

QLDC Council
14 December 2017

Report for Agenda Item: 1

Department: Corporate Services

Proposed lease of the Frankton Zoological Gardens

Purpose

The purpose of this report is to decide whether and, if so, how, to consider any further submissions on the Young family's 30 June 2016 submission on the decision to approve a lease of the Frankton Zoological Gardens.

Recommendation

That Council:

1. **Note** the contents of this report.
2. **Agree** to:
 - a. reconsider the 28 July 2016 resolution;
3. If the above recommendation is agreed to:
 - a. **consider** any further submissions on the Young family's submission of 30 June 2016; and
 - b. **determine** whether to confirm, revoke or vary the 28 July 2016 resolution approving a new lease of the Frankton Zoological Gardens to the Young family under section 54 of the Reserves Act.

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17/11/2017

Reviewed and Authorised by:



Mike Theelen
Chief Executive

30/11/2017

Background

- 1 Ivan and Daphne Young were granted a lease over a recreation reserve known as Section 167 Block 1 Shotover Survey District (**Frankton Zoological Gardens**), from 1 April 1983 for 33 years for "the purpose of a parkland for zoological purposes with associated buildings." The lease expired on 31 March

2016 and the Young family (Daphne, Penelope and Rachel Young) sought a new lease on similar terms and conditions as the previous lease.

- 2 The Youngs' application for a new lease was notified in April 2016 with the submission period closing at the end of May 2016. Five submissions were received: one from the applicant, three in support of the new lease and one, from Remarkables Park Limited (**RPL**), opposing the lease.
- 3 A hearing was held on 23 June 2016 attended by Councillors Gazzard and Aoake. Representatives of the applicant appeared, along with those from RPL. Mr Clayton and Mrs Spence were also in attendance. Following the hearing of the submissions, Councillors Gazzard and Aoake recommended that the new lease be granted for a term of five years.
- 4 On 28 July 2016 the full Council was provided with the Youngs' application, the submissions received, the hearing minutes and recommendations of Councillors Gazzard and Aoake, and a further submission received from the Youngs' solicitor, submitted on 30 June 2016, after the date of the hearing. The full Council also heard an oral submission on behalf of the Youngs during the Public Forum section of the meeting. Following the receipt of the above information and hearing from the Youngs, the Council resolved to grant the Young family a new lease over the Frankton Zoological Gardens for a term of 10 years.
- 5 RPL has written to the Council expressing concerns about the process followed in relation to the Council resolution of 28 July 2016 and has signalled an intention to seek judicial review of the Council's decision on the proposed lease. The concern of RPL is that the Council received the further written submission on behalf of the Youngs, heard the oral submission on behalf of the Youngs on 28 July 2016 and did not specifically invite RPL to respond to those further submissions.

Comment

- 6 It is considered that the Council's decision-making process in respect of its 28 July 2016 resolution complied with both the Reserves Act 1977 and the principles of natural justice. But in order to reduce the risk of a potential challenge by RPL, it is proposed that the Council undertake the following process:
 - a. Agree to reconsider the 28 July 2016 resolution;
 - b. Consider any further submissions on the Youngs' 30 June 2016 submission. The other parties which submitted on the application have been invited to provide written submissions, strictly on those matters raised in the 30 June submission, on the basis that the Council may resolve to reconsider the resolution of 28 July 2016 and consider any further submissions received; and
 - c. Determine whether to confirm, revoke, or vary the resolution of 28 July 2016.
- 7 This will not be a re-hearing of the matter, but an opportunity to ensure that the Councillors are fully appraised of all submissions prior to making a decision, by giving other original submitters the opportunity to respond to matters raised by the Young's further submission. The Council will also be provided with copies of

the written submissions, evidence and minutes of the hearing and the recommendation report of Councillors Gazzard and Aoake. After giving full consideration to all submissions and evidence, the Council can then make a decision on whether to confirm, revoke or vary the 28 July 2016 resolution. The decision would be based on all information available.

