
REPORT 1
(1215/11/IM)

**REQUEST FOR A FRESH LEASE FROM THE
NEWLANDS COMMUNITY HOUSE INCORPORATED**

Please note that at the Regulatory Processes Committee meeting of Wednesday 10 June 2009 the Committee resolved the following:

037/09RP **REQUEST FOR A FRESH LEASE FROM THE NEWLANDS
COMMUNITY HOUSE INCORPORATED**
Report of Wendy Walker, Director - Citizen Engagement and Lucy Ross,
Team Leader – Property Management.
(1215/53/IM) (REPORT 1)

RESOLVED:

THAT the Regulatory Processes Committee:

1. *Refer the report to Council for final decision.*

The recommendations from the report of the Wednesday 10 June 2009 meeting are before Council for approval (as follows) and a copy of the report is attached as appendix 1.

Officers recommend that the Committee:

1. *Receives the information.*
2. *Declines the request for a fresh ground lease to Newlands Community House Incorporated.*
3. *Notes that the existing lease allows Newlands Community House Incorporated to remove its building from the Batchelor Street Reserve by 31 December 2009 and that ownership of the building passes to the Council if it is not removed by that date.*
4. *Notes that Newlands Community House Incorporated is intending to make a separate application for a licence to operate a community garden on part of the Batchelor Street Reserve.*

5. *Notes that:*
 - (a) *the current classification of the Batchelor Street Reserve is Local Purpose (Community Centre) Reserve and this classification is unsuitable if the land becomes no longer used for this purpose; and*
 - (b) *the long term future of the Batchelor Street Reserve will be decided following consultation on the Newlands Long Term Development Plan and an assessment of the open space network in Newlands.*
6. *Agrees that the Policy does not anticipate the provision of existing services being delivered by alternative facilities in close proximity and that this is a relevant factor to take into account in the decision of this proposal.*
7. *Notes that:*
 - (a) *taking into account issues arising from the establishment of the new Community Centre as considerations relevant to determining Newlands Community House Incorporated's application; and*
 - (b) *deciding not to grant a fresh lease to Newlands Community House Incorporated,*
may be inconsistent with the Leases Policy for Community and Recreation Groups.
8. *Notes that the Leases Policy for Community and Recreation Groups is on a policy review programme and due to be reviewed during 2010.*
9. *Directs officers to take this decision into account as part of any review of the Leases Policy for Community and Recreation Groups.*

REPORT 1
(1215/53/IM)

REQUEST FOR A FRESH LEASE FROM THE NEWLANDS COMMUNITY HOUSE INCORPORATED

1. Purpose of Report

To consider a request for the granting of a fresh lease to Newlands Community House Incorporated ("NCHI") for Local Purpose (Community Centre) Reserve land at Batchelor Street Reserve in Newlands.

2. Executive Summary

NCHI holds an existing ground lease from the Council of Local Purpose (Community Centre) Reserve land at 23 Batchelor Street in Newlands. This lease will expire on 30 June 2009. NCHI owns and manages a community facility called Newlands Community House ("the House"). NCHI has applied for a fresh ground lease under the Leases Policy for Community and Recreation Groups (the "Leases Policy").

This report concludes that:

- (i) While some of the activities/community groups still being run from the House are consistent with the Council's strategic direction, this degree of consistency is outweighed by a number of practical, policy and strategic issues due to the establishment of the Newlands Community Centre ("the Community Centre").
- (ii) A fresh ground lease should not be granted to NCHI.
- (iii) A decision not to grant a fresh lease may be inconsistent with the Leases Policy for Community and Recreation Groups. However Section 80 of the Local Government Act 2002 provides a Local Authority with the ability to make a decision that is inconsistent with an adopted policy, but requires that the Local Authority identifies the inconsistency and any intention to amend the policy.

3. Recommendations

Officers recommend that the Committee:

