
AMENDMENT TO THE LEASES POLICY FOR COMMUNITY AND RECREATION GROUPS

1. Purpose

The purpose of this report is to seek a delegation so that the Chief Executive can grant leases on public land to recreational and community groups, and to amend the Leases Policy accordingly.

2. Executive Summary

Legislative changes made in the 2002 Local Government Act mean that decisions being made under the Reserves Act 1977 can now be delegated to officers.

The Council's Terms of Reference (TOR) and delegations, approved on 5 November 2004, are based on a number of principles, including:

- promoting effective and efficient decision-making
- ensuring decisions are made at the most appropriate level
- ensuring elected members are not required to make low level decisions.

Currently, the Strategy and Policy Committee's TOR and delegations contemplate that officers are able to grant leases, if this is consistent with Council policy. The Leases Policy, however, does not allow for this provision. In line with the delegations framework, officers recommend that the authority to make decisions on leases of land and/or buildings on public land is delegated to the Chief Executive, and that the Council's Leases Policy is amended to reflect this.

3. Recommendation

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend that Council agree that the Chief Executive has the delegated authority to approve leases (of land and/or buildings) on public land.*
3. *Recommend that Council amend Section 2.2 of the Council's 'Leases Policy for Community and Recreation Groups' as follows:*

"Leases of public land require final approval by the Chief Executive, except in special circumstances (to be determined at officers' discretion) when the lease

will be referred to the appropriate Council committee or subcommittee for final approval. Such special circumstances include:

- *if the lease approval is likely to be of wider public interest*
- *if the lease document requires special conditions*
- *if the applicant requests a review of the Chief Executive's decision".*

4. Background

The Council adopted its *Leases Policy for Community and Recreation Groups* ("Leases Policy") in October 2001. The Leases Policy defines the Council's position in relation to the use of public land by recreational and community groups and covers both "new" and "fresh" leases. Public land refers to:

- all recreation reserve land (which includes Town Belt land)
- other categories of reserve land
- open space land that is non-reserve but is managed as reserve.

Leases approved under the Leases Policy must also observe provisions in Council approved management plans, as appropriate.

Since the adoption of the Leases Policy, 36 leases have been agreed to by the appropriate Council committee or subcommittee. During the 2001/04 triennium, the decision to approve 10-year leases was delegated to the Built and Natural Environment Committee (34 leases were approved) and leases of under three years to the District Plan and Reserves Management Subcommittee (two leases were approved). For the 2004/07 triennium, this decision has been delegated to the Strategy and Policy Committee (no leases have yet been approved).

5. Discussion

5.1 Legislative Changes

While the Council is empowered to lease recreation reserve land under Section 54 of the Reserves Act 1977, the Act contains no specific delegation provision. As such, the delegation of these decisions is governed by the provisions of the Local Government Act (LGA). Under the LGA 1974, Council could delegate Reserves Act decisions to committees and subcommittees, but not to officers (section 716 of the 1974 LGA provided for the delegation of LGA powers to officers, but not functions, powers and duties in other Acts). The LGA 2002 provides that all local authority responsibilities, duties and powers, unless specifically reserved, can be delegated to officer level. This includes decisions to lease recreation reserve land under the Reserves Act.

5.2 Committee Terms of Reference/Delegations

The Council's TOR and delegations, approved on 5 November 2004, are based on a number of principles, including:

- promoting effective and efficient decision-making
- ensuring decisions are made at the most appropriate level

- ensuring elected members are not required to make low level decisions.

Paragraph 3.6 of the Strategy and Policy Committee's (SPC) TOR¹ contemplates that there will be some leases that can be granted by Council officers without obtaining committee approval (provided that the approval is consistent with Council policy):

- 3.6 [The committee has the responsibility and authority...] In respect of land held or managed under the Reserves Act 1977 and council owned open space land:
- c) To approve leases, licences and concessions on Council owned open space and reserve land **when not provided for in approved Council policy**.

5.3 The Leases Policy

The current Leases Policy states:

Section 2.2: All leases of public land require final approval by a subcommittee or committee of Council. Any points of disagreement in relation to the assessment of applications, terms and conditions of leases or other matters discussed under this Policy, will be addressed in a subcommittee or committee forum.

Officers recommend that the decision to grant approval for leases is delegated to the Chief Executive, as allowed for by the LGA 2002. This is consistent with the general approach to delegations, which is to delegate decision-making to the most appropriate level for the purpose of ensuring the efficiency of Council decision-making.

