

## 5.5 LEASES, CONCESSIONS, LICENCES AND RESERVE HIRE POLICY

Date Adopted	Next Review	Officer Responsible
1 June 2011	30 June 2014	Manager, Sports Recreation & Environment

### Policy Purpose:

This policy is aimed at providing robust guidelines and a framework of conditions under which applications for concessions (leases or licences) may be granted within the Rotorua District.

This policy will address the dual issues of (a) the circumstances and priorities for granting of concessions of reserve land and (b) the level of fees to be charged for such concessions (lease or a licence.)

### Scope of Policy

The scope of the policy includes conditions for the granting of all concessions on open public space, regardless of whether the application is for commercial or non-commercial use to individuals, sport clubs, partnerships and companies for commercial recreational purposes (e.g. golf driving range, mini putt etc) and/or for purposes ancillary to reserve use (e.g. café, markets etc.)

### Exclusions:

The policy does not deal with tenancy agreements for pensioner or residential housing. The policy also does not deal with granting of easements over council owned land nor does it cover tenancies of parts of council owned buildings for business, social or administration purposes. Examples of these are tenancies of Rotorua International Stadium, Community House, Rotorua Youth Centre, Kuirau House, the Rotorua Arts Village, the Rotorua Aquatic Centre building, the Sportsdrome (Rotorua Energy Events Centre) and the Soundshell.

### Glossary:

**Administering Body** - Rotorua District Council, appointed under the Reserves Act, to control and manage a reserve.

**Authorised Officer** - Any person appointed or authorised in writing by the Chief Executive or by Council to act on its behalf and with its authority and includes a member of the police. Lakes wardens have an educational/advisory/information distribution, monitoring responsibility and selected council officers and the NZ Police have enforcement responsibilities.

**Commercial activities versus non-commercial activities** - Commercial activities are distinguished from non-commercial activities by the Rotorua District Council Parks and Recreation Department after answers to the following questions are obtained:

- Do participants and or the public pay to attend the event ?
- Is it a private event?
- Is the event limited to a select group?
- Does the event have a recreation focus?
- Does the event have a charity focus?
- Who would benefit from the proceeds of the event?
- Does the event benefit the local community?
- Has funding been provided to implement the event or programme?

**Commercial recreation** - Any form of recreational activity provided for a business or profit-making purpose. Lessees will in general be individuals, partnerships and limited liability companies.

**Community** - Not-for-profit groups providing services and activities for youth, elderly, people with disabilities/ people with accessibility issues or other community groups. Does not include lease areas for the sole purpose of administration of community organisations.

**Concession/concession document** - A lease or licence; permit granted..

**Consumer Price Index** - A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.

**Differentiated charge** - Differentiated charges based on commercial versus non-commercial events and the location of a reserve used for an event, are imposed on event organisers.

**Dripline lease** - Specifies the lease area as the dripline of the building(s) occupied by the lessee. With a dripline lease, the general maintenance of the building is usually the responsibility of the lessee.

**Early childhood education** - Not-for-profit organisations such as kindergartens, play centres, and kohanga reo that provide full-time care for children less than 6 years of age. (Does not include commercial day-care centres)

**Fresh lease** - This definition applies where an existing lease is expiring and the current lessee is seeking to renew the lease under the same terms and conditions without benefit of a right of renewal.

**Lease** - Grant of an interest in land that gives exclusive possession of the land and makes provision for any activity on the land that the lessee is permitted to carry out. The granting of a lease confers rights of exclusive use to the lease area associated with buildings and structures. Maintenance and insurance responsibilities lie with the owner of the assets unless the lease specifies otherwise. A lease is usually transferable with the landlord's consent.

**Licence** - Grant that gives a non-exclusive interest in land that makes provision for any activity on the land that the licensee is permitted to carry out. A licence to occupy confers rights of exclusive use only when the area is actually in use by the organisation for recreational purposes. Responsibility for maintenance and insurance is to be negotiated. Licences are personal to the licensee and are not transferable.

**New lease** - A legal agreement that gives new and exclusive rights of occupation of an area of reserve or land for the purpose of buildings or facilities where access will be limited to members or by payment of an

entry fee. This definition will apply where the area has not been leased previously, or has been leased to a different lessee or for a different purpose.

**Not-for-profit recreation (non-commercial recreation)** - This category includes not-for-profit clubs, trusts and incorporated societies providing recreational and sporting activities (indoor and outdoor) and includes arts and leisure activities. Not-for-profit organisations may produce a profit, but the surplus is reinvested in pursuit of the group's goals.

