

**Consideration of Submissions
Proposed lease extension, PACT
8 JUNE 2017**



Minutes of a meeting to consider submissions on a proposed lease extension to the Pisa Alpine Charitable Trust held in the Meeting Room, Wanaka Recreation Centre, Ballantyne Road, Wanaka on Thursday, 8 June 2016 beginning at 2.30 pm

Present:

Mr Quentin Smith (Chair) and Ms Rachel Brown

In attendance:

Mr Dan Cruickshank (Property Advisor, APL Property Ltd), Mr Aaron Smith (Senior Parks and Reserves Planner) and Ms Jane Robertson (Senior Governance Advisor)

Commencement of the hearing

The Governance Advisor called the meeting to order and asked the elected members to determine the Chairperson for the hearing.

It was agreed that Mr Smith shall chair the meeting.

Mr Smith took the chair.

Declarations of Conflicts of Interest

No declarations were made.

Confirmation of Agenda

The agenda was confirmed without addition or alteration.

Hearing of Submissions

The Chair advised that the hearings panel had been formed at the meeting of the Wanaka Community Board held on 30 March 2017 and it had delegated authority to hear any submissions and make a recommendation on the lease extension to Council. The hearing would be conducted under the provisions of S 120 of the Reserves Act 1977.

He noted that members of the Pisa Alpine Charitable Trust (the lessee) were in attendance at the hearing and in the interests of fairness and natural justice he was happy to allow them to speak, provided that no objection to this course of action was raised. No objection was made.

Officer's covering report

Mr Cruickshank detailed the history of the trust and its activities leading to this point. He noted that an agreement to lease had been signed as a means to transition to full lease and there had been discussion around a further term. Under the provisions of

the Reserves Act 1977 any change to an original lease term was subject to public notification.

Mr Smith asked if the panel was being asked to determine a lease extension of 33 years (extending it from 66 to 99 years) or whether it could decide on a whole new lease term out to 99 years, starting in 2012. Mr Cruickshank stated that the panel could decide either as the trust had the option to sign the original lease agreement if a new term was not approved.

Mr Cruickshank noted that a recommendation containing a requirement for the trust to hold an AGM at which an annual report was presented could address the submitter concern. However, he added that the Council did not normally have a direct say in the constitutions of its community lessees and he could not think of another instance where the Council had similarly directed a group's constitution.

Mr Cruickshank did not believe there was any risk to Council if it agreed to extend the term to 99 years as the Reserves Act allowed the Council to terminate a lease at any time, if the land could be better served by another activity.

Submitter in opposition: Jonathan Holmes (accompanied by Ernie Maluschnig)

Mr Holmes expressed concern that there were no formal mechanisms for PACT to engage with the community and he considered this was a major opportunity being missed. It was the only commercial Nordic ski area in New Zealand, but the land was in public ownership and the Council represented the community. He believed that there was an opportunity for a closer partnership to be fused which could provide a greater good for the community.

If the Council was of a mind to grant a 99 year lease, Mr Holmes believed it would be wise to review the Trust's governance structure so that Council could guide management of the facility. He also considered that the Council, as lessor, should have a means of measuring the services the Trust provided to the public. He believed that greater scrutiny and an agreement for services would help the facility to endure and for the sport to grow.

In exchange for a 99 year lease, Mr Holmes believed that the lessor needed from the lessee visibility, transparency and engagement with the community. Mr Holmes cited other local organisations such as Wanaka Wastebusters and the Upper Clutha Tracks Trust, suggesting the PACT could have similar public accountability. Mr Holmes stated that he was not in favour of granting a lease extension without a mechanism for ensuring these things, but he would support it if appropriate conditions were imposed.

The hearings panel noted that staff advice was that conditions be added to the lease requiring the Trust's annual report to be made public and for the Trust to hold a public AGM. Mr Holmes was asked if these conditions would address his concerns adequately. Mr Holmes noted that tabling a report was retrospective and he was keen to see more of a partnership with the community, and he believed there would be more community engagement if the Council was involved in guiding the group.

