



**I give notice that
a Fences, Roothing, Reserves & Dogs Committee Meeting will be held
on:**

Date:	Thursday, 31 January 2019
Time:	12.00pm
Location:	Council Chamber 107 Heuheu Street Taupō

AGENDA

MEMBERSHIP

Chairperson Cr Barry Hickling
Deputy Chairperson Cr John Williamson

Members Cr John Boddy
Cr Anna Park
Mayor David Trewavas
Cr Maggie Stewart

Quorum 3

Gareth Green
Chief Executive Officer

Order Of Business

- 1 **Apologies**
- 2 **Conflicts of Interest**
- 3 **Confirmation of Minutes**
Nil
- 4 **Reports**
 - 4.1 Taupo Market Licence Variation3
 - 4.2 Easement Request on Waipahihi Reserve9
- 5 **Confidential Business**
Nil

4.1 TAUPO MARKET LICENCE VARIATION

Author: Nathan Mourie, Senior Reserves Planner

Authorised by: Kevin Strongman, Head of Operations

PURPOSE

To consider revocation of a previous Committee resolution and approval of a variation to the current Licence to Occupy (LTO) for Taupō Market at Riverside Park (attachment 1).

EXECUTIVE SUMMARY

Following a prolonged negotiation process to define a new operating location and licence to occupy between Taupō Market and Council; the operators of the market have indicated that they would like to maintain the conditions of the current licence with a variation to reflect a modified operating area. It is also considered appropriate to vary the operating hours to reflect the actual market activity.

This necessitates a revocation of a previous Committee resolution and approval of a variation of the current LTO.

RECOMMENDATION(S)

- 1) That the Fences, Roothing, Reserves & Dogs Committee revokes resolution **FRD201707/04**:

FRD201707/04 RESOLUTION

Moved: Cr John Williamson

Seconded: Cr Anna Park

That the Fences, Roothing, Reserves & Dogs Committee instructs the Chief Executive to negotiate a new licence to occupy/lease with Monika and Hermann Geister for the Taupō Market to operate on the Northcroft Domain and confirms that the Market can remain in its current location under the same Terms & Conditions of the present licence until a new agreement is signed.

CARRIED

- 2) That the Fences, Roothing, Reserves & Dogs Committee approves a variation to the Licence to Occupy held by Monika and Hermann Geister for the operation of a weekly market to vary:
- a) the Licensed Area from Lower Riverside Park (the exact area of which is more particularly described in the Licence to Occupy) to:
 - i. that area shown shaded in yellow on the plan described in this report as Figure 2 being 5540m² more or less of part of the Taupo District Council's Riverside Park; and
 - ii. that area shown shaded in red on the plan described in this report as Figure 2 being 6,280m² more or less of part of the Taupo District Council's Riverside Park for use as an extended area for the weekly market (if required), and monthly car boot sales.
 - b) the Operating Hours from Saturdays 07.00am to 02.00pm, to Saturdays 06.00am to 03.00pm.

BACKGROUND

The proposal has not been presented previously.

However, there have been previous items relating to the Taupō Market occupation of Tongariro Reserve/Riverside Park presented to Council; most recently at the extraordinary Fences, Roothing, Reserves and Dogs Committee meeting on 18 July 2017.

The purpose of the 18 July report was to consider a request from the operators of Taupō Market at Riverside Park in Taupō to adjust their licence to occupy. This was to reflect their concerns about the current licence to occupy and management arrangements of Riverside Park as it related to their operation.

Over the course of the licence agreement, with assignment of the licence to new licence holders and the evolution of the market activity and location, it made sense to re-evaluate the licence and to decide on the future management of the Taupō Market on Council administered land taking into account Taupō Market and Council considerations. A brief summary of the licence history is described below:

- Current licence to occupy granted to Sue Rauch 1 January 2013 for 5 years
- A variation extended the licence term by two years with final expiry 31 December 2019
- A variation introduced a non-operating clause for specific events
- A Deed of assignment dated 01 June 2015 assigned the licence to Monika and Hermann Geister.
- Usage area has changed from lower Riverside Park to upper Riverside Park through an informal agreement with Council
- Monika and Hermann Geister wrote to Council mid 2017 requesting that their licence to occupy council land at Riverside Park be “adjust[ed]...to reflect our current situation and location”
- Council workshop held 04 July 2017 and report presented 18 July 2017
- The FRRReD Committee identified Northcroft Reserve as a more suitable site for long term market operation with the following resolution made:

FRD201707/04 RESOLUTION

Moved: Cr John Williamson
Seconded: Cr Anna Park

That the Fences, Roading, Reserves & Dogs Committee instructs the Chief Executive to negotiate a new licence to occupy/lease with Monika and Hermann Geister for the Taupō Market to operate on the Northcroft Domain and confirms that the Market can remain in its current location under the same Terms & Conditions of the present licence until a new agreement is signed.