**Peak times** - Peak time is defined as during New Zealand daylight saving, school holidays and Easter Weekend.

**Public open place** - Any open space under the control of Council, set apart for public recreation purpose inclusive of recreation reserves, freehold land, drainage reserves, esplanade strips and reserves, court, alley, cycle track and road reserves used for public recreation, excluding exclusive leased land.

**Rental** - An annual fee charged to the lessee for the right of occupation.

**Rent review period**- Rent review for 'not -for-profit' are done on a five yearly basis. Leases granted for commercial purposes shall be subject to rent review every three years. The basis of the review shall be the valuation of the commercial rate payable per square metre and/or the base annual rental payable.

**Rent review** - The annual rental will be subject (by a condition of the lease) to regular review (three yearly for commercial leases and five yearly for non-commercial.)

**Right of renewal** - A condition of a lease that provides for further lease terms beyond the expiry of the original lease term on the same terms and conditions. Rights are conditional upon lessees having met the terms and conditions of the lease.

**Service charge** - An annual fee charged to the lessee to cover the costs of the lessee's occupation incurred by the landlord. Examples may include charges for wastewater, water and refuse. The service charge may be subject to annual increase as costs increase.

## 5.5.1 Management of Concessions on Public Open Places

### Policy Purpose:

To provide robust guidelines for administrative procedures to be followed by both applicants and council officers to ensure fair and transparent processes for allocating concessions on open public places.

### Policy:

1. As the administering body of the Rotorua District reserves, the Rotorua District Council has the authority to grant concessions on open public space under certain circumstances to various organisations.
2. All new concession applicants and those groups applying for fresh leases will be required to provide:
  - A completed lease/licence application form.
  - A copy of their most recent audited financial accounts.
  - Details of their fundraising or payment capacity.
  - A copy of their Certificate of Incorporation (this will be checked with the New Zealand Companies Office to ensure it is current.)
  - A business plan.

3. Council considers concessions on open public space for the following four general purposes:
- For facilities for public recreation or enjoyment, (e.g. baths, camping grounds, parking or mooring places etc.) In the case of a lease application, the lessee may be required to construct the facilities, or it may be provided by the administering body, (e.g. Polynesian Spa.)
  - For erection or utilisation of existing structures, (e.g. stands, pavilions, gymnasiums and other buildings) associated with and necessary for the use of the reserve.
  - For the playing of any outdoor sport, games or other recreational activity where preparation and maintenance requires the lessee, the concessionaire or licensee to expend a substantial sum of money, (e.g. golf, bowls, croquet and tennis.)
  - For the continuation of any trade, business, or occupation, provided that it must be necessary to enable the public to obtain the benefit and enjoyment of the reserve, or for the convenience of persons using the reserve.
4. The concessionaire is only authorised to use the premises for the permitted use, as specified in the agreement and shall not use or permit the whole or any part of the premises to be used for any other use.
5. Terms and conditions of concessions are to be consistent with provisions in legislation such as the First Schedule to the Reserves Act and include:
- The legal authority under which the concession is to be granted must be stated in the background to the application. This will include such matters as the section of the relevant legislation which authorises council to enter into an agreement, as well as the legal status of the concessionaire.
  - The duration or term the applicant wants to enter in an agreement for with the council. The standard term for a lease is 10 years. The term of any new lease negotiated by officers is not to exceed 10 years. Where application is made for a lease term exceeding 10 years, the matter is to be referred to the relevant Council Committee for consideration. (The Reserves Act and the Conservation Act currently allow lease terms of up to 33 years (plus rights of renewal.)
- The standard term for a licence is for a period of one year.
- Lease rent review for 'not for profit' is to be done on a five yearly basis and for commercial purposes every three years.
  - A licence will be granted in preference to a lease where:
    - i. The activity is temporary in nature and requires no permanent structures, or
    - ii. The recreation facility is freely available for use by the public when not in use by the licensee, and
    - iii. There are no buildings or other areas of exclusive occupation, and
    - iv. A short term (one year or less) is a suitable term.
  - Each concession agreement will need to specify the ownership of assets (Council versus concessionaire.) This is done for insurance purposes, maintenance liabilities etc.
-