The majority of leases considered by a Council committee or subcommittee since the Leases Policy was adopted have been approved without amendment, and in most instances, without debate.² Officers' recommendations must be consistent with comprehensive requirements in the Leases Policy and Council approved management plans which ensure leases are well examined and evaluated before final approval is given. For example, under the Leases Policy, officers must:

- evaluate each lease against a set of assessment criteria³
- undertake a public consultation process
- obtain consent from the Minister of Conservation before offering a new lease to any group using recreation reserve land (except in cases where an approved management plan exists).

¹ The full TOR is provided in Appendix 1.

² All of the 34 leases considered by the Built and Natural Environment (BNE) Committee during 2002-04 were negotiated in line with the Council's Leases Policy and did not contain any special conditions. None were amended as a result of the Committee's consideration.

³ This includes evaluating a group's strategic fit and sustainability, how the group will use the resource, the environmental impact of a group's activity and if there is community need and support for the activity.

In the two situations where amendments have been made to the officer's recommendations since the policy was adopted, special circumstances existed. One lease was for a high profile piece of land (the Marine Education Centre's application to use the Bait Shed in Lyall Bay⁴) and the other for an activity the Minister indicated might not fit within the definition of "recreation" (the Karori Childcare Centre's application to use 47 Beauchamp Street⁵). Where special circumstances are identified, officers consider that it is appropriate for the decision on a lease to be retained by the appropriate Council committee.

Given the above, should the Committee agree to delegate lease approval to the Chief Executive, officers recommend that Section 2.2 of the Leases Policy is amended as follows:

"Leases of public land require final approval by the Chief Executive, except in special circumstances (to be determined at officers' discretion) when the lease will be referred to the appropriate Council committee or subcommittee for final approval. Such special circumstances include:

- if the lease approval is likely to be of wider public interest
- if the lease document requires special conditions
- if the applicant requests a review of the Chief Executive's decision."

5.4 Town Belt Management Plan

The Town Belt Management Plan states that leases on Town Belt land are subject to the Council's Leases Policy and provides for additional protections for Town Belt land leases – mainly around placing stricter requirements on leasing tenure (a maximum lease of 10 years with no automatic right of renewal).

The Town Belt Management Plan currently does not specifically state that a Council committee or subcommittee is responsible for approving leases on Town Belt land. Such authority is implied because the management plan was written when the decision could only be delegated to the committee or subcommittee level.

Because the Leases Policy is the overall Council policy governing the approval of leases, the Town Belt Management Plan does not need to be amended should the Council agree to delegate leases decision-making to the Chief Executive.

⁴ Considered by the District Plan and Reserves Management Subcommittee on 5 February 2004.

⁵ Considered by the District Plan and Reserves Management Subcommittee on 13 May 2003.

6. Conclusion

The restrictions on delegating decisions that can be made under the Reserves Act 1977 to officers have been removed in the Local Government Act 2002.

Officers recommend that the authority to make the decision is delegated to the Chief Executive (unless special circumstances arise when it will be referred to the appropriate Committee of Council), and that the Council's Leases Policy is amended to reflect this.

Contact Officer: *Adele Gibson, Policy Adviser*

Supporting Information

1) Strategic Fit / Strategic Outcome

The Leases Policy supports Council activities as a facilitator of recreation partnerships and provider of recreation services. Agreement to the policy will contribute to Council meeting the outcome of offering a diverse range of accessible and affordable quality recreation and leisure activities (see outcomes 7.1 Recreation Opportunities) that help increase participation in such activities and enhance health and well-being (7.2 Participation and Health).

2) LTCCP/Annual Plan reference and long term financial impact

The project is contained under projects C518 (Park buildings and infrastructure maintenance) and C524 (Town belts management) in the LTCCP. The changes recommended in this report have no financial impact.

3) Treaty of Waitangi considerations

N/A

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

No external consultation has been required in compiling this report.

b) Consultation with Maori

Mana whenua have not been consulted on the recommended amendment.

6) Legal Implications

The Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This report is consistent with existing WCC policy.

