I hereby give notice that an extraordinary meeting of the Auckland Domain Committee will be held on:

Date: Monday, 22 June 2020
Time: 2.00pm
Meeting Room: via Skype
Venue: 

Kōmiti o te Papa Rēhia o Pukekawa/
Auckland Domain Committee

OPEN AGENDA

MEMBERSHIP

Chairperson
Cr Desley Simpson, JP

Deputy Chairperson
Adriana Avendano Christie
IMSB Member Renata Blair
Member Alexandra Bonham
Cr Pippa Coom
IMSB Member Hon Tau Henare
Cr Sharon Stewart, QSM
Member Sarah Trotman, (ONZM)

(Quorum members)

Sonja Tomovska
Kaitohutohu Mana Whakahaere / Governance Advisor

12 June 2020

Contact Telephone: 021615961
Email: sonja.tomovska@aucklandcouncil.govt.nz
Website: www.aucklandcouncil.govt.nz

Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Terms of Reference

Background

The Auckland Domain is an important regional park and also has areas within it managed by the Waitematā Local Board. This committee is set up jointly by the Governing Body and Waitematā Local Board to co-ordinate decisions relating to the Domain.

Responsibilities

Decision-making responsibility for parks, recreation and community services and activities in Auckland Domain including those anticipated in the Auckland Domain Act 1987, which are the responsibility of the Governing Body or the Waitematā Local Board.

Powers

All powers of the Governing Body and Waitematā Local Board necessary to perform the committee’s responsibilities including those powers conferred on Auckland Council pursuant to the Auckland Domain Act 1987.

Except:

(a) powers that the Governing Body cannot delegate or has retained to itself (section 2)
(b) where a matter is the responsibility of another committee or local board
(c) the approval of expenditure that is not contained within approved budgets
(d) the approval of expenditure of more than $2 million
(e) the approval of final policy
(f) deciding significant matters for which there is high public interest, and which are controversial.
Exclusion of the public – who needs to leave the meeting

Members of the public

All members of the public must leave the meeting when the public are excluded unless a resolution is passed permitting a person to remain because their knowledge will assist the meeting.

Those who are not members of the public

General principles

- Access to confidential information is managed on a “need to know” basis where access to the information is required in order for a person to perform their role.
- Those who are not members of the meeting (see list below) must leave unless it is necessary for them to remain and hear the debate in order to perform their role.
- Those who need to be present for one confidential item can remain only for that item and must leave the room for any other confidential items.
- In any case of doubt, the ruling of the chairperson is final.

Members of the meeting

- The members of the meeting remain (all Governing Body members if the meeting is a Governing Body meeting; all members of the committee if the meeting is a committee meeting).
- However, standing orders require that a councillor who has a pecuniary conflict of interest leave the room.
- All councillors have the right to attend any meeting of a committee and councillors who are not members of a committee may remain, subject to any limitations in standing orders.

Independent Māori Statutory Board

- Members of the Independent Māori Statutory Board who are appointed members of the committee remain.
- Independent Māori Statutory Board members and staff remain if this is necessary in order for them to perform their role.

Staff

- All staff supporting the meeting (administrative, senior management) remain.
- Other staff who need to because of their role may remain.

Local Board members

- Local Board members who need to hear the matter being discussed in order to perform their role may remain. This will usually be if the matter affects, or is relevant to, a particular Local Board area.

Council Controlled Organisations

- Representatives of a Council Controlled Organisation can remain only if required to for discussion of a matter relevant to the Council Controlled Organisation.
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1 Apologies

At the close of the agenda no apologies had been received.

2 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

3 Petitions

At the close of the agenda no requests to present petitions had been received.

4 Public Input

Standing Order 7.7 provides for Public Input. Applications to speak must be made to the Governance Advisor, in writing, no later than one (1) clear working day prior to the meeting and must include the subject matter. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders. A maximum of thirty (30) minutes is allocated to the period for public input with five (5) minutes speaking time for each speaker.

At the close of the agenda no requests for public input had been received.

5 Local Board Input

Standing Order 6.2 provides for Local Board Input. The Chairperson (or nominee of that Chairperson) is entitled to speak for up to five (5) minutes during this time. The Chairperson of the Local Board (or nominee of that Chairperson) shall wherever practical, give one (1) day’s notice of their wish to speak. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders.