- 8 For the avoidance of doubt, the decision made by the Council can be the same as or different from the one made on 28 July 2016.
- 9 It is considered that providing an opportunity for the other original submitters to submit further may address RPL's concerns as it would demonstrate that the Councillors were fully and fairly appraised of all submissions on the proposed lease prior to making a decision.
- 10 The Young family has notified Council staff that it is not opposed to the Council considering further submissions provided by RPL, should it do so.

Options

11 Option 1 Agree to:

- a. Reconsider the 28 July 2016 resolution;
- b. Consider any further submissions received; and
- c. Determine whether to confirm, revoke or vary the 28 July 2016 resolution approving a new lease of the Frankton Zoological Gardens to the Young family during this meeting.

Advantages:

- 12 It is considered that providing other parties with an opportunity to submit further may address RPL's concerns as it would demonstrate that the Councillors were fully and fairly appraised of all submissions on the proposed lease prior to making a decision.

Disadvantages:

- 13 As the decision made by the Council may differ from the resolution of 28 July 2016, the plans of the Young family for the Zoological Gardens may be disrupted.
- 14 Option 2 Status quo – proceed to execute the proposed lease of the Frankton Zoological Gardens to the Young family in accordance with the Council's resolution dated 28 July 2016.

Advantages:

- 15 The Young family will be able to proceed with its current plans for the Zoological Gardens without any time delay or disruption.

Disadvantages:

- 16 The concerns expressed by RPL would be left unaddressed. RPL has threatened litigation which, given the ability to undertake the above process, would be needless and is avoidable. RPL has refused to indicate whether the proposed process satisfies its concerns.
- 17 This report recommends **Option 1** for addressing the matter because considering any submissions that other parties wish to file will provide the Council with the opportunity to address RPL's concerns.

Significance and Engagement

- 18 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to the lease of a recreation reserve and is of some community interest.

Risk

- 19 This matter relates to the operational risk OR002 increase in expenditure, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because RPL has signalled an intention to seek judicial review of the Council's 28 July 2016 resolution.
- 20 The recommended option, considered above, mitigates the risk by providing an opportunity for the Council to address the concerns of RPL. Further, the Youngs have confirmed that they do not oppose the process proposed in this report.

Council Policies, Strategies and Bylaws

- 21 The following Council policies, strategies and bylaws were considered:
- Significance and Engagement Policy, in terms of consultation under the Reserves Act 1977.
- 22 The recommended option is consistent with the principles set out in the named policy.
- 23 This matter is not included in the 10-Year Plan/Annual Plan.

Local Government Act 2002 Purpose Provisions

- 24 The recommended option:
- Will help meet the Council's performance of a regulatory function in a way that is most cost-effective for households and businesses by demonstrating that the Councillors were fully and fairly appraised of all relevant matters prior to making a decision on the proposed lease.
 - 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

- 25 The persons who are affected by or interested in this matter are all persons who submitted on the proposed lease of the Frankton Zoological Gardens by the Young family.
- 26 The Council has notified both the Young Family and RPL of the intention to commence the process laid out in paragraph 8 of this report. The Young Family has indicated that it is happy for the process to occur. RPL has refused to confirm that the process would alleviate its concerns.

Legal Considerations and Statutory Responsibilities

- 27 The Council may grant a lease over recreation reserve under section 54 of the Reserves Act, to the extent necessary to give effect to the principles set out in section 17 of that Act. In summary those principles include providing access to areas for public enjoyment and recreation, and protecting the natural environment.
- 28 The Council is required to comply with sections 54(2) and 120(c) of the Reserves Act 1997 which require that, in making a decision on a proposed lease of a recreation reserve, the Council gives full consideration to every objection or submission received before deciding to proceed with the proposal.

Attachments

- A Agenda item, minutes and Public Forum from the Council meeting of 28 July 2016
- B Material presented at the hearing of submissions on 23 June 2016
- C Further submissions on the Youngs' 30 June 2016 submission