- All assets remaining on-site will become the property of the council with no compensation payable to the concessionaire, regardless of the fact that the concessionaire might have been responsible for the improvements and maintenance thereof. Concession agreements may however provide for the removal of assets, provided that the site be reinstated to the satisfaction of Council's authorised officer. Leases may also provide for the lessee (where they are the owner of the asset) to sell the asset to either the lessor (at the lessor's sole discretion) or an approved incoming lessee (with the prior consent of the lessor)
- The responsibility for the maintenance of improvements and the land on which a concession is granted will be dealt with on a case by case basis as defined in individual concession documents.
- Grazing licensees take responsibility for the maintenance of any paths, fences, hedges or lawns within the boundaries a licence is granted.
- The concessionaire will be responsible for all services associated with their activities, including electricity, gas, telephone, water and refuse collection.
- The responsibility for insurance of assets lies with the owner of those assets. Council must ensure that concessionaires make adequate provision for the replacement of their own assets in the event of destruction or loss. All lessees are responsible for full replacement insurance to cover their own assets. Where Council is the owner of the leased assets, a proportion of the insurance costs may be charged to the lessee as part of the annual service charge.
- Public liability insurance will be required as per concession document.
- Council consent is required for any additions and alterations to buildings, whether they belong to Council or not. Consent shall not be withheld unreasonably or arbitrarily and should be granted, providing the proposal is consistent with the purpose of the lease and does not detract from the appearance or integrity of the building. Consent for additions beyond the lease area will be at Council's discretion and may require either a new lease or a variation, depending on the scale of the additions.
- In the case of commercial concessions that have a value in terms of projected income, assignment of concessions to a third party will be permitted with the prior written consent of Council. Council cannot withhold consent unreasonably or arbitrarily, but must be satisfied that the assignee is willing and able to comply with the terms and conditions of the concession and will require a covenant to that effect as part of the Deed of Assignment.

Council consent will be required for any sub-letting of premises a concession is granted for. Council must be satisfied that the sub-lease is consistent with the terms and conditions of the head-lease, in particular, the purpose.

Non-commercial concessions that have no value to the organisation, other than the value of the assets constructed thereupon, cannot be sold or assigned to a third party. The concession must be surrendered and a new lease issued if the occupation is to continue. This process will require public notification in terms of the Reserves Act or the Conservation Act, unless the new concession conforms to the management plan.

- A commercial concession that has a value in terms of projected income may be used by the concessionaire as security (loan guarantee) for a mortgage. For the mortgage to be registered on the title, the concessionaire must be occupying the entire area subject to the title. A bank

will not be permitted to register a mortgage against an unregistered concession, or against land that is not subject to the concession.

Non-commercial concessions will, in general, not be registered and may not be used as security for mortgages as the lease will have no monetary value. However, the concessionaire may apply for Council to act as guarantor for loans raised with a financial institution. Concessionaires must in this instance meet the criteria for loan guarantees set by Council and Council must be satisfied that the improvements on their assets are of sufficient value to Council in the event of default on the loan.

- All visible signage on the concession area must comply with the requirements of the management plan for the reserve. Where there is no management plan in place, the signage must comply with the requirements of the District Plan; relevant council by-laws, or policies, whichever is appropriate.
  - The lessor may terminate the concession agreement in the event of sustained non-compliance with any of the concession terms and conditions, or if the concessionaire is no longer using the area/facility for the permitted use.
6. If a commercial lease is terminated, or expires with no provision for renewal, the lease shall be tendered on the open market. However, if it expires with both the lessor and lessee wishing to continue with the lease, a new lease may be entered into without tendering.

## **5.5.2 Assessment of Concession Applications**

### **Policy Purpose:**

This section looks at the process for assessing applications for a concession and the criteria by which council officers will make decisions approving/declining an application or deciding what recommendation to make to Council where applicable.

### **Policy:**

Criteria to be used to assess concession applications include:

- Legal authority of council to grant concession.
- Consistency of proposed concession with operative management plan for open public space.
- Sustainability of proposed activity.
- Demonstrated support and demand within the community for the activity or service that the applicant will be undertaking on public open space.
- Consistency of proposed activity with Council's strategic direction.
- Anticipated (or actual) benefits and disadvantages to Rotorua community.

## **5.5.3 Public Consultation to be undertaken as a requirement to Grant a Concession on Open Public Space**

### **Policy Purpose:**

To provide guidelines on consultation procedures prior to granting a concession on open public space.

## Policy:

1. Public notification of the intent to grant a concession is a requirement of any concession that is not provided for in a reserve management plan.
2. The intention to grant a concession for recreation purposes is required to be publicly notified.

