

REPORT 6
(1215/52/IM)

**RESERVES ACT 1977: GROUND LEASE - CAVELL FURNITURE
COMPANY LIMITED, 11A KHANDALLAH ROAD, NGAIO,
WELLINGTON**

1. Purpose of report

To recommend the Committee approves a new ground lease under the Reserves Act 1977 to Cavell Furniture Company Limited (Cavell) at 11A Khandallah Road, Khandallah.

2. Executive summary

This paper seeks to legitimise the long term occupancy of a commercial upholsterer on land held under the Reserves Act 1977.

The paper recommends a fixed term lease under section 73 (3) of the Reserves Act 1977. This section enables a lease for activities other than recreation in certain circumstances.

3. Recommendations

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Agree to lease the footprint of the existing building (approximately 136 square metres) at 11A Khandallah Road, Ngaio, Wellington to Cavell Furniture Company Limited under section 73(3) of the Reserves Act 1977 (subject to the terms and conditions noted below).*
3. *Note that the terms of the proposed lease are as follows:*

<i>Location:</i>	<i>Part of the land known as 11A Khandallah Road, Ngaio (outlined in green on Appendix 1)</i>
<i>Term:</i>	<i>5 year term + right of renewal for a further 3 year term (and absolutely no occupancy rights beyond that date)</i>
<i>Annual Rent:</i>	<i>\$2,100.00 per annum plus GST (annual CPI adjustments accumulated and rent adjusted upwards to reflect this every three years)</i>
<i>Special Conditions:</i>	<i>No subletting or assignment permitted (this includes a change in company owners and building sale) Tenant to remove the building and reinstate the site at lease end</i>

4. *Note that any approval to grant the lease is conditional on:*
- (a) appropriate iwi consultation*
 - (b) public notification under s119 and s120 Reserves Act 1977*
 - (c) no sustained objections resulting from the above consultation and notification; and legal and advertising costs being met by the lessee (where applicable)*
5. *Note that if the Committee does not wish to grant a lease in accordance with recommendation 2, then officers will serve notice on Cavell with a view to the company exiting the site before the end of 2013.*

4. Background

Council purchased a neighbouring property in 1947 for drainage purposes which Ian Gordon Cavell occupied. In 1951 Council built a shed on land at 11A Khandallah Road owned by NZ Rail (NZR) (the shed now occupied by Cavell Furniture Company) in order to relocate Cavell. NZR charged ground rent, and Council charged premises rent.

In 1977, Council sold the building to Mr Cavell. This was confirmed via a lease variation in 1982.

In 1989 NZR vested the land in Council as Recreation Reserve. Subsequent lease negotiations between the Council (as new owner) and Mr Cavell failed and following Mr Cavell's death, Brent Charles (Mr Cavell's apprentice) took over the building without a valid lease. Subsequent negotiations with Mr Charles failed to draw the matter to a conclusion and in the meantime, Mr Charles has continued to occupy the premises without payment of rent and rates.

It is apparent from the state of the building (photographs attached at appendix B) that little maintenance has been carried out.

Mr Charles does not wish to exit the site and has requested a 15 year lease.

5. Discussion

The area of land subject to the proposed lease is classified as recreation reserve under the Reserves Act. Leasing of recreation reserve for non recreation purposes is permitted under section 73 of the Act when the land is not currently required for the purpose for which it was classified. This is the case here. The area contained the buildings prior to its classification as reserve and is in an area not currently required for reserve activities. In the longer term when the buildings are removed, it is likely to be restored with native vegetation contiguous with the adjacent reserve.

Officers consider the request for a 15 year lease as inappropriate given the condition of the building and the commercial activity being carried out. Hence the 5 + 3 year lease term proposed.

In the event that the Committee approves a lease to Cavell, additional lease conditions will include an absolute prohibition on assignment or subletting (including change of company ownership and sale of the building). At the end of the term the buildings will be removed and the area restored.

The proposed lease will provide for rent and rates to be paid and clearly outline each party's roles and obligations.

Council has obtained a current market rental assessment from Darrochs. This indicates an initial annual rent of \$2,100pa + GST.

6. Conclusion

Officers propose a lease of limited duration with strict conditions as a means of formalising the use of this land whilst ensuring it is retained as reserve and restored once the current use has terminated.

Contact Officers: *Tracy Morrah (Property) and Mike Oates (Parks, Sport and Recreation).*

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

The recommendations proposed in this report fall outside Council practice. This paper seeks to regularise an existing illegitimate occupancy.

2) LTP/Annual Plan reference and long term financial impact

The proposed leases will have no substantial long term financial impact.

3) Decision-making

This is not a significant decision.

4) Consultation

a) General consultation

Public consultation will be undertaken as required under the Reserves Act 1977.

b) Consultation with Maori

Iwi will be consulted.

5) Legal implications

Council's lawyers have been consulted during the development of this report.

6) Consistency with existing policy

This report recommends a lease which is consistent with Section 73 (3) of the Reserves Act.

APPENDIX A - LOCATION PLAN



APPENDIX B PHOTOGRAPHS

