

## NGAHUE RESERVE – HEARINGS PANEL



Decision on a notified application under the Reserves Act 1977 for the issuing of leases over parts of Ngahue Reserve, St Johns.

### INTRODUCTION

1. At its meeting on 16 March 2017 the Orakei Local Board resolved that Auckland Council advertise the intention to consider varying the lease at Ngahue Reserve to Oceania Football Confederation Inc. to allow sub-leasing to third-parties to enable commercial activities to be conducted, and to vary the hours of operation available to the public (Resolution OR/2017/27).
2. On 16 March 2017 the Orakei Local Board also appointed the Hearings Panel consisting of Local Board members, with Kit Parkinson the Chair, to hear any submissions and objections, and to determine whether the requested variations to the Oceania Football Confederation Inc. lease should be allowed in full or part, or dismissed.

### HEARINGS PANEL

Local Board Deputy Chair	– Kit Parkinson - Chair
Local Board member	– Carmel Claridge
Local Board Chair	– Colin Davis
Local Board member	– Ros Rundle
Local Board member	– David Wong
Local Board member	– Toni Millar (member arrived after submissions had commenced and did not participate in the decision making part of the deliberations.)

### DECISION SUMMARY

3. Having considered the requirements of the Reserves Act 1977, the information provided for the hearings, and the content and overall thrust of the public submissions; the Hearings Panel:
4. Approves the request from Oceania Football Confederation Inc. to:
  - a. Allow commercial activities to be conducted within the leased area.
  - b. Allow third-parties to sub-lease portions of the leased area to conduct the commercial activities:
    - i. physiotherapy and/or sports medicine rooms to maximum floor area of 75 square metres;
    - ii. sports retail to maximum floor area of 50 square metres;
    - iii. a gym to maximum floor area of 75 square metres;
    - iv. a café to maximum floor area of 75 square metres; and/or
    - v. office space (for a football related organisation) to maximum floor area of 240 square metres.

Noting that all sub-leases, within the building approved under the Agreement to Lease, are subject to prior approval by the Orakei Local Board regarding tenant, location, minor increases to the floor areas listed above (up to 10%) and other matters the Board determines.

5. Declines the request from Oceania Football Confederation Inc. to amend the finishing time for community use of the Ngahue Reserve facility from 9pm to 8:30pm daily.

## THE HEARING

6. The public hearing of submissions to the leasing variations was held at the Auckland University Cricket Club rooms, Level 1, Building 750, 71 Merton Road, Glen Innes on Monday 31 July 2017, commencing at 9:30am.
7. Prior to the hearing, an information pack was made available to members of the public. The Council officers report and appendices were circulated to the applicants, submitters and the Hearings Panel prior to the hearing on 31 July 2017.
8. The matter for the Hearings Panel to consider was:

Oceania Football Confederation Incorporated has requested the Orakei Local Board consider varying the Lease to:

- a. Allow commercial activities to be conducted within the leased area
- b. Allow third-parties to sub-lease portions of the leased area to conduct the commercial activities:
  - vi. physiotherapy and/or sports medicine rooms to maximum floor area of 75 square metres;
  - vii. sports retail to maximum floor area of 50 square metres;
  - viii. a gym to maximum floor area of 75 square metres;
  - ix. a café to maximum floor area of 75 square metres; and/or
  - x. office space (for a football related organisation) to maximum floor area of 240 square metres.
- c. Vary the hours/end times previously allocated by Oceania Football Confederation Incorporated to Council from 9:00pm weekdays to 8:30pm weekdays.

## PROCEDURAL MATTERS

9. A total of seven (7) written submissions were received.
10. Of these, three submitters requested to be heard before the Hearings Panel. On 31 July 2017, one submitter advised they could not attend, and instead provided a further written statement for the Hearings Panel to consider. Two oral submissions were made to the Hearings Panel.
11. No late submissions were received.

## THE CONTEXT

### THE STATUTORY CONTEXT

12. The Reserves Act 1977 is the empowering legislation for the management of the Ngahue Reserve. The land the subject of the current leasing arrangements is a Recreation Reserve, with its underlying ownership and status giving the Council the powers of landowner and Administering Body of the reserve. The Ngahue Reserve Management Plan was adopted for the site in 1996.

13. The key provisions of the Reserves Act 1977 applicable when considering the leasing of reserve land are:

- Section 3 General purpose of this Act
- Section 5 Restricting application of this Act
- Section 17 Recreation Reserves
- Section 40 Functions of administering body
- Section 41 Management Plans
- Section 53 Powers (other than leasing) in respect of recreation reserves
- Section 54 Leasing powers in respect of recreation reserves
- Section 119 Notices
- Section 120 Rights of objection and of making submissions

14. The Resource Management Act 1991, and statutory documents such as the Auckland Council Unitary Plan designed to promote the sustainable management of natural and physical resources and prevent adverse impacts on these resources, are applicable to Ngahue Reserve. In its role as the administering body of the reserve, the Auckland Council is bound by the same rules that apply to other landowners for many activities.

