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**REPORT 2**  
*(1215/53/IM)*

## **GRANTING OF NEW LEASE TO INNERMOST GARDENS INCORPORATED OCCUPYING WELLINGTON TOWN BELT**

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### **1. Purpose of Report**

This report seeks Committee approval to the granting of a new lease over Wellington Town Belt to Innermost Gardens Incorporated.

### **2. Executive Summary**

The report provides a description and assessment of Innermost Gardens Incorporated requesting a new lease together with officers' recommendations to grant a lease to the group. It also assesses the suitability of an application by the Crossways Crèche Committee to lease the building and why this is not possible under the Town Belt Management Plan, Reserves Act or Town Belt Deed.

The land being leased to the group is classified as Public Recreation Ground, Wellington Town Belt. This lease will be granted under section 54 of the Reserves Act 1977.

The Leases Policy for Community & Recreation Groups 2001 (the Leases Policy) provides guidance for assessing new leases. This process includes assessment of the strategic fit, activity sustainability, optimal use of resources, environmental impact, demonstrated need and support from the community and the need for a lease.

The report outlines Council's strategic direction and priorities and describes the new lease assessment process, demographic and recreational trends. Officers have outlined how the proposed lease fits the Council's strategies and priorities.

### **3. Recommendations**

It is recommended that the Committee:

- 1. Receive the information.*

2. Approves, subject to the conditions noted below, the granting of a new lease to the following group under the Reserves Act 1977:

<b>Group</b>	<b>Type of Lease</b>	<b>Location</b>	<b>Term (years)</b>	<b>Annual Rent (GST exclusive)</b>
<i>Innermost Gardens Incorporated</i>	<i>Premises and Ground</i>	<i>Mt Victoria (Town Belt)</i>	<i>3 + 2</i>	<i>\$138 Maintenance Fee</i>

Note that any approval to grant a new lease will be conditional on:

- (a) *appropriate consultation with Iwi being completed;*
- (b) *The proposed lease on Recreation Reserve being publicly notified in accordance with sections 119 and 120 of the Reserves Act 1977 together with any conditions set out in any approved Management Plans (e.g. Town Belt Management Plan);*
- (c) *The Group reimbursing Council for any costs incurred in advertising;*
- (d) *There being no objections or sustained objections resulting from the required consultation or notification.*

## **4. Background**

### **4.1 The Former Bandoliers Site at Lawson Lane, Mount Victoria**

The site is part of the Wellington Town Belt and is managed in accordance with the Town Belt Management Plan. Mt Victoria Bowling Club and Charles Plimmer Park are nearby and residential buildings are situated along the western boundary.

The site is made up of:

- A former bowling green of around 1,359 square metres
- An open green space area of around 936 square metres
- A split level building of 185 square metres which has a kitchen with stove, fridge, toilets, changing area and large open room (the building)
- An active alarm system

The site was originally the Mt Victoria Women's' Bowling Club and was taken over by the Bandoliers Marching Association until they relinquished the lease in 2005.

The building is in good condition and any outstanding maintenance will be carried out by the Council prior to the lease commencing.

## **4.2 Registrations of Interest to Lease the Site**

In 2006 Council officers publicly sought registrations of interest by tender to lease the building and site, in accordance with the Leases Policy for Community and Recreation Groups. Three applications were received, they were:

- The Mt Victoria Residents Association
- Crossways Community Crèche Incorporated
- Volleyball New Zealand Incorporated

Council officers from Parks & Gardens, Property & Parking Services and City Services & Events assessed each of the applications against the Council's obligations under the Town Belt Deed (the Deed), the Reserves Act 1977 (the Reserves Act), the Town Belt Management Plan (TBMP) and the Leases Policy, and met with the representatives of each applicant organisation.

It was determined that Volleyball New Zealand had the best fit with the Council's strategies and policies relevant to recreation groups and the status of the land being Town Belt which has been set aside primarily for recreation purposes. Volleyball New Zealand subsequently withdrew their application.

Crossways Community Crèche (Crossways Crèche or the Crèche) was not deemed eligible to use the site as legal advice indicated a crèche is not a recreational activity and was not a permitted activity under the Town Belt Management Plan. Mt Victoria Residents Association was committed to working with other applicants to ensure the facility was well used by the local community and were not interested in leasing the facility on an exclusive basis. However, their intended use of the building was not recreational, so they were not deemed eligible tenants either.

