

**Wanaka Community Board
30 March 2017**

Report for Agenda Item: 1

Department: Property & Infrastructure

Lease variation for Pisa Alpine Charitable Trust

Purpose

The purpose of this report is to consider approval to notify the variation of the Pisa Alpine Charitable Trust (PACT) lease by granting one further right of renewal and removing the requirement to pay rates.

Recommendation

That the Wanaka Community Board:

1. **Note** the contents of this report;
2. **Approve** notification of the intention to grant a further lease term of 33 years to Pisa Alpine Charitable Trust and call for submissions.
3. **Appoint** three Community Board members (any two of which can form a hearing panel) to hear any submissions and make a recommendation to Council.
4. **Approve** a variation of the lease to remove the requirement to pay rates.

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8/03/2017

Reviewed and Authorised by:



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14/03/2017

Background

1. The Pisa Alpine Charitable Trust (PACT) is a charitable trust established in 2009. They negotiated the purchase of the Snow Farm land on the Pisa Range for \$1.7 million in 2011. Council contributed \$518,758 towards the purchase and PACT raised the balance through various grants. The land was purchased in the name of Queenstown Lakes District Council, classified as a recreation reserve pursuant to the Reserves Act 1977, and was to be leased to PACT who will manage and maintain it into the future. The land is known as Lot 5 DP 460313, being 297.3189 hectares.
2. The land is used in the winter for alpine recreational pursuits such as cross country skiing, winter triathlon and biathlon, dog sledding, kite boarding and winter orienteering. In summer the land is used for training running, mountain biking, hiking, overnight tramping and access to the Pisa Range, orienteering and regaining and altitude training by New Zealand and international athletes.
3. Following notification, a lease to PACT was approved by Council in 2013 with the following terms and conditions:

| | |
|-----------------------------|--|
| Commencement: | 6 November 2012 |
| Term: | 33 years |
| Renewal: | One right of renewal for 33 years |
| Rent: | \$1.00 per annum for the first 15 years |
| Reviews: | 2027 and then 3 yearly, taking into account "the unique nature of the area and the contribution made to its purchase, maintenance and improvement by the Lessee". |
| Use: | Nordic sports, summer recreation activities and education activities. |
| Assignment and sub-lease: | With written approval of the Lessor. |
| Maintenance: | Lessee to maintain existing improvements, and keep areas clear and tidy, and will meet the Lessees share of maintenance costs of the road, water and electricity supplies. |
| Public Liability Insurance: | \$1 million |

4. An Agreement to Lease was signed by the parties in late 2012 but the final lease has not been signed because PACT were unhappy with some of the terms, namely the requirement to pay rates and the total term of 66 years. PACT are seeking for rates to be waived and for a further term of 33 years to be included so that the total term is 99 years.
5. PACT have drafted and supplied an operating and business plan. They employ staff to assist with management of the area, and the Directors of the Trust oversee the strategic and business planning. Essentially PACT will be the operating entity for the land with funding for the operational facilities being raised from private benefactors. Operating funds are not being sought from Council. The proposed budgets show a small surplus each year but without fundraising, funds would not be sufficient to cover replacement equipment and other capital costs over time.

Comment

6. It is unusual, but not impossible for Council to grant a lease for 33 years with two rights of renewal for 33 years each, so that the total term is 99 years. This situation is justified because PACT purchased the land for the community, albeit with a contribution from Council. While they acknowledge that the Reserves Act 1977 will give some protection to ensure that the land remains available for community recreational use, they believe the investment of community funds outside of Council, and their intention to grow and develop the land, justifies the need for a longer term.
7. In order to extend the term, the Reserves Act requires that the intention to grant the lease be re-notified calling for submissions. If submissions are received a hearing will be required and then the hearing panel will make a recommendation to Council, including exercising the consent of the Minister of Conservation.
8. The current lease requires that the Lessee “pay and discharge all rates, tax or other charges” which is a standard Council lease term. However, most recreational activities do not trigger the necessity for the land to be rated and in this case the rating department has advised that because they charge entry and rental fees, commercial rates were applied. To date these have been significant at around \$8,000 per annum. The Trust simply cannot afford to pay this and have asked that this clause be removed from the lease.
9. As PACT is a registered Charitable Trust, under the Local Government (Rating Act) 2002 the Trust could apply to Council for exemption to pay rates, if they owned the land. As the land is owned by Council this clause doesn't apply. Therefore, in having the land in the name of Council even though they raised the funds to purchase it, PACT are penalised. For this reason, the situation is unique.
10. We have been working with the Rates Department to have the rates reassessed on the basis of the Trust's non-profit status. The Department have now confirmed that the land will be banded to a non-profit setting with minimal rates being charged going forward in the region of \$200 per year. However, the Trust are concerned that this could change in the future, and are seeking to remove the need to pay rates from the lease. If that is agreed, whatever rates are applied, they would need to be met by Council.

