

13. Consultation for Proposed Lease and Licence of Cathedral Square Land to Christ Church Cathedral Reinstatement Limited

Reference / Te Tohutoro: 20/406613

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1. Executive Summary / Te Whakarāpopoto Matua

- 1.1 The purpose of this report is for Council to consider a proposal to grant a lease and licence to Christ Church Cathedral Reinstatement Limited (CCRL) to utilise an area of Cathedral Square for construction purposes during the reinstatement of the Christ Church Cathedral. The proposed annual rent is \$1.
- 1.2 Council commenced discussion on this report at its meeting on 23 April 2020, additional advice was requested from staff and consideration of the report deferred to a future meeting. That further advice now forms part of this report (specifically paragraph 4.5 to 4.9).
- 1.3 This report seeks the Council's support for the proposal and, if supported, to initiate a process to seek the views of the community through a public consultation process to be heard by a Hearings Panel that will report to the Council for a final decision.
- 1.4 This report is staff generated in response to the request from CCRL to use a strip of land bordering between 99 and 100 Cathedral Square for use as laydown, storage and temporary site accommodation in support of the construction works associated with the reinstatement of Christ Church Cathedral following the devastating consequences of the earthquake events of 2010/2011.
- 1.5 CCRL have requested the option to use the Kiosk as a visitor centre open to members of the public during the project duration. The Kiosk is currently vacant with the previous tenants NZ Police vacating the premises in 2017.
- 1.6 A lease over those parts of the land at 99 Cathedral Square, the Kiosk, and a licence to occupy areas of legal road is sought by CCRL to enable them an area for access and reinstatement.
- 1.7 The decision in this report is of low significance in relation to the Christchurch City Council's Significance and Engagement Policy. The level of significance was determined by the number of people affected and/or with an interest, the level of community interest already apparent for the issue, possible environment, social and cultural impacts, possible costs/risks to Council, ratepayers and the wider community of carrying out the decision and whether the impact of the decision can be reversed.
- 1.8 While the issue is of low significance, there is a legislative requirement to seek the views of the public prior to the Council considering the granting of the lease and licence due to the length of time requested.

2. Officer Recommendations / Ngā Tūtohu

That the Council:

1. Authorise staff to commence a public consultation process in accordance with the obligations under the Local Government Act 2002, in respect of:
 - a. The proposed lease of a portion of land contained within 99 Cathedral Square as shown on the plan in clause 5.4 below;
 - b. The proposed licence to occupy legal road over those areas shown on the plan in clause 5.4 below;
 - c. The proposed lease of the Kiosk building in Cathedral Square as a visitor centre for Christ Church Cathedral Reinstatement Limited during the construction phase.
2. Agree that a Hearings Panel be convened at the completion of the consultation period to receive and hear submissions on the proposed lease and licence to Christ Church Cathedral Reinstatement Limited, deliberate on those submissions, and to report back recommendations to the Council.
3. Note that under staff delegation a temporary Licence to Occupy part of 99 Cathedral Square as shown on the plan in paragraph 5.4 below will be issued to Christ Church Cathedral Reinstatement Limited for a period up to six months for non-exclusive access rights.

3. Reason for Report Recommendations

3.1 Proceed with public consultation as required under the Local Government Act.

3.1.1 Advantages:

- The Council will meet their consultation obligations under the Local Government Act with regard to disposal of land through a lease.
- A Hearings Panel will be appointed allowing the public's views to be heard in an appropriate forum.

3.1.2 Disadvantages:

- The consultation and decision making process creates a period of uncertainty for the Cathedral Reinstatement project. This uncertainty is partially address by the short term licence described in 5.8 to 5.12.

4. Alternative Options Considered

4.1 There were two alternative options considered.

Do not proceed

- 4.2 Firstly Council could decide not to undertake the consultation process. Effectively this would mean that Council was deciding not to grant a lease and licence as it is legally obliged to consult.
- 4.3 This option avoids any consultation costs.

- 4.4 As access to the proposed lease areas is important for the project, a Council decision not to consider a lease may contribute to delays, increased cost and revised construction requirements for the reinstatement of the Cathedral.