In early 2007, Innermost Gardens Incorporated approached the Council with a view to lease the site and after several meetings between the Council and the recreational group, the group made a formal application to lease the site for a community garden.

In May 2007 Crossways Crèche approached Council again and asked that it reconsider Crossways Crèche for the site given the imminent sale of Crossways by the Presbyterian Church. The Crèche would consider a short term tenancy (to enable them to continue operating until they found a permanent home) or a longer term lease. Crossways Crèche obtained a legal opinion supporting the use of a crèche on Town Belt.

## **5. Discussion**

### **5.1. Innermost Gardens Incorporated**

Innermost Gardens was formed in 2006 with the aim of establishing a meeting place for Wellington migrant and refugee women to share and implement creative ideas for gardening, recipes and natural remedies.

The group made up of mainly migrant women became an incorporated society on 4 January 2007 and has a current membership of 25 women with a growing network and a

total of 88 women in the society's email group. The main project of the group is to establish a community garden for local, migrant and refugee women to grow familiar foods and celebrate a sense of place in Wellington as their new home. The project will provide "active creativity" as a way of dealing with a sense of depression due to isolation as well as having a social impact on cultural awareness that will lead to better settlement outcomes and positive community cohesion.

The group will use the building for meetings, workshops, celebrations and potluck dinners. The disused bowling green just to the south of the building will be converted to a community garden for the purpose of growing organic vegetables.

This land has previously been used as a bowling green, the Council has confirmed through independent testing that the soil contains pesticide residues, in particular DDT. These residues are above Biogro organic standards. Innermost Gardens Inc. are keen to remove the pesticides from the soil in order to grow organic vegetables and will seek funding for this from several grants organisations and the Ministry for the Environment's Contamination Sites Remedial Fund.

It is estimated by Innermost Gardens Inc. that it will take about 2 years for the pesticide residue to be reduced to reach the biogro organic standard and the green converted to a sustainable vegetable garden. Therefore use of the land will be minor and not incur a rental during this period of decontamination. The Council will look to include the use of the gardens in the annual rental at the end of the initial 3 year term in the lease.

## **5.2 Crossways Community Crèche**

Crossways Community Crèche was also considered as a tenant for the building. The Town Belt status of the land meant that Council officers concluded a crèche was not a compliant use of the land and the Crèche could not be offered a lease.

### **5.2.1 Background**

In early 2006 Council was approached by the Crossways Crèche Committee to support a relocation of the crèche. This was prompted by a change in licensing requirements. A change in governance at the Crossways Community Centre in 2007 was another trigger to further this discussion.

Council worked with the Crossways Crèche committee to help identify another suitable venue. Several venues were examined and explored, but for a number of reasons none were found to be suitable.

The Crossways Crèche committee also explored the possibility of using the Bandoliers Bowling Club as a site to develop the community crèche. As part of this an assessment was carried out as to the suitability and costs of conversion. The Crossways Crèche committee's view is that the Bandoliers is a strong venue for conversion to an early childhood centre.

This option has an estimated cost of \$380,000 which, with the exception of scheduled maintenance by Parks and Gardens, would have to be entirely met by the Crossways Crèche committee. The Crossways Crèche Committee are unlikely to receive any major

grants from the Ministry of Education for this development, as this funding is discretionary and targeted at low decile areas across New Zealand. The Committee also appreciate that the form of their ECE centre needs to change, becoming larger to become more sustainable. This will enable them to raise the enrolments to 30 children and provide full day care. They will receive a possible student based set-up grant of \$19,000 from the Ministry of Education. The Crossways Crèche Committee has funding of \$50,000 and an active committee.

### **5.2.2 Granting a Lease on Town Belt Land**

When granting a lease on Town Belt land the Council must consider its obligations under the 1873 Town Belt Deed (the Deed), the Reserves Act 1977 (the Reserves Act), the Town Belt Management Plan (TBMP) and the Council's Leases Policy for Community and Recreational Groups (Leases Policy).

Legal advice received from both Phillips Fox and Simpson Grierson states that Crossways Crèche cannot be considered as a tenant on Town Belt land as its activity does not meet the obligations under the Deed, the Reserves Act the TBMP or the Leases Policy.