1. *Receives the information.*

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2. *Declines the request for a fresh ground lease to Newlands Community House Incorporated.*
3. *Notes that the existing lease allows Newlands Community House Incorporated to remove its building from the Batchelor Street Reserve by 31 December 2009 and that ownership of the building passes to the Council if it is not removed by that date.*
4. *Notes that Newlands Community House Incorporated is intending to make a separate application for a licence to operate a community garden on part of the Batchelor Street Reserve.*
5. *Notes that:*
 - (a) *the current classification of the Batchelor Street Reserve is Local Purpose (Community Centre) Reserve and this classification is unsuitable if the land becomes no longer used for this purpose; and*
 - (b) *the long term future of the Batchelor Street Reserve will be decided following consultation on the Newlands Long Term Development Plan and an assessment of the open space network in Newlands.*
6. *Agrees that the Policy does not anticipate the provision of existing services being delivered by alternative facilities in close proximity and that this is a relevant factor to take into account in the decision of this proposal.*
7. *Notes that:*
 - (a) *taking into account issues arising from the establishment of the new Community Centre as considerations relevant to determining Newlands Community House Incorporated's application; and*
 - (b) *deciding not to grant a fresh lease to Newlands Community House Incorporated,*
may be inconsistent with the Leases Policy for Community and Recreation Groups.
8. *Notes that the Leases Policy for Community and Recreation Groups is on a policy review programme and due to be reviewed during 2010.*
9. *Directs officers to take this decision into account as part of any review of the Leases Policy for Community and Recreation Groups.*

4. Background

The Council leases land and/or buildings to a wide range of groups undertaking various activities. Leases are important to provide certainty for the Council and groups in regard to their property obligations and to provide a framework for asset management.

NCHI is currently the lessee of Local Purpose (Community Centre) Reserve land at 23 Batchelor Street in Newlands, and the owner and manager of the House.

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NCHI's aim is "To provide a facility to be known as Newlands Community House Inc, a centre through which community needs may be met". NCHI's objectives are:

- "(a) To provide a place where people may work together to promote the social, physical, educational, cultural and spiritual welfare of the community.*
- (b) To help create an accepting, non-judgmental climate in which supportive relationships may be formed, and in which people are welcomed regardless of race, sex, religion or circumstances, and no-strings-attached friendships and caring is offered.*
- (c) To seek to discover community needs, to help people to become more perceptive of their own needs, and together search out ways and means to meet those needs.*
- (d) To provide a place where small community groups may meet.*
- (e) To promote and facilitate liaison among community groups."*

NCHI has applied for a fresh ground lease under the Leases Policy. The application requests an initial term of 10 years with a right of renewal for a further 10 years.

The original 21 year ground lease expired at the end of 2008. A number of years before the expiry of this lease, the local community approached the Council and requested a new community facility. The Council then engaged with the local community about the construction of a new facility. Construction of the new community centre building began in 2007 and the Newlands Community Centre opened for use in December 2008.

At NCHI's AGM in 2008 a motion was passed "That a fresh lease is applied for as a contingency for 3 years and the focus be on setting up in the Newlands Community Centre". An application was received in August 2008 and officers presented a report to the Committee on 19 November 2008 recommending a fresh lease for a period of 6 months (not 3 years as requested) to allow a period of transition into the new Community Centre.

Following the Committee's 19 November 2008 decision to grant a 6 month lease, some correspondence took place between the Council's and NCHI's lawyers. The outcome was that NCHI executed a fresh lease that will expire on 30 June 2009 on a "without prejudice" basis; that is, NCHI did not accept the "Special Provision" under the current lease which refers to its transitional nature.

On the basis of legal advice obtained by the Council during the preparation of this report, the "without prejudice" arrangement reached with NCHI must be respected. This means the Committee must disregard the "transitional" 6 month lease from consideration when determining the application. The application should be considered as a request under the Leases Policy for a fresh lease by an organisation which has leased the relevant property from the Council since 1988.

Since December 2008, many groups whose activities were based at the House have moved to the new Community Centre, including the toy library (which has

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a purpose built dedicated space), the food bank, the knitting group, and the retired persons coordinator employed by NCHI. However, the application identifies that some community groups do not want to use the new Community Centre and continue to meet at the House. The application also advises that a new user, Menz Shed, has started running activities from the House.

NCHI's position in relation to the relocation of activities to the new Community Centre is that:

"NCHI propose using the Community House to compliment the use of the new Community Centre, by accommodating any existing services that are unable to shift to the new Centre. More importantly the Community House also now has a fantastic opportunity to provide or facilitate new services and activities that are consistent with the purpose of the Community House."

5. Approach to assessing the application

5.1 General

The circumstances of the application and its fit with the Leases Policy have presented an unusual situation. For this reason legal advice has been obtained. Officers have been advised that the Committee must:

1. Determine:
 - What considerations are relevant and may be taken into account under the Leases Policy (primarily this turns on what the Leases Policy means by an assessment of "strategic fit"); and
 - Whether, in addition to the relevant considerations under the Leases Policy, any other factors exist which should be taken into account in the circumstances.
2. Assess the application.
3. Determine whether a fresh lease should be granted. Part of this is considering whether to make a decision that is inconsistent with the Leases Policy, and if so, whether such a decision is "significantly inconsistent" so that section 80 of the Local Government Act 2002 applies.