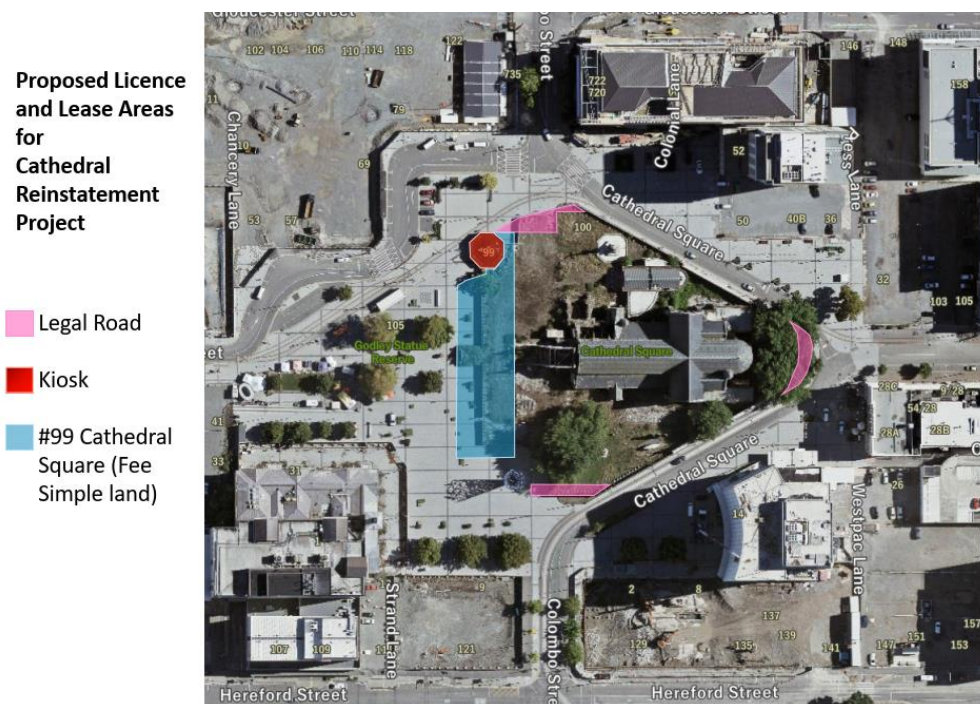
Christ Church Cathedral Reinstatement Act 2017

- 4.5 Secondly, the Crown could exercise its powers through the Christ Church Cathedral Reinstatement Act 2017 Order in Council.
- 4.6 The Christ Church Cathedral Reinstatement Act 2017 (the Act) provides for the Government to make an Order in Council (OIC) that overrides provisions of other legislation. In the current matter, this could be used to authorise the occupation or override specific provisions, such as the requirement to consult, of the Local Government Act. Before an Order in Council can be approved there are multiple steps, including a requirement to consult with Council or the public on the draft Order.
- 4.7 Following discussions with the Department of Prime Minister and Cabinet, officers consider that if the Crown was to use the OIC process the most likely action would be to override the Section 138 Local Government Act requirement to consult. Council would then still need to make a decision about approving the occupation.
- 4.8 It is considered unlikely that the Minister would use the powers to approve the occupation. Such a move creates a perception of overriding the local decision making process. There has been little evidence of a willingness by the Minister to use “special” powers when there are working “ordinary” powers. Use of the Minister’s special powers may also be disproportionate in the circumstances.
- 4.9 The lease was not included in the recent OIC process relating to other aspects of the Cathedral reinstatement.

5. Detail

Proposed Lease and Licence Detail

- 5.1 The area of land requested by CCRL is shown below:



