

Report to the Policy and Finance Committee  
from Greg Schollum, Chief Financial Officer

## **Council Owned Property – Rental Policy**

### **1. Purpose**

To reconfirm Council's policy in relation to rentals charged to tenants (lessees and licensees) on Council-owned property.

### **2. Background**

The Council owns land which is occupied by other parties, either Territorial Local Authorities or third parties such as golf clubs, sports clubs and commercial businesses. This land is subject to lease and licence agreements with each of the respective lessees and licensees.

Council's property consultants, O'Brien Property Consultancy (O'Brien's) have been operating under a general policy direction of obtaining current market rentals on all properties or where this does not cover Council's costs, a policy of recovery of administration costs.

However, there is no overall rental policy position which has been formally approved by the Council. It is therefore timely to reconfirm that what is being applied in practice is in accordance with the wishes of the Council.

### 3. Policy Issues in Relation to Land Leased by Territorial Local Authorities (TLA's)

#### 3.1 Policy Rationale

The Council, mainly through its Flood Protection activity, holds land which is occupied by TLA's.

Rentals are currently set on the basis of current market rentals, but with recognition that:

- The condition of the land when the TLA commenced occupation was often quite different to how it is today (often such land was underdeveloped)
- The TLA at its cost, "created" the land as it is today, e.g. drainage, sports field, car parks
- The Regional Council is released from any ongoing requirement to maintain the land

Under these circumstances O'Brien's believe that it is appropriate to establish the current market rent of the land by:

- (a) Instructing the valuer to assess the current market rent worth of the land given the correct description of the site prior to the TLA occupation, (this should be a description agreed with the TLA concerned). This will include a description of the ground cover and condition as it was and the area's propensity to flood. The valuer should have regard to the abilities and limitations of use imposed on land by the District Plan.
- (b) Assessing the Regional Council annual cost to maintain the area had it not been leased to the TLA, adding the annual saving enjoyed by the Regional Council (e.g. having the TLA mow the stopbank associated with the land under lease).
- (c) Deducting (b) from (a) to arrive at the appropriate current market rent reflecting the return required by the Wellington Regional Council.

O'Brien's believe that the Regional Council has acquired the land for a particular purpose (say river management and soil conservation) and has achieved that purpose. Use of the land by the TLA is therefore a secondary use which does not necessarily demand a full return on investment as that has already been obtained. This makes good sense.

It could be argued that the Regional Council is in fact adopting a wider role of assisting the TLA's to provide recreation facilities to the Region's ratepayers. The TLA receives a nominal rent from the actual end user of the land and any income obtained by the TLA does not generally begin to cover the costs incurred by the TLA in providing the facility.

The areas of risk of each party must also be acknowledged. The leases contain a provision for the Regional Council to resume use and occupation of the land at any time, without compensation to the TLA. The Regional Council therefore carries no risk as it retains the ownership of, access to and full use of the land while being released from any obligation to maintain the land.

The TLA on the other hand takes on the cost of developing the land to sports or recreation ground standard with drainage, services, lighting, carparks and surface preparation together with agreeing to maintain the land and adjoining stopbank. The TLA has a relatively insecure tenure which can be disrupted at any time by the Regional Council and which, by the very nature of the land and its location, is at constant risk of flooding.

As O'Brien's see it, the TLA carries a very real level of risk of interrupted use and occupation of the land relative to the costs of development it incurs and compared to the Regional Council position. The TLA's also carry a real annual cost for maintenance.

O'Brien's believe, in most cases under the circumstances set out above, that the TLA's will meet a net annual cost of 10 cents.

Naturally different circumstances do arise where, for example, a commercial gain will be enjoyed by the occupant and then it will be entirely appropriate for the Regional Council to share in that benefit by obtaining a current market rent which need not be influenced by the above criteria.

### 3.2 **Basis of Assessment**

A current market rent should always be obtained. However, O'Brien's believe that the assessment of the current market rent should always have regard to the land as it was at the time that the lessee first entered the land, not to the land as it is today. The assessment should also have regard to the abilities and limitations imposed by the District Plan.

O'Brien's have seen assessments of rent in the past where the valuers were not briefed adequately and proceeded to assess the rental worth of areas of recreation land on the basis of the land as it was when inspected. The resulting assessments were far in excess of the rental worth to the occupying licensees. (e.g. It has been the lessee which had drained the swamp area, backfilled it to solid ground standard and invested heavily in site improvements.)

The point being made is that the instruction to the valuer is as important as the valuer's assessment. All rents should be equitably based and a lessee should not be asked to pay a rent for the improvements that the lessee has put in place.

Current market rents therefore, will always be appropriate. Rebates should not be allowed. Care taken to ensure that the rent assessed on the correct basis, having regard to the correct land or property description should resolve most

issues. If a subsidy is to be granted this should be done on an open basis and not allowed as a deduction from the rent. Deduction from the rent effectively hides the subsidy and undervalues the property asset.

#### 4.0 **Policy Issues in Relation to land leased by parties other than TLA's**

- 4.1 The policy issues associated with land leased to TLA's are equally applicable to land leased to other parties. The emphasis however, shifts to the receipt by Council of a current market rent or a recovery of Council costs where that is the greater sum. Little or no emphasis is placed on deductibles from the current market rent to recognise cost saving benefits the Council might enjoy as a result of the land being occupied and administered by another party.

