

Report for Agenda Item: 3

Department: Property & Infrastructure

Proposed new lease to Canterbury Westland Kindergarten Incorporated for the Frankton Kindergarten

Purpose

The purpose of this report is to consider granting a new lease to the Canterbury Westland Kindergarten Incorporated for the Frankton Kindergarten premises, for which the lease (granted to Central Otago Kindergarten Association) has expired.

Recommendation

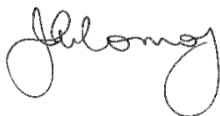
That the Council uplift the item from the table and:

1. **Note** the contents of this report;
2. **Approve** a new lease to the Canterbury Westland Kindergarten Incorporated over Lot 2 DP 392200 subject to the following terms and conditions:

Commencement	1 March 2016
Term	20 years
Rent	Pursuant to Community Pricing Policy
Reviews	Two yearly
Use	Operation of a Kindergarten and ancillary services
Assignment/Sublease	With Council approval
Liability Insurance	\$2 million
Expiry Conditions	Improvements revert to Council ownership if no new lease granted with no compensation
Early Termination	Council can give 60 months' notice of early termination if the land is required for the 'provision of core infrastructure services'. Compensation payable pursuant to Council's standard compensation calculation clause.

3. **Delegate** signing authority to the General Manager, Property and Infrastructure.

Prepared by:



Joanne Conroy
Property Manager - APL
13/07/2016

Reviewed and Authorised by:



General Manager, Property
and Infrastructure
15/06/2016

Background

- 1 Council granted a lease to the Central Otago Free Kindergarten Association (COFKA) Incorporated for the Frankton Kindergarten premises from 1 October 1995 for 19 years, 364 days, expiring 29 September 2015. The previous rent was set pursuant to the Community Facility Pricing Policy at \$967.20 plus GST per annum.
- 2 In recent years the Kindergarten has been managed by the Canterbury Westland Kindergarten Incorporated (CWKI) under their trading name "Kidsfirst". The leases for Frankton and Queenstown facilities remained with COFKA. Kidsfirst has been working with COFKA for some time and are now looking to take over the full operation of a number of kindergartens in the Central Otago and Lakes District regions. That will include assignment of the Wakatipu Kindergarten lease and the new lease at Frankton being in the name of CWKI rather than COFKA.
- 3 Because of the pending change, the new lease was not put in place immediately following expiry. The parties needed to conclude their negotiations so that the new lease would be with CWKI rather than COFKA to avoid then having to assign it.
- 4 The Council land concerned is Lot 2 DP 392200 being freehold land off Robertson Street in Frankton. The site includes a building partly funded by the community and belonging to COFKA. COFKA is transferring ownership of the improvements to CWKI. The site is accessed through the adjacent recreation reserve via a registered right of way easement. An aerial photograph showing the kindergarten location is Attachment A.
- 5 This item was considered at the Council meeting held on 24 February 2016 and a decision was made for it to lie on the table pending further consideration of the termination clauses. The resolution was as follows:

**On the motion of the Mayor and Councillor Ferguson
it was resolved that the item lie on the table pending
further discussion with the leaseholder about the
termination clause.**

- 6 There has since been further discussion about the terms of community leases and licences and early termination clauses. The terms contained in this report reflect those proposed in the earlier report about these terms.

Comment

- 7 The lease has expired and Council can grant a new lease, ask COFKA to remove their improvements and make good the land, or purchase the improvements from COFKA. The improvements are in good condition and still used extensively for early childhood education purposes.
- 8 The lease will not require public notification because the land is not reserve.
- 9 Following the Council meeting in February 2016, conditions around terms and the early termination clause have been re-evaluated and clarified. The early termination clause is proposed to provide Council with a mechanism to end the

lease sooner than 'at expiry' in case the land is needed for another purpose. This mechanism has not been explicit in previous leases, limiting Council's ability to act quickly through a defined process in the lease, in order to utilise sites mainly for infrastructure in the district.

10 In this instance, we recommend 60 months as an appropriate notice period, with compensation payable according to the standard compensation calculation clause in the previous community lease terms report.

11 The compensation clause is to help enable the community group to relocate to another location (potentially another Council owned site), if a major or significant community purpose requires the land. The compensation clause is structured to agree a fair value for the assets, and then reduces it by a pro-rata amount relative to the term remaining before renewal.

12 If a new lease is granted, the suggested terms are:

Commencement	1 March 2016
Term	20 Years
Rent	Pursuant to Community Pricing Policy
Reviews	Two yearly
Renewals	N/A
Use	Operation of a Kindergarten and ancillary services
Assignment/Sublease	With Council approval
Liability Insurance	\$2 million
Expiry Conditions	Improvements revert to Council ownership if no new lease granted with no compensation
Early Termination	Council can give 60 months' notice of early termination if the land is required for 'provision of core infrastructure services'.

Options

13 Option 1 To grant a new lease to Canterbury Westland Kindergarten Incorporated over part of Lot 2 DP 39220 pursuant to the terms detailed above.

Advantages:

14 The kindergarten will be able to continue to operate with significant certainty around their tenure for a further 20 years.

Disadvantages:

15 The land is not available for alternative uses unless the break clause is invoked and in which case the land will not be available for five years.

16 Option 2 Not to grant a new lease and to have the Central Otago Kindergarten Association remove the improvements.

Advantages:

17 The land will be available for alternative use.

Disadvantages:

- 18 There will no longer be a kindergarten in Frankton for pre-school children.
- 19 The community will be disappointed that a reasonably new building partly paid by fundraising would have to be demolished.
- 20 Option 3 Not to grant a new lease and to purchase the improvements from the Central Otago Kindergarten Association.

Advantages:

- 21 Council will have ownership of building that could be used for alternative purposes.

Disadvantages:

- 22 There would no longer be a kindergarten in Frankton.

- 23 Option 4 To grant a new lease to Canterbury Westland Kindergarten Incorporated over part of Lot 2 DP 39220 subject to terms different from those outlined above.

Advantages:

- 24 The kindergarten would be able to continue to operate.

Disadvantages:

- 25 The land would not be available for alternative uses.

- 26 This report recommends Option 1 because it will enable the continuation of kindergarten services in Frankton.

Significance and Engagement

- 27 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because it does not involve a strategic asset and relates to the ongoing use of Council land that has been used for that purpose for twenty years.

Risk

- 28 This matter relates to the strategic risk SR1 – Current and future development needs of the community as documented in the Council's risk register. The risk is classed as low. This matter relates to this risk because the kindergarten is a community asset.

- 29 The recommended option considered above mitigates the risk by ensuring the kindergarten can continue to operate.

Financial Implications

- 30 The current rent received is not significant and it is not proposed to change that. The cost of drafting a new lease will be met by the applicant.

Council Policies, Strategies and Bylaws

31 The following Council policies, strategies and bylaws were considered:

- Community Facility Pricing Policy.
- Significance and Engagement Policy.

32 The recommended option is consistent with the principles set out in the named policy/policies.

Local Government Act 2002 Purpose Provisions

33 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring kindergarten services can continue in Frankton.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

34 The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes District community.

35 No consultation has been undertaken because the facility is existing and granting a new lease will not have a significant impact on the community.

Attachments

A Aerial photograph showing the kindergarten location



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