The Crossways Crèche sought independent legal advice from Chapman Tripp that concluded there was an argument that the Crèche's activities were recreational and compliant with the Town Belt.

#### **Legal Advice**

Phillips Fox and Simpson Grierson disagreed with the Crossways Crèche's legal advice and do not consider a crèche to be a recreational activity.

Simpson Grierson has concluded that:

“a crèche or any similar childhood facility is not recreation based, and therefore the Council is not able to grant a lease of premises on land held for recreation purposes to such a facility. We note that this is consistent with the approach held by the Department of Conservation in the past”.

“The TBMP addresses the question of leasing Town Belt in some detail and makes it clear that the focus of the TBMP is on recreational activities...in our view, a crèche is not a recreational activity, and therefore a lease to a crèche is not contemplated or permitted by the TBMP.”

Phillips Fox concluded:

“Although we consider that in some circumstances it would be possible for a lease to a crèche to be granted on a recreation reserve under the provisions of section 73, in the case of the Town Belt the provisions of the Deed (which as noted above require the use of the Town Belt as a public recreation ground) and the provisions of the TBMP (which emphasise recreation, and in particular informal outdoor recreation) would under the provisions of section 5(2) of the Reserves Act limit the Council's ability to exercise that power.”

“In our view recreation suggests an activity or pastime which is pursued for pleasure or interest, rather than for the purpose of a crèche which arguably are education or childcare.”

### **The Town Belt Deed**

The Wellington Town Belt was vested in the Wellington City Council by the Town Belt and Basin Reserve Deed of 1873. The Deed remains the governing authority by which the Wellington City Council controls the Town Belt.

The Deed provided for the Town Belt land to be kept forever ‘as a public recreation ground for the inhabitants of the city of Wellington’ to be used ‘for such purposes of public utility to the City of Wellington and the inhabitants thereof as shall be expressed and declared’.

### **The Reserves Act**

The Town Belt is held ‘upon trust for public recreation ground’. Recreation reserves are defined in section 17 of the Reserves Act as being:

“for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.”

Phillips Fox have concluded that:

“the primary consideration therefore in the exercise of Council’s powers under the Reserves Act over the Town Belt is therefore the Town Belt’s use for public recreation, with and emphasis on outdoor recreation.”

### **The Town Belt Management Plan**

The TMMP states that the aims are to manage the Town Belt in accordance with the principal intention of the Deed, being to keep the Town Belt forever as a public recreation ground for the people of Wellington, and to substantially manage the Town Belt protecting and enhancing its natural, landscape, cultural and historic values.

The TBMP addresses the question of leasing town belt in some detail. It makes it clear that the focus of the TBMP is on recreational activities.

The TBMP sets out the Council’s aims and objectives for the management of the Town Belt and provides a framework for consistent decision-making.

### **Leases Policy for Community and Recreation Groups (Leases Policy)**

The Leases Policy also reinforces Council’s significant role in fostering the well-being and strength of communities by facilitating networks, providing recreation opportunities and supporting community facilities.

“The primary objective of leasing reserve land is to enable facilities to be established which will facilitate the public’s recreational use of the land” (Leases Policy 2001, p.8)

The objectives of the Leases Policy are:

- *To strengthen communities through leasing land and buildings to groups.*
- *To ensure that the provision of leases is fair, equitable and responsive to community needs.*
- *To formally standardise the requirements of the lease.*

The Leases Policy outlines the process for a new lease and lease renewal. The process is outlined in Section 5.5.

### **5.3 Overview of the Community & Recreation Leases**

One hundred and forty seven sports, recreation and community groups have current leases or are seeking fresh leases with the Council for land and/or premises on recreation and Open Space land.

This report presents a newly formed recreational group requesting a new premises and ground lease of the commonly known Ex-Bandoliers site located at Lawson Lane and Pirie Street, Mount Victoria on our Wellington Town Belt land.

### **5.4 Strategic Context and Direction**

The assessment of new leases process provides the Council with an opportunity to evaluate a group’s community value and/or proposed contribution to the various Council strategies and policies relevant to recreation and community groups. These strategies and policies include:

- Social and Recreation Strategy
- Environment Strategy
- Leases Policy for Community and Recreation Groups
- Reserve Management Plans such as the Town Belt Management Plan.