This right is in addition to the right under Standing Order 6.1 to speak to matters on the agenda.

At the close of the agenda no requests for local board input had been received.

6 Extraordinary Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

"An item that is not on the agenda for a meeting may be dealt with at that meeting if-

(a) The local authority by resolution so decides; and

(b) The presiding member explains at the meeting, at a time when it is open to the public,-"
(i) The reason why the item is not on the agenda; and

(ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting."

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

"Where an item is not on the agenda for a meeting,

(a) That item may be discussed at that meeting if-

(i) That item is a minor matter relating to the general business of the local authority; and

(ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but

(b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion."
Auckland Domain - Extension of Parking Agreement with Auckland Bowling Club

File No.: CP2020/07781

Te take mō te pūrongo
Purpose of the report

1. To endorse the extension of the current parking management agreement with the Auckland Bowling Club to 31 August 2020.

Whakarāpopototanga matua
Executive summary

2. The Auckland Council has an Operation and Management Agreement with the Auckland Bowling Club for them to manage the council land in the Grafton Mews area that forms part of Auckland Domain adjacent to the club’s leased site. This agreement was set up in 2017 with a number of extensions being granted. The current expiry date of the Carpark Operation and Management agreement with Auckland Bowling Club (Attachment A) is 30 June 2020 with the intention a new car parking management regime was being introduced.

3. A further extension of this agreement is now required due to delays with AT processes during the COVID-19 restrictions. An extension of the agreement is important to ensure continuity of the car park management.

4. The Auckland Domain Committee is being asked to endorse the extension to 31 August 2020.

Ngā tūtohunga
Recommendation/s

That the Auckland Domain Committee:

a) endorse a further extension of the Car Park Operation and Management Agreement between Auckland Council and the Auckland Bowling Club, for a period of two months, up until 31 August 2020. In all other respects this extension shall be on similar terms and conditions as the existing agreement, and

b) delegate authority to the General Manager Parks, Sport and Recreation to authorise a further extension of up to two months of the Agreement referred to in clause a) if required.

Horopaki
Context

5. The Auckland Bowling Club (the club) leases an area of the Auckland Domain adjacent to a carpark at 100 Stanley St. The carpark currently has approximately 75 parking spaces, nine of which sit within the club’s leased area.

6. In May 2017 the Auckland Domain Committee resolved to enter into a Car Park Operation and Management Agreement (agreement) with the club. This was to put some structure around the practice of the club leasing most of the car parks to local health and business entities which had been operating without consent for some time. The agreement was set up as a temporary arrangement with the knowledge that a longer-term solution was required to manage the parking area.
7. Several extensions have been provided to the agreement to enable the development of an alternate management solution. The latest extension was granted by the Chief Executive under delegated authority until 30 June 2020.

8. On 29 November 2018 the Auckland Domain Committee agreed to endorse parking charges in Grafton Mews subject to normal Auckland Transport (AT) consultation processes and net revenue being returned to the domain (Resolution number ADC/2018/36). This included the parking area in 100 Stanley Street managed by the club. It is anticipated, given the pressure on this parking area from the surrounding commercial area and university, and the precedent of past parking fees, that this is the most effective form of managing this parking area.

Tātaritanga me ngā tohutohu

Analysis and advice

9. The implementation of parking charges was dependent on AT being able to include this in their work programme. They were unable to do this until recently and are currently progressing this. It was expected this would be implemented by July 2020, however, there have been delays due to Covid-19 restrictions.

10. A further extension of the agreement is now necessary to bridge the gap between the current agreement concluding and the new arrangement potentially being put in place. It is recommended that this be formally endorsed by the Auckland Domain Committee.

Tauākī whakaaweawe āhuarangi

Climate impact statement

11. The purpose of this report to extend an existing management agreement for parking in the Grafton Mews area. It is not proposing any change to the current status and therefore would not result in a climate impact.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

12. This report largely reflects a 'business as usual' operational activity and is considered to be in line with council group activities.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

13. The extension to the club’s parking management agreement till 30 June was supported by the members of the Waitematā Local Board on the Auckland Domain Committee at a workshop held on 6 April 2020.

