

QLDC Council  
17 August 2017

Report for Agenda Item: 11

Department: Property & Infrastructure

Lease variation for Pisa Alpine Charitable Trust

Purpose

The purpose of this report is to consider approving a variation to the terms of the Pisa Alpine Charitable Trust (PACT) lease by approving one further right of renewal of 33 years and removing the requirement to pay rates.

Recommendation

That Council:

- 1 **Note** the contents of this report;
- 2 **Approve** a variation to Council's resolution of 19 December 2013 to allow two rights of renewal of the PACT lease over Lot 5 DP 460313 of 33 years each (resulting in a total lease term of 99 years) and to remove the requirement for PACT to pay rates;
- 3 **Approve** a variation of the terms of the agreement to lease signed by the Council and PACT on 6 November 2012 to provide for the amended terms noted in recommendation 2 above;
- 4 **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to allow two rights of renewal of the PACT lease over Lot 5 DP 460313 of 33 years each (resulting in a total lease term of 99 years);
- 5 **Delegate** signing authority to the General Manager, Property and Infrastructure.

Prepared by:



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2/08/2017

Reviewed and Authorised by:



Aaron Burt  
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## Background

- 1 The Pisa Alpine Charitable Trust (**PACT**) is a charitable trust established in 2009. PACT negotiated the purchase of the Snow Farm land on the Pisa range for \$1.7 million in 2011. Council contributed \$518,758 towards the purchase and PACT raised the balance through various grants. The land was purchased in the name of Queenstown Lakes District Council, classified as a recreation reserve pursuant to the Reserves Act 1977, and was agreed to be leased to PACT who will manage and maintain it into the future. The land is legally described as Lot 5 DP 460313, being 297.3189 hectares.
- 2 The land is used in the winter for alpine recreational pursuits such as cross country skiing, winter triathlon and biathlon, dog sledding, kite boarding and winter orienteering. In summer, the land is used for training running, mountain biking, hiking, overnight tramping and access to the Pisa Range, orienteering and rogaining and altitude training by New Zealand and international athletes.
- 3 Following notification, a lease to PACT was approved by Council in 2013 with the following terms and conditions:

Commencement:	6 November 2012
Term:	33 years
Renewal:	One right of renewal for 33 years
Rent:	\$1.00 per annum for the first 15 years
Reviews:	2027 and then 3 yearly, taking into account “the unique nature of the area and the contribution made to its purchase, maintenance and improvement by the Lessee”
Use:	Nordic sports, summer recreation activities and education activities
Assignment and sub-lease:	With written approval of the Lessor
Maintenance:	Lessee to maintain existing improvements, and keep areas clear and tidy, and will meet the Lessees share of maintenance costs of the road, water and electricity supplies
Public Liability Insurance:	\$1million
- 4 An Agreement to Lease was signed by the parties in late 2012 but the final lease has not been signed because PACT were unhappy with some of the terms, namely the requirement to pay rates and the total term of 66 years. PACT are seeking for rates to be waived and for a further term of 33 years to be included so that the total term becomes 99 years.
- 5 PACT have drafted and supplied an operating and business plan. They employ staff to assist with management of the area, and the directors of the Trust oversee the strategic and business planning. Essentially PACT is the operating entity for the land with funding for the operational facilities being raised from private benefactors. Operating funds are not being sought from Council. The proposed budgets show a small surplus each year but, without fund-raising, funds would not be sufficient to cover replacement of equipment and other capital costs over time.

- 6 The Wanaka Community Board considered notification of the proposal to vary the lease to offer a further 33 year term and to remove the requirement to pay rates on 30 March 2017 and passed the following resolution:

**On the motion of Councillor McRobie and Mr Taylor it was resolved that the Wanaka Community Board:**

- 1. Note the contents of this report;**
  - 2. Approve notification of the intention to grant a further lease term of 33 years to Pisa Alpine Charitable Trust and call for submissions;**
  - 3. Appoint Community Board members Rachel Brown, Quentin Smith and Ed Taylor (any two of whom can form a hearing panel) to hear any submissions and make a recommendation to Council; and**
  - 4. Approve a variation of the lease to remove the requirement to pay rates.**
- 7 The Reserves Act requires the intention to grant a new lease to be publicly notified. The notification was published and one submission was received as attached. A hearing was held on 6 June 2107. The minutes from the hearing are also attached. The hearing panel released the following decision:

*Having heard the submission received and with the guidance provided by the report, the panel, being made up of Quentin Smith (chair) and Rachel Brown, recommends that the lease extension be **granted** without additional conditions.*