#### **5.4.1 Social and Recreation Strategy**

Sport, recreation and community group leases fit under the Social and Recreation Strategy. This Strategy aims to build strong, safe and healthy communities for a better quality of life. The Council will provide greater leadership to promote a high level of social cohesion and participation. High levels of participation in the community including sports and recreation groups are critical to resilient communities.

The Social and Recreation Strategy encourages collaborative partnerships with our sports and recreation groups to ensure the best delivery of services and programmes and the maximum use of amenities and resources.

## **5.4.2 Environment Strategy**

Sport, recreation and community group leases also fit within the context of the Environment Strategy, which emphasises sustainable development and the protection and enhancement of our natural environment. The Strategy recognises the inter-relationship between social and cultural well being and the environment. It aims to make Wellington more liveable, where our natural environment is more accessible to all for a wide range of social and recreation opportunities while not compromising our environmental values.

## **5.4.3 Recreation Policy (2003)<sup>1</sup>**

The Recreation Policy identifies that quality recreation and leisure opportunities enhance the city as a place to live and visit, and contributes to community well-being. It aims to offer a diverse range of accessible and affordable recreation activities, enhance the contribution of recreation events to the city's economy, and encourage an increase in participation.

The Council understands that the provision of recreation is provided to a wide variety of organisations including sports and recreation groups. The Council plays a pivotal leadership role and aims to establish strong partnerships with these organisation and groups to achieve and sustainable recreation opportunities for the city.

## **5.4.4 Leases Policy for Community and Recreation Groups (Leases Policy)**

The Leases Policy is discussed above in section 5.2.2.

## **5.4.5 Reserve Management Plans (For example the Town Belt Management Plan)**

The Town Belt Management Plan supports leasing land to groups provided their activity is primarily concerned with public outdoor recreation, is open to public participation, does not restrict public access, and is not detrimental to any of the other values of the Town Belt. The term of the lease shall be no more than 10 years, with no automatic right of renewal.

## **5.5 Assessment of New Leases**

New leases apply in instances where either the land and/or buildings have not previously been leased or there has been an existing lease, but the lessee has not elected to renew it and it is available to be leased to another group.

The process for a new lease is as follows:

- Step 1. An application is made to the Council for a new lease and the applicant provides Council officers with relevant information including, financial information, historical patterns of use and future prospects.

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<sup>1</sup> Formerly known as the 'Recreation Strategy' before 2005/6 Strategic Review.

- Step 2. Officers evaluate information, including assessing whether the group will be sustainable (membership and financial), their activities are consistent with Council's strategic direction and objectives. If there is evidence that these criteria are met to a significant extent a new lease will be available to the lessee.
- Step 3. Communicate officers' decision to the applicant. If a new lease is recommended then negotiate draft lease tenure, rental and terms and conditions.
- Step 4. Seek approval in principle from Regulatory Committee.
- Step 5. Public notification following the Reserves Act process.
- Step 6. If all approvals are granted and no objections are sustained, then lease documents will be prepared.

## **5.6 Lease Agreement and Documentation**

The Lease Policy provides guidance and a standard framework for the lease agreement and documentation. This includes, lease rental and tenure, procedural matters and the responsibilities and requirements of the lessee and the Council.

The Council offers ground leases and premises leases to community groups. Some groups own their own building and are responsible for its maintenance and insurance. In these cases the Council can offer a ground lease, which is a lease for the land only. Groups that lease Council owned buildings are granted a premises lease. These groups lease both the land and the Council owned buildings on the land. They pay a maintenance fee to the Council for their share of the external maintenance costs.

The leases offered to the groups are in the standard format in accordance with Leases Policy and Committee's resolution of 7 February 2007. The standard leases cover the following terms and conditions:

- Reporting requirements
- Allocation of responsibilities between lessee and lessor
- Payment of rates, water and other utilities
- Maintenance of buildings, structures, vegetation and land
- Insurance
- Subleasing
- Granting security against a lease
- Termination of leases
- External signs
- External commercial advertising within leased areas.

## **5.7 Term of Lease**

In accordance with the Leases Policy the standard tenure for leases is ten years plus one further term of ten years. (The standard term for a lease on Town Belt is 10 years with no automatic right of renewal).