Tauākī whakaaweawe Māori

Māori impact statement

14. This proposed extension to the agreement is largely about operation of the car park, so it is not proposed to specifically engage mana whenua on this.

Ngā ritenga ā-pūtea

Financial implications

15. The extension of the agreement will mean the current arrangement of council receiving a percentage of the parking revenue collected by the club will continue for an additional two months.
Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations

16. The extension of the current management arrangement for two months will ensure continuity of the management of the carpark and minimise any risks associated with a gap between the current agreement concluding and the new arrangement potentially being put in place.

Ngā koringa ā-muri
Next steps

17. To advise the bowling club that they are able to maintain operation of the car park to the end of August 2020.

18. Continue to work with Auckland Transport on the consideration of changes to carparking in Grafton Mews in line with previous Auckland Domain Committee resolutions.

Ngā tāpirihanga
Attachments

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Ngā kaihaina
Signatories

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<tr>
<th>Author</th>
<th>Mace Ward - General Manager Parks, Sport and Recreation</th>
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<tr>
<td>Authoriser</td>
<td>Martin van Jaarsveld - Manager Community Parks and Places</td>
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CARPARK OPERATION AND MANAGEMENT AGREEMENT

AUCKLAND COUNCIL

AUCKLAND BOWLING CLUB INCORPORATED
AGREEMENT DATED 14 NOVEMBER 2017

PARTIES

1. AUCKLAND COUNCIL ("Council")

2. AUCKLAND BOWLING CLUB INCORPORATED (incorporated society number 221332) ("Manager")

BACKGROUND

A. Council owns the land at Stanley Street the subject of this Agreement, held in two parts. The first part is part of the land more particularly described as Lot 1 Deposited Plan 29608 and contained in Certificate of Title NA730/30, Part Auckland Domain as defined on Deposited Plan 21515 and contained in Certificate of Title NA479/229 ("First Part"), is vested in Council under the Auckland Domain Act 1987 ("The Act"). The second part is more particularly described as Part Allotment 1 Section 18 Suburbs of Auckland and contained in Certificate of Title NA83/279 ("Second Part").

B. Pursuant to The Act, Council has authority to enter into this Agreement with respect to the First Part of land. Under the Local Government Act 2002, Council has the authority to enter into this Agreement with respect to the Second Part of land.

C. Subject to the terms of this Agreement, Council has agreed to grant and the Manager has agreed to provide the Services set out in this Agreement for the management of the Carpark Area.

D. The parties have entered into this Agreement to record the arrangements between them.
REFERENCE SCHEDULE

1. COUNCIL LAND

100 Stanley Street, Auckland more particularly described as Lot 1 Deposited Plan 29808 in Certificate of Title NA730/30, Part Auckland Domain as defined on Deposited Plan 21515 in Certificate of Title NA479/229, and Part Allotment 1 Section 18 Suburbs of Auckland in Certificate of Title NA83/279

2. CARPARK AREA

That part of the Council Land identified in pink on the attached plan.

3. THE TERM

A term of one (1) year commencing on 1 July 2017 and expiring on 30 June 2018.

4. MANAGEMENT FEE

A management fee of $45,000.00 per annum plus GST payable quarterly in arrears on 30 September 2017, 31 December 2017, 30 March 2018, and 30 June 2018 in accordance with clause 4.

5. DEFAULT INTEREST RATE

14%.

6. AMOUNT OF PUBLIC LIABILITY INSURANCE

$5,000,000.00

7. ADDRESSES FOR SERVICE

Council: Kim O’Neill | Acting General Manager
Community Facilities | Operations Division
Auckland Council
Mobile 027 284 4048 | kim.o-neill@aucklandcouncil.govt.nz
Level 5N, Bledisloe House, 24 Wellesley Street, Auckland 1010

Manager: [TBA]
Email: [TBA]

8. HOURS OF OPERATION

The Manager shall manage the Carpark Area in accordance with this Agreement 24 hours per day, 365 days per year, or as otherwise advised by Council from time to time.