APPENDIX 1

SPC Terms of Reference and Delegations

Terms of Reference:

The committee has responsibility and authority to:

- 1.0 delegate to any subcommittee of the Strategy and Policy Committee any authorities which have been delegated by Council to the committee (note that authority to establish any subcommittee is retained by the Council);
- 1.1 undertake the administration of all statutory functions, powers and duties within its terms of reference, other than those specifically delegated to the Regulatory Processes Committee;
- 1.2 develop the Council's draft and final LTCCP, Annual Plans, Community Outcomes, and all other policies required under the Local Government Act 2002 to be included in the LTCCP (including but not limited to the funding and financial policies and the Significance Policy) for recommendation to Council;⁶
- 1.3 determine the form and extent of public consultation methods to be employed for the draft Annual Plan and LTCCP, and any other matter within the committee's terms of reference (this is subject to the requirements as set out in the Local Government Act 2002);
- 1.4 hear submissions under the special consultative procedure, or submissions received as part of any consultative process undertaken by Council in relation to any decision or power of recommendation within the committee's terms of reference;
- 1.5 approve the exceeding of the budget level for a Key Achievement Area with no commensurate savings elsewhere, up to \$500,000 and recommend to Council amounts exceeding \$500,000, if required after the Annual Plan or Long Term Council Community Plan is approved;
- 1.6 approve submissions on behalf of the Council in relation to proposed legislation or policy by Government, Local Government or other regulatory authorities within its terms of reference (except that in cases where the submission is of a technical nature and the nature of the Council's submission is consistent with Council policy, a submission may be approved by the Chief Executive);
- 1.7 perform any of its delegated functions jointly with another committee when issues arise which are also within the terms of reference/delegated authority of that other committee. In such cases, a joint meeting of two or more committees can be called in the following circumstances:
 - the chairs of the committee agree to such a meeting; or
 - Council directs a joint meeting; or
 - at least one third of the members of each committee so request;

⁶ This will include projects/new initiatives, income and expenditure, and includes recommending the draft for notification, and the final for adoption.

- 1.8 develop, monitor, review and approve policy (unless specifically retained by Council in which case the Committee has the power of recommendation to Council);
- 1.9 review, develop and recommend to Council the adoption of new or amended strategy;
- 2.0 receive and consider reports on the Council's performance against the LTCCP and AP;
- 2.1 set the strategic guidelines for the AP and the LTCCP;
- 2.2 recommend service level changes and new initiatives for the AP and LTCCP;
- 2.3 develop, review and recommend to Council, Council's consultation policy,
- 2.4 review and approve Asset Management Plans;⁷
- 2.5 review and recommend to Council that it make any resolution where in a bylaw the Council has reserved any matter to be regulated, controlled, or prohibited by the Council by resolution either generally, for any specified case, or in a particular case;⁸
- 2.6 review and approve the Statements of Intent and Business Plans of Council's CCOs;
- 2.7 oversee, develop and approve an appropriate Council response on the Treaty of Waitangi and relationship with Maori;
- 2.8 review, develop and recommend to Council policy and practices in respect of governance (including elections, Standing Orders, representation reviews and related issues);
- 2.9 review and notify a Proposed District Plan, or proposed changes to the District Plan;
- 3.0 receive reports from Advisory Groups;
- 3.1 develop policy and practices (and approve policy and practices if not delegated to a subcommittee) in respect of:
 - Auditing
 - Financial Reporting
 - Rates
 - Risk Management
- 3.2 review and approve all new borrowings approved in the LTCCP;
- 3.3 monitor the financial management of the Council's borrowings and investments in accordance with Council's revenue and financing policy and investment policy;
- 3.4 review and recommend to Council the adoption of the Annual Report;
- 3.5 approve the Waterfront Development Subcommittee's annual work plan and project development plan covering the Waterfront Development Subcommittee projected activities for the year.

⁷ Need to be aware that the actual \$\$ amounts will not be approved until in the LTCCP/ AP - which is reserved for Council

⁸ Includes matters such as: 1) any new or amended traffic resolutions under the Traffic Bylaw; 2) setting fees if a bylaw provides for fees to be set by resolution of Council; 3) the extension of the Liquor ban for a special event

- 3.7 In respect of land held or managed under the Reserves Act 1977 and council owned open space land:
- a) to conduct public engagement/consultation processes as required by the Reserves Act 1977;
 - b) to review, notify and approve the adoption of reserve management plans;
 - c) to approve leases, licenses and concessions on council owned open space and reserve land when not provided for in approved council policy;
 - d) to approve easements over town belt land;
 - e) to approve the purchase of any land for open space purposes that is consistent with council policy and within the funding provided in the LTCCP;
 - f) to review and approve (and recommend to Council where required) reserve:
 - declarations
 - revocation
 - classification
 - naming;
- 3.8 consider and approve non-contestable grants;
- 3.9 set fees in accordance with legislative requirements unless the fees are set under a bylaw or set as part of the LTCCP or AP (in which case the decision is retained by Council and the committee has the power of recommendation);
- 3.10 approve any resolution required under section 319A of the Local Government Act 1974 (naming of road).

Delegated Authority

The Strategy and Policy Committee will have delegated authority to carry out activities within its terms of reference.