NCHI should be allowed the opportunity to consider and give its views on these issues. A copy of this report will be brought to NCHI's attention and it will be made aware of its ability to give oral submissions to the Committee (through public participation).

5.2 What are the relevant considerations under the Leases Policy?

The application has been made under the Leases Policy, and the Leases Policy itself is therefore a primary relevant consideration. The objectives of the Leases Policy include "To strengthen communities through leasing land and buildings to groups" and "To ensure that the provision of leases is fair, equitable and responsive to community needs". The Leases Policy also reinforces the Council's significant role in fostering the well-being and strength of

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communities by facilitating networks, providing recreation opportunities and supporting community facilities. In its broadest sense, the Leases Policy is seeking to ensure that applications for leases are consistent with the Council's strategic direction.

The Leases Policy states that, in the way it is applied, the Council will attempt to be consistent and as fair as possible to community/recreation groups. Under the Leases Policy applications for fresh leases must be assessed to check that:

- (i) The lease will continue to be consistent with the Council's objectives (by applying assessment criteria 1 and 2 under the Leases Policy); and
- (ii) The terms and conditions of the previous lease were met consistently.

The Leases Policy states that "Unless there is evidence that the above are not met to a significant extent a fresh lease will be available to the lessee".

5.3 What is "strategic fit"?

Criteria 1 of the assessment whether a lease will continue to be consistent with the Council's objectives is strategic fit: are the activities of the group or organisation consistent with the Council's strategic direction? Appendix 1 to the Leases Policy explains the criteria of strategic fit by stating "This assessment should look at the Council's most up-to-date strategic statements ... and relevant strategies". Accordingly, criteria 1 turns on an understanding of the Council's strategic direction.

The Council's most up-to-date overarching strategic statement is its 2006/16 Long-Term Council Community Plan ("LTCCP"). (While the draft 2009/19 LTCCP can be considered, it must be remembered that this document remains subject to public consultation and possible amendment.)

The activity of community centres and halls falls within the 2006/16 LTCCP "social and recreation" strategy area, in relation to which the Council aims "to promote social well-being by ensuring a strong social infrastructure and a high level of cohesion". Under the heading "Why It's Important", the 2006/16 LTCCP states:

"Community centres and halls contribute to social well-being in many ways. They provide a community venue for activities and services, bring people together and help them to access opportunities. They also contribute to people's sense of belonging and pride in their local suburban areas. Support for community groups helps to build social cohesion and assist people in need."

In addition to the strategic direction expressed in the 2006/16 LTCCP, the Council should evaluate any other strategies and policies that are relevant to recreation and community groups. Such strategies and policies include:

- (i) Social and Recreation Strategy;
- (ii) Community Facilities Policy
- (iii) Environmental Strategy; and
- (iv) Reserve Management Plans (such as the Northern Reserves Management Plan).

Social and Recreational Strategy

The role of the Council in the social domain is focussed at the community level. The Social and Recreation Strategy identifies strong communities as those that:

- Have a robust social infrastructure; that is, there is sound provision of amenities, facilities and key social services; and
- Are cohesive; that is, there is a high level of community participation, strong networks and empowered community groups.

In some respects infrastructure is concerned with buildings and organisations and cohesion is concerned with relationships and engagement. Both aspects are interdependent and critical to strong communities.

Community Facilities Policy

This Policy, developed in 2001, covers a wide range of community facilities including community centres, community halls, recreation centres and libraries.

The Policy sets out:

- why the Council supports community facilities;
- the Council's roles in providing community facilities; and
- how the Council can make decisions about the need for and location of community facilities

The Policy requires Council to continually review its current community facilities to ensure that both community needs are met and that resources are being used in the best possible way.

Northern Reserves Management Plan

The Northern Reserves Management Plan was approved on 29 August 2008 following a period of public consultation and a review of comments made by submitters. The plan supports the provision of facilities suitable for recreational and leisure activities, specifically for established sport codes. Several submitters supported the retention of the House at its current site.

Clause 8.4.2.2 of the plan states:

- Investigate future options for the Community House Reserve and its integration into the Newlands Mall redevelopment.

This work-stream is scheduled to be undertaken in the 2009/10 financial year.

All submitters on the Community House received the following response:

- "Future use of the Newlands Community House and reserve are linked to the future redevelopment of the Mall and in particular the development of a new community centre.
- The policy (8.4.2.2) indicates that any future options for the house and reserve should be aligned with these developments. The current tenancy of the house between Newlands Community House Trust and the Council

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expires on 31 December 2008. Review of this tenancy will be covered by the Council's Leases Policy."