9. OBJECTIVES

Council has the following over-arching Objectives for the provision of the Services:

(a) the successful management of the Carpark Area, and
(b) the provision of customer service to all carpark users in line with Council expectations.

10. AUTHORISED ACTIVITY

Parking of private motor vehicles
GENERAL TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires, capitalised words have the meanings given to them in the Reference Schedule and as follows:

1.1.1 Business Day means any day other than a Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, Waitangi Day and any day in the period commencing with 25 December and ending with 5 January in the following year and the day observed as the anniversary of the province in which the Council Land is situated.

1.1.2 Commencement Date means 1 July 2017.

1.1.3 Insolvency Event means where the Manager, being an incorporated body:

   (i) is or is deemed to be unable to pay its debts as defined in section 287 of the Companies Act 1993;

   (ii) goes into liquidation (other than voluntary liquidation for the purpose of a restructure or amalgamation approved in writing by the Landlord);

   (iii) is wound up or dissolved;

   (iv) enters into any assignment or other compromise or scheme of arrangement with its creditors or any class of its creditors; or

   (v) has a receiver, manager or receiver and manager appointed in respect of any of its assets.

1.1.4 Services mean the services to be supplied under this Agreement.

1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

1.2.1 headings are inserted for convenience only and do not affect the interpretation of this document;

1.2.2 if the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day;

1.2.3 a reference in this document to dollars or $ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars;

1.2.4 a reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

1.2.5 a reference in this document to any agreement or document is to that agreement or document as amended, notated, supplemented or replaced;
2. APPOINTMENT OF MANAGER TO MANAGE CAR PARK

2.1 Council appoints the Manager to exclusively manage, control and operate the parking spaces within the Carpark Area as a paid car parking facility which is available for term parking or casual use by members of the public from the Commencement Date and for the Term.

3. PROVISION OF SERVICES AND PARKING CHARGES

3.1 The Manager shall manage all parking and vehicle movement for the Carpark Area and collect parking fees from the users of the Carpark Area in accordance with the rates approved by Council from time to time (in its sole discretion). For the avoidance of doubt, Council may specify the rates payable for casual parking during any day or part of any day but may also include charges, or a scale of charges, for use or licencing of spaces on a weekly or monthly user basis.

3.2 Without limitation, a maximum fee of $20 per day (inclusive of GST) shall apply for casual use of the Carpark Area.

3.3 In providing the Services the Manager must:

3.3.1 not, without the prior written consent of the Council do anything, or allow anything to be done, which causes interruption to the passage of vehicular and pedestrian traffic using the through fare within the Carpark Area;

3.3.2 maintain the Carpark Area and take all reasonable steps to protect the Carpark Area from any damage by the Manager, the Manager’s employees, agents, invitees or those with licences to park;
3.3.3 ensure that 30% of the car parking spaces in the Carpark Area are available for
casual public parking;

3.3.4 not permit more than 30% of the car parking spaces in the Carpark Areas to be
used by users of the Manager's premises known as The Auckland Bowling
Club and then for no more than half a day at a time and only when the
Manager's premises are in use;

3.3.5 only allow the Carpark Area to be used for the Authorised Activity; and

3.3.6 provide any plans for signage to the Council for prior approval. Signage should
not include any tow away signage nor restrict the publics use of the car park as
this Agreement intends.

3.4 The Manager shall provide the Services so as to meet the Objectives.

3.5 The Manager shall keep record of and report on the general usage of the car park
to Council. This should be reported to the Council each quarter by way of email to
Manager Co-governance and Auckland Domain, Parks Sports and Recreation,
Auckland Council. The purpose of this is to enable Council to be better informed as
to future decisions on how this car park is to be managed.

3.6 The Manager shall, at its cost, be responsible for obtaining the consents, permits
and approvals necessary to enable it to provide the Services under this Agreement.

3.7 On expiry of the Term, the Manager must reinstate the Carpark Area to the state it
was in prior to the commencement of this Agreement including, but not limited to,
signage and road painting.

4. MANAGEMENT FEE AND EXPENSES

4.1 The Manager agrees to pay the Management Fee to Council on the dates set out in
the Reference Schedule. Invoices will be issued by Council at the beginning of the
Term for the entire year and the Manager will be responsible for making payments
on time as per the Reference Schedule.