**Reasons for decision**

*The panel acknowledges the concern raised by Jonathan Holmes in his submission. He raised concerns about the operation of PACT and sought to encourage more engagement and accountability. He asked the Council to consider changes to the governance and constitutional arrangements of the Snow Farm in issuing a lease for the reserve.*

*The question of how much involvement Council should play in the provision of cross country ski services was considered: whether it should take a specific interest in the operation or whether it should be held at arm's length, with a fair bit of autonomy. Cross country skiing and the related activities are unique for a Council to be involved in within New Zealand and in fact, the Snow Farm operation is completely unique in nature in New Zealand. As such, the operation is of national interest, not just local. The interest in the site by national sport*

*body (Snow Sports New Zealand) and the role the Snow Farm plays in the New Zealand Winter Games is an example of this.*

*The panel acknowledges the special circumstance that led to the reserve being vested in Council in 2011 where the Trust raised approximately \$1.2 million; the Council contributed \$518,758 and the land was purchased and classified as Recreation Reserve. In this case, the Council was a minor contributor and acted to empower PACT to operate the facility for the benefit of the community. It is fair to say that it would have been unlikely that Council would have either funded the entire purchase or taken an interest in the day-to-day operation of these activities or this land without PACT.*

*The existence of a current agreement for a 66 year lease was also considered relevant, and the increase from 66 years to 99 years was considered to be relatively minor in effect.*

*The panel encourages PACT to be open and engaged with all stakeholders of the Snow Farm and suggests PACT consider making annual reports available and holding a public AGM. It however, was not considered in this case that it was the role or responsibility of the Council to manage or dictate the operation of the facility, or the constitutional structure and operation of PACT or its subsidiaries. It was considered that the conditions of the lease, the “purpose” of the Trust and the protection under the Reserves Act are sufficient to ensure that the reasons and intent of the land being purchased and vested as Recreation Reserve are upheld, and that access to the land is facilitated for the benefit of the general public, the Nordic skiing community and other recreational users.*

### **Conclusion**

*Taking into account the matters raised by the submitter, the Council report, the Reserves Act and the background of the Recreation Area, the panel recommends the granting of the proposed additional 33 years lease, being a total lease of 99 years without need for further conditions.*

### **Comment**

- 8 It is uncommon for Council to grant a lease including renewals of up to 99 years. This situation is justified because PACT purchased the land for the community, albeit with a contribution from Council. While PACT acknowledge that the Reserves Act 1977 will give some protection to ensure that the land remains available for community recreational use, they believe the investment of community funds outside of Council, and their intention to grow and develop the land, justifies the need for a longer term.
- 9 The current lease requires that the Lessee “pay and discharge all rates, tax or other charges” being a standard Council lease term. However, most recreational

activities do not trigger the necessity for the land to be rated and in this case the rating department has advised that because they charge entry and rental fees, commercial rates were applied. To date, rates have been significant at around \$8,000 per annum. The Trust simply cannot afford to pay this and have asked that this clause be removed from the lease.

- 10 As PACT is a registered Charitable Trust, under the Local Government (Rating Act) 2002, the Trust could apply to Council for exemption to pay rates, if they owned the land. However, as the land is owned by Council, this clause doesn't apply. Therefore, in having the land in the name of Council even though they raised the funds to purchase it, PACT are penalised. For this reason, this situation is unique.
- 11 We have been working with Council's rating team to have the rates reassessed on the basis of the Trust's non-profit status. The team have now confirmed that the land will be banded to a non-profit setting with minimal rates being charged going forward in the region of \$200 per year. However, the Trust are concerned that this could change in the future, and are still seeking to remove the need to pay rates from the lease. If that is agreed, whatever rates are applied, they would need to be met by Council.
- 12 Varying the original lease terms to include a further renewal of 33 years, requires re-notifying the lease under the Reserves Act 1977. This has been conducted with one submission being received and the matter reviewed by a hearing panel. The hearing panel has recommended that the renewal be approved by full Council, with this recommendation recorded earlier in the report.
- 13 As the variation to the lease terms would be pursuant to the Reserves Act 1977, the consent of the Minister of Conservation is also required. That approval has been delegated to Council.

## **Options**

- 14 Option 1 To approve a variation to the Council's original resolution of 19 December 2013 and the agreement to lease with PACT over Lot 5 DP 460313 providing 1 further renewal of 33 years, and waiving the necessity for PACT to pay rates.

### *Advantages:*

- 15 Provides certainty to PACT to manage the site, activities, and assets over a longer time period.
- 16 The charitable organisation will not be financially encumbered with the requirement to pay rates on the land.