CARRIED

- Council’s working group discussed the option of up to five years at Northcroft Reserve, or two years at upper Riverside Park; both under a new licence to occupy with the rental reflecting the current market valuation for the sites. Council’s working group also discussed the option of the market being held for nine months at Northcroft, with three months at upper Riverside over the winter period.
- Monika and Hermann Geister refused these options and asked to continue under the terms of their current licence (including the non-market rental), but modified to reflect the use of upper Riverside Park instead of lower Riverside Park as identified in the current licence. The market operators acknowledged that this would only provide a licence until 31 December 2019.

DISCUSSION

Following a prolonged negotiation process to define a new operating location and licence to occupy agreement with Monika and Hermann Geister; the discussions have stalled, with the operators of the market ultimately indicating that they would like to maintain the conditions of the current licence with a variation to reflect a modified operating area. It is also appropriate to vary the operating hours to reflect the actual market activity.

If this is a desirable outcome; then for completeness it is also good practice to revoke any prior resolutions to reflect that negotiations with Monica and Herman Geister for a new licence at Northcroft Reserve have stalled. Therefore it is recommended that the resolution relating to the market from the 04 July 2017 FRRReD Committee meeting be revoked.

It is anticipated that in respect of the current licence all other clauses will then be implemented as described in the licence. To date, many clauses have not been fully applied, including requirements for the licence holder to pay a fair proportion of the outgoings (e.g. power) and to be responsible for management and removal of waste generated by the market. To date Council has covered costs of power, waste management and ground maintenance and repair made necessary by use of the site by the market and allowing parking on Tongariro North Domain amongst other considerations.

The current operation of the Taupō Market has, at times, strayed from the Licenced Use described within the current LTO.

Under the current licence the final expiry date for the market operation is 31 December 2019. There are no rights of renewal. If the proposed variations are approved by Council, the final expiry date for the licence will remain the same; 31 December 2019. Therefore, upon expiry of the licence the Taupō Market will no longer have any rights to operate a market on Council administered land.

Council recognises the community value in having a local market and is committed to providing a space in Taupo for a weekly market. Therefore, it is anticipated that an item will be presented to the Committee in the first quarter of this year for it to consider its options for providing a weekly market in Taupo.

\$100,000 was allocated in the Long Term Plan (LTP) to develop Northcroft Reserve as a multi-use space capable of accommodating the market operation. It is now anticipated that this money will not be spent on the Northcroft Site, or any other market site as intended in the LTP timeframes (\$25k in 2018/19 & \$75k in 2019/20). A decision on the future of the allocated LTP budget could be made at the same time as Council considers its options for providing a weekly market in Taupo.

The proposed variation to the operating hours is to change them from the current time of 0700-1400 hours on Saturdays to 0600-1500 hours on Saturdays. This reflects the actual current use by the market, allowing time for stallholders to pack up and pack down, and is intended to remove any potential conflict in understanding of the licence limitations.

The proposed change in area from lower Riverside Park to upper Riverside Park is indicated below.



Figure 1 - Existing Licenced Area (approx. 8,200m²)



Figure 2 - Proposed New Licenced Area

The yellow area is the core location for the market, with the red area being available if necessary to accommodate additional vendors, and for monthly car boot sales.

Alternatively, Council could seek to enforce the existing licence terms (i.e. require the Taupo Market to operate from the Lower Riverside Park). However, such action is considered to be of little community benefit, and to be viewed unfavourably by the Taupo Market stall holders.

Based on this information it is considered that there are two options.

OPTIONS

Analysis of Options

Option 1. Approve the variations and revoke the previous resolution

Advantages	Disadvantages
<ul style="list-style-type: none"> • Would limit any potential conflicts between the documented licence agreement and the on-the-ground activity • Revoking the previous resolution reflects that negotiations for a new licence at Northcroft Reserve have stalled 	<ul style="list-style-type: none"> • Does not address the current operational issues with the market location • Allows for the continuation of a rental far below market valuation

Option 2. Decline the variations and retain the previous resolution to negotiate a new licence for Northcroft Reserve

Advantages	Disadvantages
<ul style="list-style-type: none"> • Opportunity to re-commence negotiations with the licence holder for a licence at Northcroft Reserve 	<ul style="list-style-type: none"> • Potential to prolong the ongoing tension between licence holder and landlord • Unlikely to result in a new licence for Northcroft Reserve being negotiated as negotiations have stalled • The existing terms of the licence to operate from Lower Riverside Park will not reflect the current on the ground activity at Upper Riverside Park

Analysis Conclusion:

The preferred option is to approve the variations and revoke the previous resolution.

CONSIDERATIONS**Financial Considerations**

The financial impact of the proposal is estimated to be nil.

Legal ConsiderationsLocal Government Act 2002

The matter comes within scope of the Council's lawful powers, including satisfying the purpose statement of [Section 10](#) of the Local Government Act 2002. The matter will enable the Council to meet the current and future needs of communities for good quality local public services. (i.e. efficient, effective and appropriate to present and anticipated future circumstances).

The proposal has been evaluated with regards to a range of legislation. The key legislation applicable to the proposal has been reviewed and the relevant matters for consideration align with these documents.

