to Community Boards or officers. This authority encompasses the power to: ...grant leases for reserve land"

BACKGROUND

- 3 The agreement would be for part of the land area known as Tasman Road Reserve and more particularly shown as the hatched area in Appendix 2, being part of the land comprised and described in LOT 6 DP 5421. The area is approximately 1,800m².
- 4 The land is owned by the Crown and administered by Kāpiti Coast District Council under Section 28 of the Reserves Act 1977 (the Act). The Council's role under this section is to provide areas for; recreation and sporting activities; the physical welfare and enjoyment of the public; the protection of the natural environment. Under the Act the land described is classified Recreation Reserve.
- 5 It is proposed that the lease would be for a five year term with a right of renewal for a further five years. Either party would have the right to terminate the lease with three months written notice.
- 6 Byron's has occupied this land for some time, using it as overflow camping space during peak times such as long weekends and Christmas school holidays. Council aerial photography dating back to 1998 indicates that the land was fenced and occupied by Byron's at this time. Anecdotal evidence indicates the land has been used in this manner for at least 20-30 years.

- 7 Byron's does not currently have a formal lease to occupy this area. Officers understand there was some form of undocumented verbal agreement reached previously whereby Byron's would be able to use the land provided they also maintained it.
- 8 When the current owners purchased Byron's approximately six years ago they were informed by the previous owner about the existing arrangement with Council. Their understanding was they could continue to have use of the land provided they continued to keep it maintained.

ISSUES AND OPTIONS

Issues

- 9 The Act places limitations on the types of activities permitted on recreation reserves. Section 54(1)(a) of the Act allows the administering body to:

"lease to any person, body, voluntary organisation, or society (whether incorporated or not) any area set apart under section 53(1)(h) for baths, a camping ground, a parking or mooring place, or other facilities for public recreation or enjoyment."

and section 54(1)(d) allows the administering body to:

"Grant leases or licences for the carrying on of any trade, business, or occupation on any specified site within the reserve... provided that the trade, business, or occupation must be necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve."

- 10 Officer opinion is that the area is not required as public open space at this time and there are no plans to develop the land in the foreseeable future. However, this area of land could be more valuable in the future as population and space demands increase.
- 11 There has been interest from some members of the public in relation to Byron's use of this area of public land, believing that it should be completely opened up for public use and not be used by Byron's. This includes a recent activity where some members of the public spent a morning on the land and invited other members of the public to join them. This was attended by approximately 20 people. Anecdotally, there also appears to be support for Byron's continued use of the land.
- 12 The Department of Conservation (DoC) has been approached by a member of the public about the use of this land. DoC has made it clear that the land is under the administration of Council, that they have no influence on the management of the reserve and they are satisfied that the land is being used in a suitable manner.
- 13 The lease could continue to allow the area of land in question to be used for activities not associated with Byron's. The current owners of Byron's are amenable to public use of the area during times when it is not being used by Byron's, however this is not a requirement of the Reserves Act. The area could be leased solely for the use of Byron's if that was the desire of Council.

- 14 If the land is to also be available for public use, Council officers will work with the owners of Byron's to agree the best system for letting people know when the area is available to use.
- 15 If the area is available for public use when not required by Byron's there is a potential security risk as members of the public can easily gain access to the rest of the resort. Council officers would need to monitor how the arrangement is working and address any concerns as appropriate. There are also CPTED (Crime Prevention Through Environmental Design) issues with this area as it is tucked away and not easily seen from other public spaces.
- 16 In officer's opinion, having Byron's occupy and be responsible for maintaining this area in the short to medium term is a reasonable use of the land. As the only current vehicle access to the land is through Byron's property, it also mitigates the necessity of Council having to get access to the land and maintain it; either through an access agreement with a private land owner or construction of an access over the dune hill.
- 17 It is to Council's advantage for Byron's to continue to maintain this area rather than adding it to Council's maintenance schedule. It would cost approximately \$2,000 - \$3,000 per year for Council to include maintenance of this area in the schedule for Tasman Road Reserve.
- 18 Taking into consideration the above points, officers consider that the best option is to have an exclusive lease with Byron's Resort.

CONSIDERATIONS

Policy considerations

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

Legal considerations

- 20 Section 54(1) of the Act authorises the Council to enter into a lease for recreation reserves.
- 21 New lease documentation will be drafted and will be reviewed by the Council's legal advisor before being presented to Byron's for signing.
- 22 Section 54(2) of the Act requires that Council give public notice of the new lease proposed to be granted in accordance with section 119 of the Act. A period of not less than one calendar month must be provided by the Council for objections or submissions to be received. Under section 120 of the Act, Council must consider any submissions received and review its recommendation in light of the submissions. Any submissions received will be considered at the Council meeting of 18 August 2016.

Financial considerations

- 23 Given the limited times during the year Byron's will actually use the land, the recommended annual rental is \$500 including GST, with the provision for an annual CPI adjustment. This rental amount takes in to account: negotiation with the owners of Byron's about what would be viable for them; the cost of maintenance should Council be required to take this over; the land could be

available for public use when not required by Byron's and there are no plans for further development at this stage.

- 24 Costs associated with a new lease, including costs associated with public notification, are required to be covered by the Lessee.

Tāngata whenua considerations

- 25 There are no known issues for consideration relating to iwi or the Treaty of Waitangi.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

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

Consultation already undertaken

- 27 As the proposed lease is required to be publicly notified, community and other agencies have not been specifically consulted in this matter. All potentially affected parties will have the opportunity to make a submission during the public notification process.
- 28 The Ōtaki Community Board has been kept up to date on this matter and are supportive of a formal lease with Byron's.

Engagement planning

- 29 If the recommendations in this report are approved then officers will arrange for public notification, in accordance with section 119 of the Act.

Publicity

- 30 As this is a new lease on Reserve land, one month public notification is required. The requirements of the Act which define public notice to be: publishing the notice once in a newspaper circulating in the area in which the reserve is situated and in such other newspapers (if any) as the administering body decides.
- 31 The appropriate Council communication channels will be used to ensure key stakeholders and audiences are aware of the process and outcome.

RECOMMENDATIONS

- 32 That the Environment and Community Development Committee authorises the Chief Executive to undertake the required public consultation process for the lease proposal as outlined in this report (CS-16-1859), allowing for public use when possible, for the land at Tasman Road Reserve, Ōtaki, shown in Appendix 2, to Byron's Resort Motels and Campground. A final decision regarding the proposed lease will be made at the Council meeting of 18 August 2016, following a report back from Council officers on submissions received.

OR

- 33 That the Environment and Community Development Committee authorises the Chief Executive to undertake the required public consultation process for the exclusive lease proposal as outlined in this report (CS-16-1859) for the land at Tasman Road Reserve, Ōtaki, shown in Appendix 2, to Byron’s Resort Motels and Campground. A final decision regarding the proposed lease will be made at the Council meeting of 18 August 2016, following a report back from Council officers on submissions received.

Report prepared by	Approved for submission	Approved for submission
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ATTACHMENTS

Appendix 1: Byron’s Resort and Tasman Road Reserve

Appendix 2: Plan of land area proposed for lease at Tasman Road Reserve

Appendix 1 - Byron's Resort and Tasman Road Reserve



Appendix 2 - Proposed Lease Area (hatched area)