15. However, these are regulatory mechanisms and cannot replace the primary management legislation. Auckland Council, functioning as the administering body of the reserve, retains responsibility for carrying out its functions as per Section 40 of the Reserves Act. Its management responsibilities derive directly from the Act, or by way of additional powers delegated by the Minister.

16. The general purposes of the Reserves Act 1977 can be summarised as -

- providing for the preservation and management of areas for the benefit and enjoyment of the public
- ensuring, as far as possible, the survival of all indigenous species of flora and fauna
- ensuring, as far as possible, the preservation of access for the public around New Zealand's coastal margins, lakes and rivers, and
- promoting the protection of the natural character of the coastal environment and the margins of lakes and rivers.

17. To sharpen the focus of management, there are seven classifications of reserve available to the Minister, according to their principal or primary purpose. These are -

Recreation (refer section 17), Historic (s18), Scenic (s19), Nature (s20), Scientific (s21), Government purpose (s22), Local purpose\*\* (s23).

\*\* for the likes of kindergartens, Scout dens, community halls, art galleries, Plunket rooms, museums, clubrooms, and similar purposes.

18. Being classified as recreation reserve, it is Section 17 that provides the focus for the management of Ngahue Reserve. Broadly, recreation reserves are for the purposes of providing areas for recreation and sporting activities, and the physical welfare and enjoyment of the public, with an emphasis on the retention of open spaces and on outdoor recreational activities.

19. The primary objectives of management are to -
- Allow the public freedom of entry and access subject to such conditions as are necessary for the protection and well-being of the reserve and for the protection and control of the public using it.
  - Conserve those qualities which contribute to the pleasantness, harmony and cohesion of the natural environment, and to the better use and enjoyment of the reserve.
20. A secondary objective is to manage and protect (to the extent compatible with the primary purpose of the reserve) the scenic, historic, archaeological or other natural features of the reserve, including indigenous flora or fauna.

### **Ngahue Reserve Management Plan**

21. The Ngahue Reserve Management Plan was adopted by the former Eastern Bays Community Board in 1996 following a public consultation process. Although the reserve management plan is now 21 years old, it remains the operative plan for the reserve and needs to be referred to along with the Reserves Act 1977.
22. The Ngahue Reserve Management Plan covers the northern portion of the site (the area proposed for the Oceania Football Confederation lease and the finalised Tennis Auckland Region lease) but excludes the majority of the Auckland Netball Centre leased area, which was only added to the reserve after the 1996 plan had been adopted.
23. At the time the 1996 Ngahue Reserve Management Plan was adopted, the site had a variety of other users and or tenants. Tennis Auckland Region is the only remaining organisation named in the 1996 plan.
24. Notwithstanding, the Ngahue Reserve Management Plan anticipated leases being issued to organisations in order to facilitate and enhance the recreational use of the reserve.
25. In August 2013, following a public consultation process, leases were approved by Auckland Council and issued to Auckland Netball Centre Inc., and Tennis Auckland Region Inc.
26. Also in August 2013 following the same public consultation process, Auckland Council approved an Agreement to Lease to be issued to Oceania Football Confederation Inc. to enable the development of football related facilities on the reserve. Following completion of Stage 1 (as defined in the agreement), a 30 year lease would be entered into.
27. Issuing the leases was consistent with the provisions of both the Ngahue Reserve Management Plan and the Reserves Act 1977.

### **Public involvement**

28. As noted earlier, because the Reserves Act is about managing or otherwise dealing with public land, the legislation is strong on the community having the opportunity to have a say and be involved. It requires the Minister or the administering body to adopt an open and transparent process when declaring areas they own or manage to be reserves. When they want to prepare or amend a management plan for a reserve, or want to lease a reserve they must “go public”.

## **Legal option for issuing the leases**

29. The option adopted by Auckland Council in this case, was to advertise the leases in terms of section 54 (2) of the Reserves Act, invite submissions or objections, and deal with them in accordance with section 120 of the Act. The Minister has delegated the approval of matters relating to the leases for Ngahue Reserve (and others) to the Governing Body of Auckland Council, and subsequently to the Orakei Local Board.
30. The Hearings Panel has been presented with opinions and general comment about the management and use of Ngahue Reserve and the neighbouring land use. Some information was provided to the Hearings Panel before the hearings, with additional information provided by submitters through their written and oral submissions.
31. In evaluating the options relating to varying the terms of the proposed lease to accommodate Oceania Football Confederation's request, and considering the points put forward in both the written and oral submissions, the challenge has been to focus on ensuring Ngahue Reserve can be developed and utilised in a manner that complies with the provisions of Reserves Act 1977, while ensuring that an area of land currently under-utilised can be developed and incorporated into the network of recreation reserves available for public use. The Hearings Panel has also been mindful of some strategic questions: How can the reasonable and legitimate expectations of the community be met/balanced, within the framework of what the law requires and what the potential lessees intend to undertake?