The only exemptions to public notification and consultation are:

- Where the activity is provided for or contemplated in an approved reserve management plan for the reserve involved.
  - In cases where an application for resource consent in relation to the activity is publicly notified under the Resource Management Act.
  - Fresh leases granted to existing tenants, where the effects of the use will be the same or similar in character, intensity and scale, are consistent with the provisions of the management plan and are similar to previous terms and conditions.
3. Council will consult with Rotorua District Council Director Kaupapa Maori in respect of new concession proposals on gifted reserves where these are not provided for in the reserve management plan.
  4. Consent must be sought from the Minister of Conservation in any case where Council does not have the delegated authority to grant a concession. This will apply particularly to reserves that do not have reserve management plans and for any new concessions that are not provided for by reserve management plans.

### 5.5.4 Methodology for Fee Determination for Concessions

#### Policy Purpose:

To provide methodology for fee determination of 'one – off'; repetitive; commercial and non-commercial concessions of council owned assets (land, buildings or any other asset) on public open space.

#### Policy:

##### Licences

1. Licences will be granted for daily, weekly monthly and annual periods. Annual licences are renewable from the date of commencement with possible renewal for up to a maximum of two more years. A renewal will only be permitted providing that the service/activity has been up to expected standards.
2. Non tendered licence fees are charged as per the Parks and Recreation Fees Structure. A distinction in fees is made between location of reserve and duration of licence (i.e. daily, weekly, monthly or yearly.)

Rating classifications in terms of location are:

- Premium Rate                      Village Green / War Memorial Park
- High Rate                              Government Gardens / Kuirau Park

- Medium Rate                      Blue Lake/ Hannahs Bay / Holdens Bay / Boyes Beach and Hamurana Reserves
- Low Rate                              All remaining reserves

A further distinction is made between normal and peak time.

3. Fees for licences are annually to be increased in line with Consumer Price Index (CPI)

#### **Lease agreements**

1. Rent is, under certain circumstances, not charged for an area occupied for use as an outdoor playing surface (e.g. bowling green, hockey turf, golf course, playground), whether the cost of maintenance is met by the concessionaire, or by Council, or a combination of both.
2. Leases that are for not for-profit community and recreation organisations shall be charged a minimum base rental as per the Parks and Recreation Fee Structure plus rates (less applicable remissions) assessed on the 'dripline' area of the building or buildings to which the lease applies.

The base rental is to be inflation-adjusted on a five-yearly basis.

3. Non – tendered commercial leases on public open spaces will be charged a commercial market rental on the entire lease area to be calculated on either:
  - A dollar rate per square metre based on a commercial lease rate, or
  - A base rent plus a percentage of gross income, or
  - A percentage of land value

Over and above rental, rates are payable assessed on the entire area to which the lease applies. The base rental shall be inflation adjusted five yearly. A registered valuer of Council's choice may be used to determine the initial rental and for subsequent reviews and the cost is to be paid by the lessee.

#### **Bonds Payable**

Bond payments are payable as determined on a case by case basis for each concession as determined by the delegated staff member (same as Activities on Open Public Spaces Policy.)



## **RELEVANT/RELATED LEGISLATION/BYLAWS AND POLICIES**

Legislation/bylaws and policies relevant to concessions on open public places:

### **Reserves Act 1977**

The Reserves Act is the main piece of legislation governing the ability of Council to grant concessions on reserves. The purposes for which concessions may be granted are defined by the classification of the reserve and the section of the Act under which the concession may be granted. The powers to grant concessions are embodied within Sections 54 (recreation), 56 (scenic), 58A (historic), 59A (Crown – refers to Conservation Act), 61 (local purpose), 67 (racecourse), and 73 (recreation) of the Reserves Act and terms and conditions specified in the First Schedule to the Act.

### **Conservation Act 1987**

Part IIIB of the Conservation Act applies to reserve land that is still owned by the Crown. This applies to reserves where Council has been appointed to control and manage the reserve and the reserve has not been vested in Council. A number of reserves are affected in this way, including Kuirau Park, Pukeroa Reserve (corner of Ranolf and Arawa Streets), parts of the Lakefront Reserve (Village Green), Town Belt Reserve (Pererika Street and Sheaf Park), Lytton Street Reserve and part of Centennial Park. Concessions on these reserves must be granted in accordance with Part IIIB of the Conservation Act.

### **Local Government Act 2002**

The Local Government Act controls the ability for Council to lease local purpose reserves, or parks that are not reserves subject to the Reserves Act.