4.2 Any and all expenses for the running of the Carpark including but not limited to staff
costs, purchase, repair or maintenance of any machinery or equipment involved in
the management of the carpark (e.g. ticketing machines, signage, road marking and
any other equipment required) will be payable by the Manager.

For the avoidance of doubt, the parties agree that all equipment used in the
management of the car park are the property of the Manager stated otherwise.

4.3 Any and all other expenses for the maintenance and repair of the Carpark Area
including rates, utility costs, cleaning, security and capital expenditure are the
responsibility of the Manager

4.4 Rates, utilities and security costs are to be paid directly by the Manager to the
respective service providers.

Carpark Management Agreement – 100 Stanley Street
5. DEFAULT INTEREST

5.1 Default Interest: If the Manager fails to pay any instalment of the Management Fee or any other money payable under this Agreement for ten (10) Working Days after:

5.1.1 Due Date: the due date for payment; or

5.1.2 Demand: the date of Council's demand, if there is no due date,

then the Manager must on demand pay interest at the Default Interest Rate on the money unpaid from the due date or the date of Council's demand (as the case may be) until the date of payment.

6. HOLDING OVER

6.1 If, other than under a renewal of this Agreement or entry into a new agreement, Council permits the Manager to continue to provide the Services after the expiry or earlier termination of the Term, the Manager shall continue to do so on a fortnightly basis, terminable by two (2) week's written notice by either party at any time, on the same terms and conditions as herein expressed or implied.

7. DEFAULT BY MANAGER

7.1 If at any time:

7.1.1 the Manager neglects or fails to meet the Objectives or to perform and observe any of the other terms contained or implied in this Agreement including, without limitation, the payment of any amounts due in terms of this Agreement and the Manager has failed to remedy that neglect or failure within the period specified in a notice served on the Manager in accordance with section 246 of the Property Law Act 2007;

7.1.2 the interests of the Manager in or under this Agreement shall be attached or taken in execution or under any legal process;

7.1.3 the Manager suffers an Insolvency Event;

then and in any of these cases Council may immediately or at any time thereafter and without any notice or demand re-enter (forcibly if necessary) the Carpark Area and thereby determine the Manager’s estate and interest therein and may expel and remove the Manager and the effects of the Manager and those claiming under the Manager without being guilty of any form of trespass or conversion. Thereupon this Agreement shall cease and determine but without releasing the Manager from liability in respect of the breach or non-observance of any term of this Agreement.
8. COUNCIL’S RIGHT TO REQUIRE MANAGER TO CORRECT BREACH

8.1 Without limiting Council’s rights under clause 7.1, if the Manager breaches an obligation under the Agreement or fails to meet the Objectives, Council may give the Manager a notice that the Manager is in breach, and require the Manager to correct it within a specified reasonable time. If the Manager fails to do so, Council may do anything that Council reasonably believes is necessary or desirable to correct it. The Manager will reimburse Council for any reasonable costs Council incurs in correcting any breach of this Agreement. Any other right of Council’s is not affected.

9. INSURANCE AND INDEMNITY

9.1 The Manager shall at all times during the term maintain a current policy of insurance (at its expense and with an insurer Council approves of) against each of the following:
   (a) damage to the Carpark Area;
   (b) damage to any vehicles in the Carpark Area;
   (c) third party liability;
   (d) public liability insurance for an amount no less than the amount specified in the Reference Schedule;
   (e) business interruption insurance for a period of not less than three (3) months;

   such insurance policies must, without limitation, ensure Council is indemnified against any liability in accordance with clause 9.2.

9.2 The Manager shall effect and keep current at all times during the term a public liability cover for an amount not less than the amount of Public Liability Insurance stated in Item 5 of the Reference Schedule (being the amount that may be paid out arising out of any one single accident or event) indemnifying Council as owner and the Manager as manager in respect of all liabilities to third parties arising from Council’s ownership of and the Manager’s interest in the Carpark Area. The Manager must give Council a certificate of currency if Council requests it. The certificate must detail the cover and confirm the current premium has been paid.