Mr Smith suggested that such a request was unusual, as in terms of the Trust the Council was simply empowering a sector to undertake an activity on public land rather than being the service provider itself. He drew attention to a similar arrangement with the Queenstown Mountain Bike Club. He added that the Council had not established the Snow Farm because it recognised a gap in service provision; rather the Trust had provided a new opportunity that the Council had chosen to take. He added that the Trust had a written constitution and was a charitable organisation and he questioned why Mr Holmes did not believe there was adequate protection in those mechanisms. Mr Holmes replied that these factors were not accountabilities between lessee and lessor.

Trust Presentation

The Pisa Alpine Charitable Trust was represented at the hearing by Tom Pryde (Chair), John Hogg and Mary Lee.

Mr Pryde spoke on behalf of the Trust. He noted that all of the lease terms had been agreed with Council following discussions over a number of years and review by two legal firms. He detailed the unique circumstances and major financial contribution of the Trust. He questioned Mr Holmes' assertion that the documentation and structure of Wanaka Wastebusters was a perfect exemplar, noting that the constitutions of the two were not comparable as Wanaka Wastebusters was an incorporated society whilst PACT was a charitable Trust with two subsidiary companies, Snow Farm and Merino Musterers. Further, he stated that there was nothing in Wanaka Wastebusters' constitution that covered any of the issues Mr Holmes had raised, adding that he had never seen a lease agreement where a landlord had dictated how the tenant should run their business. Whilst he did not disagree with the philosophy of holding public meetings, he did not believe that would be great public interest in such meetings. Overall, he considered the inclusion of such conditions in a lease as a one-off was in appropriate and he was opposed to anything of that nature being included in the lease.

Mr Pryde noted that the Trust's lease had been approved and the only questions open for consideration at the hearing was an additional 33 years and waiver of rates.

The Chair asked what protection was provided to the Council in the lease. Mr Pryde considered that there was little actual difference for the Council between 66 and 99 years, but a long lease allowed the Trust to make long-term investment in the facility. Whilst the Trust employed various paid staff, the Trustees themselves were volunteers. The Trust did not want to change its constitution nor did it want to add conditions into the lease about compulsory public meetings or the rotation of directors. It was a standard commercial lease, additional conditions would be unworkable and Mr Pryde did not know of any other charity that would agree with such conditions.

Mr Hogg stated that Trusts tended not to be democratic but Trustees had to abide by the terms of the Trust and these were generally of a higher standard than a society. He believed a Trust was the right structure for this sort of operation.

Mr Maluschnig left the meeting at 3.44pm.

Mrs Lee stated that she was proud of what the Trust had done in its first 5 years. She believed that there were existing mechanisms that enabled public input into the Trust.

Mr Hogg added that the Trust was always interested in getting feedback from people and he agreed that this could be more obvious on the website.

Ms Brown asked if the Trust would consider a member of the Wanaka Community Board fulfilling a liaison role on the Trust.

Officer's Review of Recommendation

Mr Cruickshank noted that the Trust's application to extend the term of the lease had resulted in the re-notification process which did give the Council the opportunity to reconsider the terms and conditions of the lease. The Council could not renege on the existing 66 year lease but it could offer an additional 33 years with new terms. He acknowledged that making public the Trust's annual reports was more than what a similar entity would be required to do, but it was similarly unusual to offer a 99 year lease.

The Chair advised that the panel would reserve its decision and all parties would receive a copy of its decision in writing.

The members of the public left the meeting at 3.55pm.

Deliberations

It was agreed that regard was needed to the existing baseline. There was further discussion about the possible involvement of a member of the Wanaka Community Board in PACT. It was noted that the Trust had started providing its annual reports to the Council because of public interest in it and whilst requiring public AGMs would be unusual, the arrangement was not like a normal commercial lease.

It was agreed that the panel would meet together independently to formulate its decision.

The meeting concluded at 4.00pm.