Authorisations as follows are required for the proposal:

- Resource Consent Building Consent Environmental Health
 Liquor Licencing Licence to occupy

Authorisations are not required from external parties.

Policy Implications

There are no known policy implications.

Māori Engagement

Council is bound by various Acts to consult and/or engage with Māori, including a duty to act reasonably and in good faith as a Te Tiriti o Waitangi partner. Equally, Council has a responsibility to develop and proactively foster positive relationships with Māori as key stakeholders in our district, and to give effect to the principles of Te Tiriti o Waitangi including (but not limited to) the protection of Māori rights and their rangatiratanga over tāonga. While we recognise Māori in general, we also need to work side by side with the three ahi kaa / resident iwi of our district.

Although good faith does not necessarily require consultation, it is a mechanism for Council to demonstrate its existence and commitment to working together as district partners. Appropriately, the report author acknowledges that they have considered the above obligations including the need to seek advice, guidance, feedback and/or involvement of Māori on the proposed recommendation/s, objective/s, project/s or service/s outlined within this report.

Risks

There are no known risks.

SIGNIFICANCE OF THE DECISION OR PROPOSAL

Council's Significance and Engagement policy identifies the following matters that are to be taken into account when assessing the degree of significance of proposals and decisions:

- a. The level of financial consequences of the proposal or decision;
- b. Whether the proposal or decision will affect a large portion of the community or community of interest;
- c. The likely impact on present and future interests of the community, recognising Maori cultural values and their relationship to land and water;
- d. Whether the proposal affects the level of service of an activity identified in the Long Term Plan;
- e. Whether community interest is high; and
- f. The capacity of Council to perform its role and the financial and other costs of doing so.

Officers have undertaken a rounded assessment of the matters in clause 11 of the Significance and Engagement Policy (2016), and are of the opinion that the proposal under consideration is of low importance.

ENGAGEMENT

Taking into consideration the above assessment, that the decision is of a low degree of significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

COMMUNICATION/MEDIA

Direct communication has been/will be carried out with affected parties/key stakeholders but no wider communication is considered necessary.

CONCLUSION

It is considered that the Riverside Park location is not a suitable long term location for a weekly market activity. However, given the limited duration of the remaining term of the existing licence; the adverse consequences will be operationally dealt with until the final expiry of the current Licence to Occupy. Given that the proposed changes also reflect the current unlicensed operational use by the market, clearing up the documented Licensed Use rights will bring the licence in line with the activity and will not have any additional effects on the use or management of the site in addition to those that already exist.

While these adverse effects are not practically sustainable in the long term, they are manageable for the short term of the remaining licence term until 31 December 2019.

ATTACHMENTS

1. Draft Variation for Taupo Market at Riverside Park

4.2 EASEMENT REQUEST ON WAIPAHIHI RESERVE

Author: Nathan Mourie, Senior Reserves Planner

Authorised by: Kevin Strongman, Head of Operations

PURPOSE

To decide on approving an easement to Unison on Waipahihi Reserve, Taupō for the purposes of power supply.

DISCUSSION

Unison own and operate the local electricity distribution network. They have approached Council requesting an easement to convey electricity, telecommunications and electronic data over Council administered land on Waipahihi Reserve.

Council's legal officers have advised that staff do not have the appropriate delegations to approve any such request. The ability to make such changes under section 48 of the Reserves Act 1977 has been delegated by Council to the Fences, Roothing, Reserves & Dogs Committee.

Section 48 deals with grants of rights of way and other easements. This section allows the administering body to grant an easement over any part of the reserve for the establishment and lawful exercise of a right of way or other easement without public consultation provided:

- The reserve is vested in an administering body and is not likely to be materially altered or permanently damaged; and
- The rights of the public in respect of the reserve are not likely to be permanently affected.

Detailed information on the works has been provided by Unison and are included as attachments to this report; and all associated costs would be met by Unison.

There is an existing 11kv cable running through the reserve which is in need of replacement. There is currently no easement in place for this infrastructure. Unison are requesting an easement in order to secure future access. In addition, Unison would like to modify a portion of the existing route from the middle of the reserve to the western boundary. In addition the proposed easement includes an area along the Grace Cres access point for future 11kv support to the Grace Cres area.

It is not unusual for utility infrastructure to be located on Council reserves. It is considered that in this instance the effects on reserve users is negligible.

CONCLUSION

The replacement of the 11kv line important to ensure the secure ongoing electricity supply to southern areas of Taupō, as well as providing for improved future infrastructure. An easement will secure access for the utilities company to continue maintaining the electrical infrastructure in this area. Moving the cable from the middle of the park to the boundary is also likely to make any long term future development of the park easier as the southern portion of town continues to grow.



Figure 1 - Existing Cable and Proposed Easement

RECOMMENDATION(S)

That the Fences, Roading, Reserves & Dogs Committee approves the granting of an easement to Unison over Waipahihi Reserve for the right to convey electricity, telecommunications and electronic data as outlined in the attachments to this report and authorise the Chief Executive to sign any approval documents on behalf of Council in respect of this matter.

ATTACHMENTS

1. Unison Easement Proposal Letter