## **DISCUSSION OF THE ISSUES**

32. A total of seven submissions were received. Six of the submissions were supportive of amending the proposed Lease to enable Oceania Football Confederation to sub-lease part of the site to enable commercial activities to be undertaken and to amend the public access hours from 9pm daily, back to 8:30pm.
33. One submitter opposes all the requested changes on the basis that the request is inconsistent with the provisions of the Reserves Act 1977 (sub-leasing and commercial activities), and does not take into account the likely future demands for playing surfaces over the life of the lease (30 years).
34. There were a number of sub-issues raised that the Hearings Panel has had to consider.
35. These issues can be summarised as:
- Sub-leases and commercial activities on the reserve
  - Length of leases and sub-leases
  - Changing the public/community finishing time from 9pm to 8:30pm daily.

## **Commercial Activities and Sub-leases**

36. The original Agreement to Lease executed in September 2013 provides that any business operation present on the site (café/offices/gym) are to all be ancillary to the dominant recreation

activity of the reserve i.e. they are supportive of the dominant activity and not separate to this operation.

37. The existing arrangements allow certain activities to be undertaken (café/offices/gym) and run in-house by Oceania Football Confederation. That is, there is no provision for sub-leasing to third parties to undertake commercial activities.
38. Approving the in-house activities (café/offices/gym) in September 2013, was principally on the basis of providing facilities to users of the football turfs.
39. In 2013 the Hearings Panel considered the proposed gym and café facilities as being consistent with the intended use of site. The facilities were being developed to enable international and local teams to undertake all aspects of training at the facilities. A gym facility is complementary to the principal purpose of outdoor football playing and practice facilities. The provision of food and sustenance at a large facility of this nature is reasonable taking into account of the number of users and supporters that may be present at any one time.
40. The Hearings Panel further considered that the proposal by Oceania Football Confederation to provide administration/office facilities are complementary and necessary to ensure the efficient and successful operation of the facilities. Acknowledging that the facilities will be used by overseas teams, accompanied by team administrators, the provision of administration and office space will be necessary to ensure the successful and optimal use of the complex.
41. Having considered the written and oral submissions, and taking account of the decision in 2013 to permit certain activities to be undertaken (café, gym, offices, pro shop and physio), the Hearings Panel considers that the proposed commercial activities remain consistent with those proposed in 2013, the significant difference being that they will be undertaken by third-parties – not Oceania.
42. During the oral submissions Oceania raised the prospect of increasing the sub-leased areas as plans for the facility are developed and finalised. The Hearings Panel was advised by council staff that if necessary there may be scope to adjust the final sub-leased areas by small amounts (up to 10%) to accommodate design changes. Large changes would not be accommodated this way and would necessitate further consultation as the advertised areas and consultation process referred to 'maximum' areas.
43. The Hearings Panel was advised that it is proposed that 50% of the rent collected from any commercial sub-leases is to be paid to council. In both its written and oral submissions Oceania requested that the amount to be paid to council be reduced, but was unable to provide any financial information for the panel to consider at the time.
44. While Oceania offered to provide further information at a later date, the Hearings Panel concluded that it needed to base its decisions on the information available at the hearing and prior to making its deliberations. In the absence of any further financial information from Oceania on the day of the hearings, the Hearings Panel determined that the 50% of rent collected would continue to be paid to Auckland Council.

#### **TERM (LENGTH) OF LEASES AND SUBLEASES**

45. The recreation reserve classification of Ngahue Reserve is consistent with the use and development by Oceania Football Confederation. The Ngahue Reserve Management Plan provides for short and long-term leases where appropriate, and outlines that sports fields are

likely in the future. As this was a new lease not contemplated for in the Ngahue Reserve Management Plan, approval from the Minister of Conservation was required, although as noted earlier, this approval process was delegated to Auckland Council.

46. At the conclusion of the 2013 public consultation process and after being considered by both the Orakei Local Board and the Regional Development and Operations Committee of the governing body of the Auckland Council, approval was granted for a 30-year lease to be issued to Oceania Football Confederation.
47. The Hearings Panel was advised by council staff that any sub-leases entered into by Oceania are subject to approval by the Orakei Local Board, and the sub-leases cannot be on terms more beneficial than those granted to Oceania.
48. The term (length) of any sub-leases will be approved by the Orakei Local Board in accordance with the prevailing policies at the time.