- 5.2 The land is required for a period of up to 10 years for construction purposes. Specifically, it will be used to undertake works, including site establishment and stabilisation works to the Christ Church Cathedral and its setting which includes but is not limited to access for equipment and heavy vehicles and equipment, laydown areas, establishment of site office, provision for use of the Kiosk to provide a localised point of interaction with the public to provide information about the project during the construction phase.
- 5.3 The area of land subject to the lease is approximately 1527m² plus the Kiosk and a total of 270m² of legal road.
- 5.4 The proposed annual rent is a peppercorn rental (\$1) as part of the Council's "in-kind" commitment to the project.
- 5.5 The advantages of granting a lease and licence to CCRL are:
- 5.5.1 Ensuring safety of the public and efficiency of works on the construction site;
 - 5.5.2 Locating temporary construction offices in the leased area, outside of the Cathedral collapse zone, minimises the risk or harm from a collapse event and provides an on-site safe egress zone.
 - 5.5.3 The extension of the current site to the west end generates the least external effect on the transport corridor and pedestrians in the Cathedral Square area.
 - 5.5.4 It also allows the site to operate within the Cathedral property boundary to the north, south and east sides that means the site boundary effects are minimised and there is no interruption to users of the road, tram or pedestrian footpaths.
 - 5.5.5 Provides an area for on-site storage of materials, recovered stone and tools, and reduces heavy traffic movements to and from the site that provides savings on project transport costs and minimises effects on the transport corridor, neighbours and pedestrians.
 - 5.5.6 Use of the laydown area also provides an opportunity for stonemasons to work on site with the potential for public engagement and education as part of this arrangement.
- 5.6 The disadvantages of granting a lease and licence to CCRL are:
- 5.6.1 The lease and license will restrict access to parts of Cathedral Square. The level of restriction is minor and will not materially impact on the public's experience. The restricted access will not significantly restrict the either people walking through the Square or the ability to hold events in the space.
- 5.7 Overall staff consider that the advantages of the lease and licence outweigh the disadvantages.

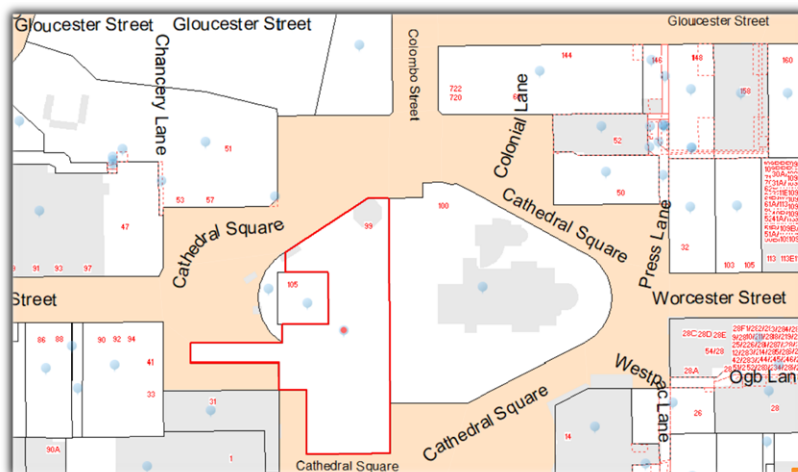
Temporary Licence - Shared Use

- 5.8 The project director for the Council's Cathedral Square redevelopment project has indicated a possible saving to that project which has mutual benefits for Council and CCRL. To achieve the savings the project team would uplift pavers contained within the area proposed in the lease to CCRL. This will provide cost savings to the Council project of circa \$180,000 and enable the team to complete the Strand Lane portion of the programme within project timeframes while keeping a uniform look in paving.
- 5.9 In uplifting the pavers, the team will require the current fencing/hoardings to be moved out further into the Square in a similar position as proposed by CCRL. The area of uplifted pavers will need to be made safe for the duration of that project until new pavers are obtained and a design agreed with stakeholders. The Council project has an estimated for completion date of August 2021.

- 5.10 It would be possible for CCRL and the Council to both work within the expanded area. Therefore, discussions with CCRL have occurred to see if this will work and they have agreed that they will work with the Council project team to ensure that the uplifted area is made safe and will relocate their portable site offices into this area under a temporary licence to occupy. On this basis a licence will be issued under a staff delegated authority for a six month period (being the maximum term permissible under that delegation) to CCRL to enable them to work jointly alongside the Council project team in the expanded area.
- 5.11 Effectively the area will be a Council controlled worksite, with CCRL having non-exclusive access rights for their site offices. Council will avoid the cost of having to temporarily reinstate the paved area, as the site offices will occupy the area where the pavers have been removed.
- 5.12 The six month licence period allows sufficient time for the Council to use its business as usual powers as set out in the report i.e. grant a lease, after consultation.

Consultation Requirements Local Government Act Sections 78 and 138

- 5.13 Section 138 of the Local Government Act 2002 requires the Council to consult on any proposal to dispose of a park. The definition of park means “land acquired or used principally for community, recreational, environment, cultural, or spiritual purposes” but does not include land held under the Reserves Act 1977.
- 5.14 The land making up Cathedral Square consists of:
 - 5.14.199 Cathedral Square - Park in accordance with the above description; legal description Lot 2 DP 39475 Canterbury, Title Identifier CB18K/1393
 - 5.14.2105 Cathedral Square – Godley Statute Reserve – described as Section 1193 Town of Christchurch, Title Identifier CB12K/392 – defined as Reserve under the Reserves Act 1977 (not subject to the proposed lease/licence).
 - 5.14.3 Legal Road as shown in the coloured areas of the plan below.