This is a reflection of the wider public benefit issues where TLA's are involved.

#### 5.0 **Recovery of Council Costs**

##### 5.1 **Policy rationale**

The requirement for a policy relating to Council cost recovery (where a market rental would be too low, to recover Council's costs) has come to O'Brien's attention through a review of encroachment licences.

Areas of land held for river management and soil conservation on the banks of the Hutt River have been encroached upon by the neighbouring residential properties. In effect, back yards have been extended onto Council land. Rather than turn a blind eye to these encroachments, the Council has correctly entered into encroachment licence agreements with the owners to formalise the occupation and to record the ability of the Council to resume use of the land at any time it wished.

The current market rent for these areas is nominal as the land cannot be built on and the security of tenure is minimal.

The majority of encroachment licences run for a period of 5 years before renewal and review. Apart from the initial set up costs, the costs to administer the licence on an annual basis are minimal.

O'Brien's have assessed that 4.5 hours is realistic to cover administration costs associated with encroachment licences (including set up and annual review). At an estimated fee of \$125.00 per hour this indicates a likely up front cost of \$562.50. Over 5 years and including a 15% recovery this would calculate to an annual licence charge of \$160.00 plus GST. Sometimes this cost will be exceeded and other times this full cost will not be incurred. Over time a balance will occur.

## 6. Overall Policy Framework

Overall, where property held by the Regional Council is available for lease or licence the rental derived should be based on a current market assessment, except where cost recovery should be imposed to ensure the Council doesn't incur a loss, (where cost recovery exceeds market rent).

O'Brien's believe that the first step is to categorise the land into Commercial land (with obvious open market value and demand) or non-commercial land (with no obvious market value or demand).

Commercial Land must attract a current market rent set by open market criteria.

Non-Commercial Land must attract a current market rent set by open market criteria where that is possible. Where it is not possible to assess a market rent, an assessment of the ability of the lessee or licensee to pay or an assessment of what appears to be reasonable in the circumstances may be made but as a minimum Council's costs incurred must be recovered.

Commercial users must always pay a commercial market rent.

Non-commercial users, (clubs, charitable organisations or some TLA land use), may have the rent or licence fee influenced by the use or the ability to pay but as a minimum need to meet the costs incurred by the Regional Council.

Where land is utilised by a TLA, lessee or licensee where WRC cost savings are achieved, those cost savings may be recognised as a deduction against the market rent assessed.

If the Council is to grant a subsidy to any licensee, this should be done as a separate action to the setting of the appropriate market rent. The rent and the subsidy should not be blended into one as this will distort the apparent rent obtained for the property asset.

## 7. Communications

As this policy position is formalising current practice no specific communication is considered appropriate.

## 8. Recommendations

(1) *That the report be received and the contents noted.*

(2) *That the Committee recommend to Council that it adopt the following rental policy:*

(i) *That the rent for leasing land to a TLA be assessed as:*

*The current market rent of the land having regard to:*

- (a) *The correct description of the land as it was prior to the TLA occupation, (this should be a description agreed with the TLA concerned). This will include a description of the ground cover and condition and the area's propensity to flood.*
  - (b) *The ability and restrictions to use the land in accordance with the District Plan.*
  - (c) *The Regional Council annual cost to maintain the area had it not been leased to the TLA.*
  - (d) *The annual saving enjoyed by the Regional Council in having the TLA mow the stopbank associated with the land under lease may be assessed and allowed as a deduction from the rent assessed.*
- (ii) *Where current market rent is to be assessed, care needs to be taken to ensure that the rent is assessed having regard to the condition of the land as it was at the date of first entry by the licensee or lessee.*
- (iii) *Encroachment licences and other similar small licences issued where the current market rent will be less than \$160.00 per annum will attract a minimum annual licence fee subject to:*
- (a) *In all cases the current market rent be assessed to ensure that it does not exceed the minimum annual charge level. The higher of the two should be adopted.*
  - (b) *The minimum annual charge be set at \$160.00 plus GST per annum (except as varied as per (c) and (e) below).*
  - (c) *The minimum annual charge being inflation adjusted on an annual basis in line with CPI movement.*
  - (d) *The annual cost recovery charge should reflect the actual time and cost incurred where the minimum annual charge is inadequate.*
  - (e) *Where the Council derives a quantifiable benefit from a licensee's occupation a reduction to the minimum annual charge may be recommended.*
- (iv) *Overall, where the Council land is:*

- (a) *Commercial Land (with obvious open market value and demand) the land must attract a current market rent set by open market criteria.*
- (b) *Non-Commercial Land (with no obvious market value or demand), a commercial user must pay a current market rent set by open market criteria.*
- (c) *Non-Commercial Land (with no obvious market value or demand), a non-commercial user (club, charitable organisation or TLA) may have the rent or licence fee influenced by the lessee or licensee ability to pay but will meet the cost to establish incurred by the Regional Council as a minimum.*
- (v) *The Regional Council annual cost to maintain the area, had it not been leased, may be recommended to be assessed and allowed as a deduction from the rent assessed. Approval will be at the discretion of the Council.*
- (vi) *If the Council is to grant a subsidy to any lessee or licensee, this will be done as a separate action to the setting of the appropriate market rent. The rent and the subsidy should not be blended into one.*

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