#### **COMMUNITY USE – Change of hours**

49. While the complex is being constructed principally to enable overseas football teams to use the facilities, for a large proportion of time the grounds are available for use by local and other sports teams.
50. To ensure the turfs are used to their maximum capacity (within the warranty specifications) the lease arrangement provides that Auckland Council will manage the bookings for the facilities after taking account of Oceania's requirements for overseas and other visiting teams.
51. In finalising the 2013 agreements the hours of community access were agreed as:
  - Monday to Friday 3pm to 9pm
  - Saturday and Sunday 8am to 9pmAuckland Council has access to 24 hours per turf per week within the timeframes above. Auckland Council determines who the 'community' times are allocated to.
52. The existing agreements between council and Oceania require that the parties meet prior to the commencement of each season to agree the allocation of the community times within the hours noted above for the forthcoming season. Although the agreement provides for a 9pm finish time, there is the opportunity for council to only allocate use until 8:30pm, thereby allowing Oceania the opportunity to use the facility as it wishes between 8:30pm and 10pm.
53. The Hearings Panel considered that as this provision already exists within the agreements it is not necessary to permanently change the community use time back from 9pm to 8:30pm daily.
54. This further recognises that due to anticipated population growth, and demand for field space, that permanently moving to an 8:30pm finish time is premature and may compromise future use and allocations of the fields by the community.
55. The Hearings Panel noted that the provisions of the Reserves Act (incorporated into the lease agreement) already enable Oceania to have exclusive use of the facilities for up to 40 days per annum, for no more than six consecutive days at any one time. Staff advised that Oceania have not yet used this facility.
56. The Hearings Panel determined that it would not support moving the finish time for community hours from 9pm daily to 8:30pm, instead would recommend Oceania engages with the process allowed for in the lease agreement to seek earlier finish times on a season by season basis.

Oceania should also be encouraged to familiarise itself with the other opportunities for exclusive use which it has not yet availed itself of.

## **SUMMARY**

57. In summary the Hearings Panel finds –

- a. The Ngahue Reserve Management Plan anticipated certain developments on Ngahue Reserve that never eventuated. This meant that a large portion of the Ngahue Reserve remained undeveloped and inaccessible to the general public. The Oceania development has taken un-used land and transformed it into two high quality artificial football turfs which enable considerable community use.
- b. The Hearings Panel is supportive of approving the request from Oceania to amend the proposed lease agreement to enable sub-leasing to third parties to undertake the specified commercial activities, viz: café, gym, offices, pro shop and physio.
- c. The Hearings Panel recommends the areas to be sub-leased as follow:
  - i. physiotherapy and/or sports medicine rooms to maximum floor area of 75 square metres;
  - ii. sports retail to maximum floor area of 50 square metres;
  - iii. a gym to maximum floor area of 75 square metres;
  - iv. a café to maximum floor area of 75 square metres; and/or
  - v. office space (for a football related organisation) to maximum floor area of 240 square metres.
- d. The Hearings Panel recommends that the request to change the daily finishing time from 9:00pm to 8:30pm be declined. The panel considers there are sufficient provisions within the proposed lease arrangements to provide flexibility around finishing times on a season by season basis to accommodate Oceania's requirements.
- e. The Hearings Panel would recommend that Oceania consider availing itself of the exclusive use provisions to ensure its needs are adequately met throughout the course of the year.
- f. The request from Oceania in its written and oral submissions to reduce the proportion of rent received from the commercial arrangements from 50% to a lesser amount is declined.

## **DECISION TO BE COMPLETED**

58. To give effect to the Hearing Panel's findings, and pursuant to the authority vested in them by resolution of the Orakei Local Board OR/2017/27, the Hearings Panel have determined as follows:

59. To Approve the request from Oceania Football Confederation Inc. to:

- a. Allow commercial activities to be conducted within the leased area.
- b. Allow third-parties to sub-lease portions of the leased area to conduct the commercial activities:

- i. physiotherapy and/or sports medicine rooms to maximum floor area of 75 square metres;
- ii. sports retail to maximum floor area of 50 square metres;
- iii. a gym to maximum floor area of 75 square metres;
- iv. a café to maximum floor area of 75 square metres; and/or
- v. office space (for a football related organisation) to maximum floor area of 240 square metres.

Noting that all sub-leases, within the building approved under the Agreement to Lease, are subject to prior approval by the Orakei Local Board regarding tenant, location, minor increases to the floor areas listed above (up to 10%) and other matters the Board determines.

60. To DECLINE the request from Oceania Football Confederation Inc. to amend the finishing time for community use of the Ngahue Reserve facility from 9pm to 8:30pm daily.

Dated 31 July 2017

Kit Parkinson - Chair

Colin Davis

Carmel Claridge

Ros Rundle

David Wong