Northern Growth Management - Newlands Town Centre

The Northern Growth Management Framework, developed in 2003, identified the need to redevelop and improve the Newlands town centre, including the need for a new community centre in Newlands. The Council is developing a long term development plan for the Newlands town centre in consultation with the community to help ensure it better meets the needs of local residents.

A draft long term development plan was consulted on in November 2006. The draft plan identified several opportunities for improving the Newlands town centre, for example, better utilising Council-owned land and assets, and encouraging private sector investment in more shops and housing.

The draft plan also identified the following principles to guide future development in the town centre:

- Encourage redevelopment in and around the town centre for mixed uses;
- Improve the integration of the town centre with better and safer connections;
- Ensure new buildings and spaces have high quality urban design;
- Use a new community facility to enhance the integration of activities and spaces; and
- Provide a focal point for the town centre and its sense of place.

Feedback received on the draft plan showed a good level of support for its proposals. The Council is now working to finalise the long-term development plan and is discussing redevelopment scenarios with a land-owner who has major holdings in the town centre. Options arising from the discussions will be incorporated into the final plan and will be the subject of further public consultation.

5.4 What other relevant considerations exist?

The most important factor that arguably falls outside the relevant considerations under the Lease Policy is the fact that the Council built a new multi-purpose facility with the intention that it replaced the House.

To the extent it can be argued that any decision not to grant a fresh lease to NCHI may inconsistent with the Leases Policy, officers note that policies do not bind the Council in the same way as legislation. Section 80 of the Local Government Act 2002 makes it clear that a local authority may make decisions which are inconsistent with its adopted policies. The Council is not required to ignore the on-the-ground reality that the new Community Centre has been built.

6. Discussion/assessment

6.1 Community Centres

Community centres make a significant contribution to Wellington City by identifying local need and planning and providing community activities, services

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and meeting spaces to meet this need. The Council aims to maximise the use of amenities and resources such as community centres by working collaboratively with communities to ensure the best delivery of services and programmes, and improve social cohesion.

Community centres are one of the Council's responses to fulfil its vision for the city's communities. A community centre is part of an integrated city-wide network of community resources. It is a facility that provides opportunities for social interaction, activities, recreation, events, programmes, interest-based courses and meeting spaces that benefit the local community. Community centres identify and meet local community needs in interactive ways, are open to all people, and complement other resources in the community.

In 2007 Wellington City Council began the construction of the Newlands Community Centre as a new community facility to replace the House. There has been frequent engagement with the Newlands community regarding the Newlands Community Centre and there is wide community support for it.

The new Community Centre provides several meeting rooms, a hall, performance space, toy library, cyber library and kitchen facilities for community use. The Community Centre's construction has been funded by the Council and with significant support from the Johnsonville Licensing Trust. The Community Centre, which is significantly larger than the House, will provide a modern comfortable environment for the local community.

6.2 *Newlands Community House Incorporated*

NCHI provides facilities for many community groups to meet and charges a nominal fee for the use of the House. The existing lease allows for activities such as community group meetings, childcare assistance and advice programmes. The Council has always intended that the community groups using the House would transfer their activities to the new Community Centre. While specific activities/community groups are not necessarily being duplicated between the House and the new Community Centre, the aim of providing "a centre through which community needs may be met" will be diluted if two competing facilities exist.

As noted in the backgrounds section above, NCHI's application states that new activities have been invited into the House to fill spaces freed up by the transition of other groups into the Community Centre. Menz Shed now uses the House on a Wednesday and officers are expecting to receive an application from NCHI for a community garden close to the area currently leased. This proposal will be assessed in the context of a wider study of parks provision in the Newlands area.

6.3 *The Building*

NCHI has a strong affiliation with the building and clause 14 of the existing lease provides an opportunity for it to remove the building from the site within six months of the current lease expiring. This will allow NCHI to potentially benefit from disposal of the building if a fresh lease is not granted.

A condition assessment of the House was undertaken in November 2008 and indicated, at this time, that the premises are in reasonable condition apart from some areas requiring exterior painting and weatherboard replacement. An

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approximate cost of around \$5,000 was identified to undertake the required repair and maintenance.

6.4 Sustainability of activities

Criteria 2 of the assessment whether a lease will continue to be consistent with the Council's objective is activity sustainability: will the group be sustainable in terms of financial position and membership or users of the service for the period of the lease?