9.3 The Manager and persons under its control shall not do, or permit to be done, anything upon the Carparks Area whereby any insurance effected by Council or by the Manager may be rendered void or voidable or (except with Council’s prior written approval) whereby the premium payable or chargeable on any such insurance or self-insurance (as the case may be) shall be liable to increase and the Manager shall pay all extra premiums payable or chargeable by Council as a result of any extra risk caused or permitted by the Manager pursuant to this clause. The Manager shall pay Council for any increase in the cost of any insurance Council has that results from anything the Manager does, or fails to do, or allows to be done, or not done, in breach of the Manager’s obligations under this Agreement (including, by way of example only, any increase in premiums as a result of any damage to vehicles). The Manager will on the commencement date of the Agreement and every twelve (12) months thereafter provide Council with an insurance broker’s certificate that confirms the currency and the insurance the Manager is required to maintain.

9.4 The Manager agrees to manage the Carpark Area at the Manager’s risk and releases to the full extent permitted by law Council, its servants and agents, from all claims.

Carpark Management Agreement – 100 Stanley Street
and demands of any kind and from all liability that may arise in respect of any accident damage, or injury occurring to any person, property and/or vehicles in or about the Carpark Area.

9.5 Council is not liable for any damage to or loss of any property, or injury to any person unless it arises as a result of a negligent or intentional act or omission by Council or someone for whom Council is responsible.

9.6 The Manager indemnifies Council against any liability, or claim, arising from any at the following:

(f) the Manager supplying the Services at the Carpark Area;

(g) something the Manager does or fails to do; or that someone the Manager is responsible for does, or fails to do;

(h) the Manager or the Manager's Staff, breaching any term of any insurance policy, or this Agreement.

10. NO WARRANTY

10.1 By entering into this Agreement the Council is by no means warranting that the Carpark Area is suitable or adequate in order to carry out the Authorised Activity. The Council does not warrant that the Carpark Area meets all relevant statutes, regulations or consents required where car parks and/or through fares are concerned.

11. COMPLIANCE WITH STATUTORY REQUIREMENTS

11.1 The Manager must at its own expense comply with all Acts, Bylaw and regulations including requisitions by any competent authority, in respect of the Carpark Area and Authorised Activity and the Manager's use of it. In particular but without limitation, The Manager must take all reasonably practicable steps to ensure that any person in or on the road (or through fare) or in the vicinity of the through fare is not harmed by any hazard arising from the Carpark Area, the Authorised Activity or the Manager's use of it.

12. COUNCIL AS REGULATORY

12.1 The Council has signed this Agreement as manager and controller of the Auckland Domain and in its non-regulatory capacity. This Agreement does not bind Council in its regulatory capacity, in any way and any consent or agreement the Council gives under this Agreement is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, Council are entitled to consider all applications to them without regard to this Agreement. Council will not be liable to the Manager or any other party if in its regulatory capacity, Council declines or imposes conditions on any consent or permission that the Manager or any other party seeks for any purpose associated with this Agreement.

13. COUNCIL'S RIGHT TO ENTER AND USE CARPARK AREA

13.1 This Agreement in no way limits the Council's free use of the Carpark Area;

Carpark Management Agreement – 100 Stanley Street
a) Council, and all other persons authorised by the Council, may enter onto any part of the Carpark Area at any time, and for any purpose.
b) Council may use, occupy and deal with the Carpark Area without reference to the Manager, including granting rights to other parties, provided the Council does not unreasonably restrict the Authorised Activity or the Manager’s rights under this Agreement.

14. NOTICES

14.1 Any notice given pursuant to this Agreement will be deemed to be validly given if personally delivered, posted, or forwarded by facsimile transmission to the address of the party to be notified set out in the Reference Schedule or to such other address as the party to be notified may designate by written notice given to the other party.

14.2 Any notice given pursuant to this Agreement will be deemed to be validly given:

14.2.1 in the case of delivery, when received;

14.2.2 in the case of facsimile transmission, when sent;

14.2.3 in the case of posting, on the second day following the date of posting;

provided that any notice personally delivered or sent by facsimile either after 5.00 pm on a working day or on any day that is not a working day will be deemed to have been received on the next working day.

