

Sumner Tennis and Squash Club Incorporated

FACTORS TO CONSIDER WHEN DEALING UNILATERALLY

- 1.1 The Council must consider and meet the requirements of section 14 of the Local Government Act 2002 (LGA) in particular:
 - (1)(a) Conduct its business in an open, transparent, and democratically accountable manner,
 - (1)(f) Undertake any commercial transactions in accordance with sound business practices.
 - (1)(g) Ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including planning effectively for the future management of its assets.
- 1.2 The relevant Council policy as recorded in the Council's Policy Register as Property – Leasing Council Property is "where the Council recognises there is only one logical lessee for a public property, the Council will unilaterally deal with that lessee." This includes facilities linked to contracts including but not limited to buildings on parks and reserves and not for profit organisations.
- 1.3 In addition it is useful and supportive to consider the Ministry of Business, Innovation and Employment 'Unsolicited Unique Proposals - How to deal with uninvited bids'; guidance for government entities dated May 2013 that recommends when evaluating an unsolicited proposal it needs to be ensured that there is a sound business case to support the decision to accept the unique unsolicited proposal.
- 1.4 The purpose of the MBIE Guidance on Unsolicited Proposals is to provide a methodology for considering unsolicited proposals in a way that:
 - is transparent and fair to everyone;
 - encourages the supplier community to put forward good ideas;
 - promotes objectivity; and
 - supports decisions based on sound fact and evidence.
- 1.5 Having considered the above factors, it is felt that this is not an unsolicited proposal but rather an expansion of recreational activities offered by the Tennis Club established for that purpose. It supports effective and efficient use of resources and the provision of varied recreational and sporting activities on the Council red zone land. This is the only available site within a walkable distance of the current tennis club and a great opportunity to promote more recreation in the area.

Legal Considerations – Accepting the Proposal and Granting a Lease

- 1.6 There are a number of relevant legal considerations when making a decision about the proposal received and the future use of the property:
- 1.7 Decision Making sections 76 – 82 LGA
 - Section 76 provides that "Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81 and 82 as are applicable". In summary those sections provide:

- Section 77 a local authority must, in the course of the decision-making process, seek to identify all reasonably practicable options for the achievement of the objective of a decision and in doing so assess the options in terms of their advantages and disadvantages.
- Section 78 the views and preferences of persons likely to be affected by, or to have an interest in, the matter must be considered.
- Section 79 provides that in considering how to achieve compliance with sections 77 and 78 they must consider the significance of the matter in accordance with its Significance and Engagement Policy.
- Section 80 sets out the matters that need to be clearly identified when making a decision that is inconsistent i.e. the inconsistency, reason for it and any intention of the local authority to amend the policy or plan to accommodate the decision.
- Section 81 provides contributions to decision making by Maori.
- Section 82 sets out the principles of consultation.

Section 78 does not require the Council to undertake a consultation process of itself but the Council must have some way of identifying the views and preferences of interested and affected persons.

1.8 Importantly and specific to this property is Section 97 LGA which provides that if the Council is proposing to transfer the control of a “strategic asset” to or from the Council, the Council must not make that decision, unless:

- The decision is explicitly provided for in its LTP; and
- The proposal to provide for the decision was included in a consultation documents in accordance with section 93E.

1.9 The Significance and Engagement Policy sets out the list of “strategic assets”. In particular, the Policy lists as “strategic assets”, community facilities as follows:

Community Facilities

- (i) Christchurch Town Hall;*
- (j) Christchurch Art Gallery and its permanent collection;*
- (k) all land and buildings comprising the Council's social housing portfolio;*
- (l) all public library facilities;*
- (m) all parks and reserves owned by or administered by the Council;*
- (n) all public swimming pools;*
- (o) all waterfront land and facilities owned or operated by the Council, including wharves, jetties, slipways, breakwaters and seawalls;*
- (p) cemeteries and listed heritage buildings and structures.*

“All” or “its” means the asset as a whole.

1.10 Where a “strategic asset” is a network or has many components, decisions may be made in respect of individual components within the network without those components being regarded as strategic, unless such decisions are considered to significantly alter the level of service provided by the Council.

1.11 Therefore it is considered that section 97 applies; this means that the Council can progress the proposal (where it transfers the control of an asset by way of lease) as the LTP stipulates through the Parks and Foreshore Activity Plan that community parks are generally managed for a primary purpose such as recreation, sport or community activities.

1.12 The Council's "Leasing Council Property" policy adopted 10 December 2015 was developed to ensure that the Council was "consistent with the principles of legislation and the behaviours expected to prudently manage public property".