It is difficult to assess the sustainability of NCHI as it relies on grant funding which is not guaranteed. Many organisations are finding grant funding is becoming more difficult to obtain. The Council currently provides a grant to cover costs for the retired persons coordinator, mainly based at the Community Centre but employed by NCHI. With the growth in use of the Community Centre, this particular grant is likely to become contestable. Officers are concerned that the cost of operating the House, undertaking maintenance, insuring the building and providing utilities may in the future exceed NCHI's income, especially as most former users have transitioned into the Community Centre.

A large number of users of the House have successfully transitioned into the new Community Centre over the past 6 months and therefore the number of users of the house has reduced. The sustainability of the group as far as number of users has not been quantified in the application, however NCHI has been offering their facility to groups who had not previously operated in the Newlands area and Menz shed have begun using the House on a Wednesday.

While having regard to the above points, NCHI has a long history and officers do not have sufficient information to conclude that it will not be sustainable over the 10 + 10 year period being sought by the application.

6.5 Terms and conditions of previous and existing leases

Officers understand that the terms and conditions of the previous and existing lease have been consistently met by NCHI.

6.6 Strategic fit

Putting aside the fact that maintaining the House as a community facility in parallel with the Community Centre is a poor fit with the Council's planning for the Newlands town centre, some of the activities/community groups still being run from the House are consistent with the Council's strategic direction. For example:

- (a) The Newlands/Wellington North Community Patrol contributes to social well-being in the community.
- (b) Menz Shed is an amenity that may empower its participants and encourage community participation and strong networks.

However, on a broader assessment that encompasses considerations arising from the establishment of the Community Centre, officers conclude that the degree to which some of the continuing activities/community groups are consistent with the Council's strategic direction is outweighed by:

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- (i) The relevance of the Council's long held plan to transition community activities to the new Community Centre; continuing to lease the relevant land for a second community facility imposes an opportunity cost on the community which, in the view of officers, should be avoided.
- (ii) The fact that, in the view of officers, the new Community Centre provides adequate facilities for Newlands-based community groups.
- (iii) The fact that most of the groups associated with the House have successfully transitioned to the new Community Centre.
- (iv) The fact that it was not the Council's intention for the House to continue on as a duplicate or complementary facility when the new Community Centre was built. This was forecast well in advance during community engagement. NCHI's decision to pursue a long-term future for the House (by way of a 10 + 10 year lease) is relatively recent.

7. Conclusion

Officers recommend that the Committee does not grant a fresh lease to NCHI.

It is acknowledged that this recommendation is based on an assessment which takes into account considerations (i.e. issues arising from the establishment of the new Community Centre) which are not directly contemplated by the Leases Policy. As a consequence, the final recommendation to refuse a fresh lease may also be inconsistent with the Leases Policy, however section 80 of the Local Government Act does not preclude the Council from making such a decision.

Contact Officers: *Wendy Walker, Director - Citizen Engagement and Lucy Ross, Team Leader – Property Management*

Supporting Information
<p>1) Strategic Fit / Strategic Outcome</p> <p><i>While some of the activities/community groups still being run from the House are consistent with the Council's strategic direction, this degree of consistency is outweighed by a number of practical, policy and strategic issues due to the establishment of the Newlands Community Centre ("the Community Centre")</i></p>
<p>2) LTCCP/Annual Plan reference and long term financial impact</p> <p><i>Refusing to grant NCHI a fresh lease is in accordance with the 2006/16 LTCCP social and recreation strategy area.</i></p> <p><i>The building is owned by NCHI, which is responsible for all repairs and maintenance. If the building is not removed from the land and ownership passes to the Council, associated costs of maintenance/removal would need to be met by the Council. Provision would be made in the 2010/11 year.</i></p>
<p>3) Treaty of Waitangi considerations</p> <p><i>Not applicable.</i></p>
<p>4) Decision-Making</p> <p><i>Because the application concerns a fresh lease for the same land and use as the existing lease, the decision to grant or refuse the application is delegated to the Council as Local Authority.</i></p> <p><i>A decision which is inconsistent with Council's adopted Policy is permitted under Section 80 of the Local Government Act 2002.</i></p>
<p>5) Consultation</p> <p><i>The directly affected party (NCHI) will be provided with an opportunity to make submissions through public participation. Community views on the issues considered in this report are known through previous consultation and officer contact.</i></p>
<p>6) Legal Implications</p> <p><i>Council's lawyers have been consulted during the decision making process.</i></p>
<p>7) Consistency with existing policy</p> <p><i>This report recommends an assessment and outcome which may be inconsistent with the Leases Policy. This is because the Lease Policy does not anticipate the circumstances of this application and it is not clear whether such circumstances are relevant considerations under the Leases Policy.</i></p>