

QLDC Council
30 June 2016

Report for Agenda Item: 9

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

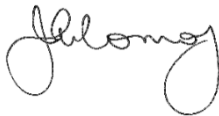
That the Council uplift the item from the table and:

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	10 years
Rent	Pursuant to Community Pricing Policy
Reviews	Two yearly
Renewals	One of five years at Council's absolute discretion
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
Break Clause	Council can give 24 months' notice of termination if the land is required for the 'provision of core infrastructure services' or 'development of a significant community asset'. Compensation period within the first 10 years only.

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

Prepared by:



Joanne Conroy
Property Manager - APL
15/06/2016

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 break clause options and these are considered in a paper appended as Attachment B. The issues discussed in this paper have been incorporated into the revised recommendations presented in this report.

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 the break clause have been re-evaluated and clarified. The break 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 24 months as a sufficient notice period, as no further major building improvements are intended by the lessee, and the building is already 20+ years old. Where Council was to issue a lease covering a new building, the term offered and renewal would be considerably longer, perhaps 33 years with a renewal of the same.
- 11 Break clauses are considered necessary in such community leases to ensure that land can be utilised for the greater district in instances relating to the 'provision of core infrastructure services' or 'development of a significant community asset'. This would see the break clause only enacted for major and significant purposes where overall the effects to the lessee are less than the benefits to the wider community.
- 12 We suggest the break clause is structured into two components, a term requiring compensation to be paid to the lessee, and a term not requiring compensation. Generally, the term requiring compensation will be the period of the lease prior to its first renewal, in the case of the Kindergarten who have an existing building, the term suggested is 10 years.
- 13 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. The renewed term, would not offer any compensation under this formula, as it deemed that considerable use has already resulted from the original building efforts.
- 14 If a new lease is granted, the suggested terms are:

Commencement	1 March 2016
Term	10 Years
Rent	Pursuant to Community Pricing Policy
Reviews	Two yearly
Renewals	Five years at Council's absolute discretion
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
Break Clause	Council can give 24 months' notice of termination if the land is required for 'provision of core infrastructure services' or 'development of a significant community asset'. Compensation period within the first 10 years only.

Options

- 10 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:

- 15 The kindergarten will be able to continue to operate with significant certainty around their tenure for up to a further 15 years.

Disadvantages:

- 16 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 two years.

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

Advantages:

- 18 The land will be available for alternative use.

Disadvantages:

- 19 There will no longer be a kindergarten in Frankton for pre-school children.
20 The community will be disappointed that a reasonably new building partly paid by fundraising would have to be demolished.

- 21 Option 3 Not to grant a new lease and to purchase the improvements from the Central Otago Kindergarten Association.

Advantages:

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

Disadvantages:

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

- 24 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:

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

Disadvantages:

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

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

Significance and Engagement

28 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

29 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.

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

Financial Implications

31 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

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

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

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

Local Government Act 2002 Purpose Provisions

34 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

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

36 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
- B Proposed break clause text to be included in lease

Attachment A: Aerial photograph showing kindergarten location



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Queenstown Lakes District Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented by the GIS data. While reasonable use is permitted and encouraged, all data is copyright reserved by Queenstown Lakes District Council. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED

QLDC – BREAK CLAUSE OPTIONS

1. Lessor Termination Right

1.1 **Termination Notice:** If the Lessor requires possession of the Premises for:

1.1.1 the provision of core infrastructure services (being drinking water supply, waste water collection and treatment, stormwater management and discharge, roading and footpaths); and/or

1.1.2 the development of a significant community asset,

then the Lessor may terminate this Lease on not less than [] months' prior written notice to the Lessee (**Termination Notice**). A Termination Notice may only be served on the Lessee [] years after the Commencement Date] *[Note: To decide whether or not Council can only terminate after a certain number of years or whether this right should be exercisable at any time].*

1.2 **Surrender of Lease:** On the expiry of the period specified in the Termination Notice the Lessee will be deemed to have surrendered the estate and interest of the Lessee in this Lease and the term will expire. The Lessee will yield up vacant possession of the Premises and [all provisions of the Lease applicable on expiry of the term will apply] / [the Lessee shall be required to leave the Premises in a clean and tidy condition but shall not be required to comply with its reinstatement and make good obligations under the Lease] *[Note: To decide whether the Lessee is required to comply with its reinstatement obligations on the termination date]*

1.3 **Compensation:** *Elect one of the following options:*

1.4 **No compensation:** The Lessee may not recover from the Lessor any damages or compensation of any kind, or obtain any order, injunction or other remedy against the Lessor as a consequence of receiving the Termination Notice or the operation of this clause.

OR

1.5 **Compensation:** On the date that the Lessee yield up vacant possession of the Premises [and complies with its reinstatement obligations] in accordance with clause 1.2 above the Lessor will pay to the Lessee an amount (plus GST) calculated in accordance with the following formula:

$$A - \frac{(A \times B)}{C}$$

Where:

A = [the cost of the Lessee's improvements installed or to be installed at the Premises (as certified by a quantity surveyor)] / [the value of the Lessee's improvements installed at the Premises (as certified by a registered valuer)] or \$[] *[Note: Value of improvements can either be assessed or a value agreed up front between the parties]*

B = the number of days from and including the Commencement Date, or (if applicable) the earliest date on which a Termination Notice may be served, to and including the expiry of the notice period under the Termination Notice

C = the number of days from and including the Commencement Date or, (if applicable) the earliest date on which a Termination Notice may be served, to and including

[insert the date the Lease would have expired if the Termination Notice had not been served]

PROVIDED that the Lessee shall not be entitled to any compensation pursuant to this clause if a Termination Notice is served after [insert date]. *[Note: To decide whether or not compensation should cease to be payable after a certain date]*

The Lessee will not otherwise recover from the Lessor any damages or compensation of any kind, or obtain any order, injunction or other remedy against the Lessor as a consequence of receiving a Termination Notice or the operation of this clause.