However, there are occasions where it is appropriate to use a degree of flexibility in the term of a lease. This flexibility is at the Council’s discretion and is designed to allow Council to respond to changing community needs and expectations. The reasons a shorter or longer term may be offered are limited to the following circumstances:

*Table 1: Reasons for a shorter or longer term may be offered.*

<b>Shorter Tenure</b>	<b>Longer Tenure</b>
Declining trends in an activity	Recognition of past asset investment
Evolution of activities that will compete for assets	Proposed asset investment
Alternative uses are planned by the Council for the lease asset (for example, demolition of the buildings in X years)	To provide certainty for external funding purposes
Life expectancy of facility/ assets is less than lease tenure	Dependence by community or membership on continuity of a key activity
Group asks for a shorter tenure	

## **5.8 Monitoring and Reporting Requirements**

The Council is interested in the ongoing performance of community and recreation groups so it can monitor the achievement of strategic objectives for the city. The reporting requirements in the lease are not intended to be a control mechanism, rather a means of communication between the Council and the groups.

Reporting generally includes the requirement for:

- Membership numbers and usage rates
- Community events run through the leases
- Financial information

## **5.9 Relevant Demographic Trends**

This section outlines some of the demographic changes and relevant trends that have occurred or are projected city-wide. This information assists in portraying what is happening at the community, regional and national level and can be used to make informed decisions.

The proportion of young people who live in Wellington and are sedentary has increased significantly. In 1997 seven percent of young people living in this region were sedentary, but by 2001 this figure had risen to 31% (SPARC Physical Activity Survey<sup>2</sup>).

It is predicted that by 2026 there will be:

- 2,000 fewer children aged 0-14
- 20,000 more people aged 40-64
- 14,000 more people aged 65 plus.

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## **Gardening**

American studies have shown that community gardens can have a positive impact on residents and are instrumental elements in promoting community participation and social cohesion. Community gardens also provide health and exercise benefits to those participating in gardening (source: American Community Garden Association Website, [www.communitygarden.org](http://www.communitygarden.org)).

Within the Wellington region, participation in gardening is higher among women (64%) compared to men (50%). The Quality of Life Survey 2004 showed Wellington City residents were less likely to garden or mow lawns in their spare time in comparison to the rest of country (13% vs 24% nationally).

There are several known organised community gardening groups (in addition to the newly formed Innermost Gardens Incorporated) operating in Wellington City - Operation Green Thumb assist setting up community gardens and provides training and support within the Wellington area for people wanting to grow organic vegetables and for those people on low incomes.

Common Ground Community Garden are based at the Home of Compassion in Island Bay and hold regular organised working bees every Sunday between 11.00am – 3.00pm which involves gorse cutting, seaweed collection, building compost heaps and plots. There is also a community garden on Town Belt in Tanera Park.

## **6. Conclusion**

Innermost Gardens Incorporated have requested a new lease on Open Space, Reserve Land and the Wellington Town Belt. They have provided sufficient evidence to demonstrate their strategic fit and are sustainable for the proposed term of their lease. The group is in agreement with the proposed terms and conditions, including the term of the lease.

Officers propose that the Committee exercise its delegated authority to approve the granting of a new lease to this group, subject to the conditions identified in the Recommendations Section (Section 3) of this report.

Contact Officer: David Shaw, Property Advisor, Community Purpose Property

## Supporting information

### a) Strategic fit

7.1 Recreation Opportunities – Wellington offers a diverse range and an abundance of quality recreation and leisure activities that are easily accessed and affordable.

7.2 Participation and Health – Increased participation in recreation and leisure activities enhances overall health and well-being

7.3 Events and Identity – Year-round recreation activities and event contribute to the economic prosperity and identity of Wellington.

### b) Annual Plan reference

This is a Corporate Services activity as opposed to an Annual Plan activity.

### c) Annual Plan and Long Term Financial Strategy implications

There is currently no Annual Plan measure for this activity.

### d) Treaty of Waitangi implications

The recommendations in this report are subject to consultation with appropriate Iwi being completed.

### e) Consultation

A copy of the notification will be sent to the Friends of the Town Belt, and leases will be publicly advertised in accordance with the Town Belt Management Plan 1995.

Public notification is not required for leases granted under the Local Government Act 2002.

### f) Legal implications

Each lease is referred to Council solicitors to confirm that documentation is in order prior to either party signing the final lease documents. Council solicitors to provide certification to support this.