- 5.15 Section 138 creates an obligation to consult and does not provide any further guidance on the form of the consultation. Therefore, in the absence of any guidance, it is appropriate for the Council to determine and design a consultation process that is appropriate to the particular circumstances of the case.
- 5.16 The consultation process that is designed must:
 - 5.16.1 Comply with the principles of consultation set out in t Section 82 of the Local Government Act 2002; and

- 5.16.2 Enable the Council to comply with its obligations in Section 78 of the Local Government Act 2002 to consider the views and preferences of persons likely to be affected by, or have an interest in, the decision whether or not to lease the subject land to CCCRL for the prescribed purposes.
- 5.17 In determining the consultation process, the Council should be guided by its Significance Engagement Policy (SEP). Under the SEP, the level of consultation/engagement required will depend on the level of significance of the matter. The significance assessment for this matter is discussed in paragraph 1.6 of this report. The relevant forms of engagement from the SEP in this case will be to “inform” and “consult”.
- 5.18 In addition to the Section 138 consultation requirements, the Council must comply with its decision-making obligations in Part 6 of the Local Government Act 2002. Section 79 provides that each Council is to determine how it will achieve compliance with sections 77 and 78, although as a general rule compliance should be largely proportional to the significance of the matter. The more significant the matter, the higher the standard of compliance is expected from the identification and assessment of options, the consideration of the views of those affected, and the extent of the written record kept showing compliance.

6. Policy Framework Implications

Strategic Alignment

- 6.1 This report supports the [Council's Long Term Plan \(2018 - 2028\)](#):
- Activity: Public Information and Participation
 - Level of Service: 4.1.11.1 Provide advice and leadership in engagement and consultation planning and delivery - Community consultation occurs for all projects / issues of high significance or as directed by Council

Policy Consistency

- 6.2 The decision is consistent with Council’s Plans and Policies.

Impact on Mana Whenua

- 6.3 The decision does not involve a significant decision in relation to ancestral land or a body of water or other elements of intrinsic value, therefore this decision does not specifically impact Mana Whenua, their culture and traditions.

Climate Change Impact Considerations

- 6.4 The carrying out of a consultation process and possible granting of a lease and licence does not provide an opportunity to determine the climate change effects arising from the activity of the proposed Lessee.

Accessibility Considerations

- 6.5 The granting of a lease and licence may have a potential impact on those individuals with a physical disability, wheelchair users and visually impaired. Use of the legal road (areas identified by the colour pink in paragraph 5.4.1) will be subject to approved Traffic Management Plans which will take into account the safety of the public.
- 6.6 Secure hoarding will be erected and a site control plan will be followed to ensure the safety of public.

7. Resource Implications

Capex/Opex

- 7.1 Cost to Implement – consultation costs have not yet been calculated however it is estimated by be less than \$2,000. Staff time is not being allocated against this project.
- 7.2 Maintenance/Ongoing costs – Not applicable.
- 7.3 Funding Source – the consultation costs are unbudgeted and costs be met through existing operational budgets.

8. Legal Implications

Statutory power to undertake proposals in the report

- 8.1 Local Government Act 2002.

Other Legal Implications

- 8.2 The legal consideration is compliance with relevant legislation.
- 8.3 If the decision is made by the Hearings Panel to grant a lease and licence, those documents will be prepared by the Council’s Legal Services Unit.
- 8.4 This report has not been reviewed and approved by the Legal Services Unit, however advice was given as to the consultation requirement.

9. Risk Management Implications

- 9.1 There is a high risk that in not carrying out consultation as detailed in this report could place the Council in breach of the Local Government Act and become vulnerable to legal challenge.
- 9.2 There may be some negative publicity to the Council and CCRL by those members of the public who are not supportive of the project. This will be managed by the appropriate consultation and engagement teams for both parties.

Attachments / Ngā Tāpirihanga

There are no attachments for this report.

In addition to the attached documents, the following background information is available:

Document Name	Location / File Link
Not applicable	

Confirmation of Statutory Compliance / Te Whakatūturuanga ā-Ture

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.