15. DISPUTE RESOLUTION

15.1 If any question, dispute or difference arises between the parties concerning or in any way arising out of this Agreement or the performance of either party of this Agreement, or of the circumstances, representations, and conduct giving rise thereto, no party may commence any court or arbitration proceedings relating to any question, dispute or difference unless that party has complied with the procedures set out in this clause.

15.2 A representative of the party initiating the question, dispute or difference (“the first party”) must provide written notice of the same to the other party (“the other party”) and nominate in that notice the first party’s representative for the negotiations. A representative of the other party must within 5 working days give written notice to the first party naming the other party’s representative for the negotiations. Each representative nominated must have authority to settle or resolve the question, dispute or difference.

15.3 The representatives nominated under clause 15.2 will enter into discussions in an attempt to resolve the question, dispute or difference. If the parties are unable to resolve the question, dispute or difference by discussion and negotiation within 20 working days of commencing negotiations then the parties must, unless they agree to extend that period, immediately refer the question, dispute or difference to mediation.

15.4 The mediation must be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected and his/her fee determined by the Chair for the time being of LEADR New Zealand Inc. The mediator’s fees and disbursements shall be met

Carpark Management Agreement – 100 Stanley Street
by the parties in equal shares. Each party shall pay its own expenses of and incidental to the mediation.

15.5 If the dispute remains unresolved after the mediation, then the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement to be nominated by the President of the New Zealand Law Society. The arbitration will be conducted in accordance with the Arbitration Act 1998 and the provisions of the Second Schedule of the Act will apply. The parties reserve the right to appeal to the High Court on any question of law arising out of an award.

16. NOT PARTNERSHIP OR JOINT VENTURE

16.1 Nothing in this Agreement shall be deemed or construed to constitute any entity or organisation in the nature of a partnership, joint venture, trading undertaking, trust or any union of interest or similar arrangement, nor constitute either party to be a partner, agent or representative of the other.

16.2 No party shall have the authority or right or hold itself out as having the authority or right to assume, create or undertake any obligation of any kind whatsoever on behalf of or in the name of the other party.

17. NO ASSIGNMENT OR SUBLETTING

17.1 The Manager may not assign or sublet its rights and obligations under this Agreement.

17.2 Notwithstanding this, the Manager may grant third parties long term licences to park in the Carpark Area on the following basis:
(a) the licences are to be on a weekly or monthly basis;
(b) the licences must not extend beyond the term of this agreement;
(c) the licences must require the licencees to comply with all terms of this Agreement; and
(d) Council is to be promptly informed of the details of each such licence granted.

18. COSTS OF THIS AGREEMENT

18.1 Each party shall bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

19. WAIVER

19.1 No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.

20. EARLY TERMINATION

20.1 This agreement has been entered into by both parties on a trial basis and may be extended, (provided there is satisfactory performance by the Manager) for a further term/s at the sole discretion of the Council. Notwithstanding this, the Council may terminate the agreement at any time upon giving 3 months’ written notice to the Manager.

21. PARTIAL INVALIDITY

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21.1 If any provision of this Agreement or its application to any party or circumstances is or becomes unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

22. THIRD PARTIES

22.1 Except as specifically provided nothing in this Agreement is intended to confer a benefit upon any third party under the Contracts (Privy) Act 1982.

23. ENTIRE AGREEMENT

23.1 This Agreement when executed shall be the entire Agreement between the parties in relation to the operation of the Carpark Area.

24. VARIATIONS

24.1 No variation to this Agreement shall be valid or binding on the parties unless in writing and executed by both parties.

25. NOT BINDING UNTIL EXECUTED

25.1 This Agreement shall not be binding on either party until it has been duly executed by both parties.

SIGNATURES

SIGNED for and on behalf of AUCKLAND COUNCIL under delegated authority:

[Signature]
Kim O'Neill | Acting General Manager
Community Facilities | Operations Division
Auckland Council

SIGNED for and on behalf of AUCKLAND BOWLING CLUB INCORPORATED by

[Signature, Name and Title]
Tony Banks
Chairman

Carpark Management Agreement – 100 Stanley Street
Item 7

Attachment A

Carpark Management Agreement – 100 Stanley Street