### **Local Government Rating Act 2002 as amended**

The relevance of this legislation is that as of 1 July 2003, the owner of the land becomes the ratepayer and rates cannot be separately apportioned and charged directly to lessees. The effect of this is that reserve owners must recover rates from occupants, or alternatively, charge an increased rental in lieu of rates.

Section 11 of the Act identifies the situations in which the lessee can become the ratepayer. If the concessionaire was previously entered in the district valuation roll as the occupier of the rating unit, and the concession:

- i. Commenced prior to 8 August 2001, and
- ii. Remains in force, and
- iii. Is either registered against the title under Section 15 of the Land Transfer Act 1952; or
- iv. Precludes the renegotiation of rent or any other payments that would allow the owner to be reimbursed if the owner were directly liable to pay the rates due on the unit, then the lessee must be entered in the rating information database and district valuation roll as the ratepayer in respect of the unit.

For new leases, the lessee must be entered in the rating information database and district valuation roll as the ratepayer in respect of a rating unit where the lease:

- i. Is registered under section 115 of the Land Transfer Act 1952;
- ii. Is for a term including renewals of not less than ten years; and
- iii. Provides that the lessee must be entered in the rating information database and the district valuation roll as the ratepayer, in respect of the unit.

## **Long Term Plan**

The purpose of the Long Term Plan is to:

- Provide a basis for accountability to the community
- Describe the community outcomes
- Describe Council's activities
- Provide a long-term focus for the decisions and activities of Council
- Provide integrated decision-making and coordination of Council's resources, and
- Provide an opportunity for participation by the public in decision-making processes.

The Long Term Plan is based on a series of desired community outcomes:

- *Visionary community leadership*
- *A safe and caring community*
- *A prosperous community*
- *A community with excellent facilities and services*
- *A community that respects its environment*
- *A community that values its living Maori culture*
- *A learning community*
- *A thriving community*
- *A healthy community*

The granting of leases to individuals and organisations needs to be compatible with these desired outcomes, and should contribute to their achievement.

## **Open Space Strategy**

Council is constructing an open space strategy for the district that will guide future decision-making on matters such as reserve acquisition and disposal, and the values, purposes and compatible use of open space. The concessions policy needs to be consistent with the open space strategy.

## **District Plan**

Council's District Plan is the key method of implementation of the Resource Management Act. The District Plan concentrates on the effects of development, and the avoidance, remedying and mitigation of those effects. Applicants for concessions must consider the potential effects of development with respect to the requirement for resource consents and demonstrate compatibility with other activities on the land.

The District Plan is currently undergoing a major review.

## **Recreation Strategy**

The Rotorua District Recreation Strategy was adopted in February 2002. It contains a series of strategies aimed at achieving a vision of "active people, healthy communities" through increased participation in recreation. The strategy is constructed around goals in seven areas:

- Participation
- Promotion
- Provision of facilities
- Programmes
- Partnerships

- Planning, and
- Priorities

The most relevant strategies to this concessions policy are in the area of provision of facilities, partnerships and priorities. The concessions policy is consistent with these strategies to ensure optimal use of resources, prevent duplication of under-utilised facilities and encourage partnerships in both provision and use of facilities.

### **Management Plans**

Rotorua District Council has operative reserve management plans (prepared under s41 Reserves Act) for most of its recreation reserves in the urban and rural areas. These management plans are under constant review to ensure that information and policies are kept current.

The main significance of management plans with respect to leasing is that Council only has the authority to grant concessions where they are contemplated or provided for in an operative management plan. This is because management plans are deemed to be the main method of consultation with the public with respect to the use and development of reserves. If there is no management plan, or the proposed concession does not conform to the operative plan, then Council does not have the authority to grant the concession unless:

- i. A management plan is prepared or the operative plan varied in accordance with s41 to provide for the lease, or
- ii. Council obtains the consent of the Minister of Conservation to the lease (s54) after public notice (s119) and the hearing of any submissions (s120), or
- iii. The lease is an existing use and the effects of the use will be the same or similar in character, intensity and scale. This applies only to the granting of fresh leases to existing lessees conducting the same activities provided for under the previous lease.

### **Rotorua District Council General Bylaw 2011**

The purpose of the Bylaw is to make provisions which are of a general specified nature and common to, and form part of, all other Bylaws which are either in force in the Rotorua District as at the commencement date of this Bylaw or come into force after that date.