Options

11. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.
12. Option 1 To approve notification of the intention to grant a lease for Pisa Alpine Charitable Trust over Lot 5 DP 460313 for 33 years with two rights of renewal for 33 years each, and to approve waiving the necessity for PACT to pay rates, with all other terms and conditions as per the Agreement to Lease from 2012.

Advantages:

13. The lease to PACT can be finalised and the land managed by PACT through to 2111.
14. The recreational activity will be affordable because rates would not be imposed.

Disadvantages:

15. The land is committed to PACT for a significant term.
 16. Council may have to pay the rates on behalf of PACT.
17. Option 2 To approve notification of the intention to grant a lease for Pisa Alpine Charitable Trust over Lot 5 DP 460313 for 33 years with two rights of renewal for 33 years each, but not to approve waiving the necessity for PACT to pay rates, with all other terms and conditions as per the Agreement to Lease from 2012

Advantages:

18. The lease to PACT can be finalised and the land managed by PACT through to 2111.
19. Council will not have to meet the rates cost.

Disadvantages:

20. The land is committed to PACT for a significant term.
 21. Paying rates will be financially difficult for PACT.
22. Option 3 Not to approve notification of the intention to grant a lease for Pisa Alpine Charitable Trust but to approve waiving the necessity for PACT to pay rates, with all other terms and conditions as per the Agreement to Lease from 2012

Advantages:

23. The lease will only be for a total term of 66 years rather than 99 years.
24. The recreational activity will be affordable because PACT won't have to meet the rates cost.

Disadvantages:

25. The land is still committed to PACT for a significant term.
26. Council may have to meet the cost of the rates.
27. PACT may refuse to sign the lease and either Council will have to take over management of the facility, or it will close down.

28. Option 4 Not to approve notification of the intention to grant a lease for Pisa Alpine Charitable Trust and not to approve waiving the necessity for PACT to pay rates, so that the terms and conditions remain as per the Agreement to Lease from 2012

Advantages:

29. The lease will only be for a total term of 66 years rather than 99 years.

30. Council will not have to meet the cost of rates.

Disadvantages:

31. The land is still committed to PACT for a significant term.

32. Paying rates may be unaffordable for PACT.

33. PACT may refuse to sign the lease and either Council will have to take over management of the facility, or it will close down.

34. This report recommends **Option 1** for addressing the matter. This is an unusual situation whereby a Trust raised significant funds in the community to enable a recreation reserve to be purchased, and then gave the land to Council. In return they are seeking the right to lease it for a total of 99 years to ensure the activities can continue and develop for the benefit of the community. They do not believe 66 years is sufficient time and their ability to grow and continue will be reduced if they are required to pay rates.

35. It is worth noting that any additional right of renewal provided in the lease would be subject to the terms and application of relevant sections of the Reserves Act 1977 (as is the case with the existing right of renewal), and would be drafted on that basis. This means that renewal of the lease will not happen as of right – the lessee will need to comply with the renewal requirements set out in the Reserves Act 1977 (including, by way of example only, a requirement that the lessor is satisfied that another use of the land should not have priority in the public interest).

Significance and Engagement

36. This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to a recreational reserve which is a strategic asset. However, because a lease over the land has already been approved, the significance is not seen as high.

Risk

37. This matter related to the operational risk OR11, decision making, as documented in the Council's risk register. The risk is classed as low.

38. The recommended option considered above mitigates the risk by ensuring the process of granting a new lease is commenced in a timely and legally compliant manner.

Financial Implications

39. If rates are not waived or reduced, then Council will need to meet the on-going rates obligation, currently approximately \$200 per annum.

Council Policies, Strategies and Bylaws

40. The following Council policies, strategies and bylaws were considered:

- Community Facility Pricing Policy.
- Lease Terms Policy.

41. The recommended option is consistent with the principles set out in the Community Facility Pricing Policy, but not the Lease Terms Policy because of the unique circumstances and because the main terms and conditions were agreed prior to the adoption of that policy in 2016.

42. This matter is not included in the 10-Year Plan/Annual Plan and the funds for rates would need to be included in the annual plan going forward if they are not waived.

Local Government Act 2002 Purpose Provisions

43. 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 ensure a Charitable Trust can continue to develop and offer recreational activities to the public at a low cost;
- 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

44. The persons who are affected by or interested in this matter the residents of the Queenstown Lakes District.

45. The Council has already notified the intention to grant the original lease and no submissions were received. The recommendation in this report is that further consultation is undertaken in relation to the intention to grant a longer term that previously notified.

Attachments

A PACT Report to QLDC – October 2016