### *Disadvantages:*

- 17 The land will be committed to PACT for a term of up to 99 years, which would prevent other operators taking a lease over the land.

18 Council will be required to pay the rates on the land, which will be minimal in the present but could change in the future, if the rating method changes.

- 19 Option 2 To approve a variation to Council's original resolution of 19 December 2013 and the agreement to lease with PACT over Lot 5 DP 460313 providing 1 further renewal of 33 years, but to decline waiving the necessity for PACT to pay rates.

*Advantages:*

20 Provides certainty to PACT to manage the site, activities, and assets over a longer time period.

21 Council will not be required to pay the rates on the land.

*Disadvantages:*

22 The land will be committed to PACT for a term of up to 99 years, which would prevent other operators taking a lease over the land.

23 PACT will be required to pay the rates on the land which may be difficult in the future, if the rating method changes.

- 24 Option 3 To decline a variation to Council's original resolution of 19 December 2013 and the agreement to lease with PACT over Lot 5 DP 460313 requesting 1 further renewal of 33 years, but to approve waiving the necessity for PACT to pay rates.

*Advantages:*

25 The lease will only be for a total term of 66 years rather than 99 years.

26 The charitable organisation will not be financially encumbered with the requirement to pay rates on the land.

*Disadvantages:*

27 Will not provide as much certainty to PACT to manage the site, activities, and assets over a longer time period.

28 Council will be required to pay the rates on the land.

- 29 Option 4 To decline a variation to Council's original resolution of 19 December 2013 and the agreement to lease with PACT over Lot 5 DP 460313 providing 1 further renewal of 33 years, and to decline waiving the necessity for PACT to pay rates.

*Advantages:*

30 The lease will only be for a total term of 66 years rather than 99 years.

31 Council will not have to meet the cost of rates which would sit with PACT.

### *Disadvantages:*

- 32 Will not provide as much certainty to PACT to manage the site, activities, and assets over a longer time period.
- 33 PACT will be required to pay the rates on the land which may be difficult in the future, if the rating method changes.
- 34 This report recommends **Option 1** for addressing the matter. This is an unusual situation whereby a Trust raised significant funds in the community to enable a recreation reserve to be purchased, and then gave the land to Council. In return they are seeking the right to lease it for a total of 99 years to ensure the activities can continue and develop for the benefit of the community. They do not believe 66 years is sufficient time and their ability to grow and continue will be reduced if they are required to pay rates.
- 35 It is worth noting that any additional right of renewal provided in the lease would be subject to the terms and application of relevant sections of the Reserves Act 1977 (as is the case with the existing right of renewal), and would be drafted on that basis. This means that renewal of the lease will not happen as of right – the lessee will need to comply with the renewal requirements set out in the Reserves Act 1977 (including, by way of example only, a requirement that the lessor is satisfied that another use of the land should not have priority in the public interest).

### ***Significance and Engagement***

- 36 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to a recreational reserve which is a strategic asset. However, because a lease over the land has already been approved, the significance is not seen as high.

### ***Risk***

- 37 This matter related to the operational risk OR11, decision making, as documented in the Council's risk register. The risk is classed as low.
- 38 The recommended option, considered above, mitigates the risk by ensuring the process of granting a new lease is commenced in a timely and legally compliant manner.

### **Financial Implications**

- 39 If rates are not waived or reduced, then PACT will need to meet the on-going rates obligation, currently approximately \$200 per annum.

### **Council Policies, Strategies and Bylaws**

- 40 The following Council policies, strategies and bylaws were considered:
- Community Facility Pricing Policy.
  - Lease Terms Policy.

- 41 The recommended option is consistent with the principles set out in the Community Facility Pricing Policy, but not the Lease Terms Policy because of the unique circumstances and because the main terms and conditions were agreed prior to the adoption of that policy in 2016.
- 42 This matter is not included in the 10-Year Plan/Annual Plan and the funds for rates would need to be included in the annual plan going forward if they are not waived.

### **Local Government Act 2002 Purpose Provisions**

43 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensure a charitable trust can continue to develop and offer recreational activities to the public at a low cost;
- 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**

- 44 The persons who are affected by or interested in this matter the residents of the Queenstown Lakes District.
- 45 The Council has already notified the intention to grant the original lease and no submissions were received. The Intention to vary the lease terms to offer a further term was also publicly notified with one submission being received (as attached). A hearing was held to allow the submitter to support their position and the recommendation in this report is consistent with the decision of the hearing panel on that submission.

### **Attachments**

- A Submission to lease variation
- B Hearing panel minutes
- C PACT Report to QLDC – October 2016