

Council

**Wednesday, 27 July 2005
Commencing at 5.30 pm**

Item 10: Westpark Marina - Update

**SUPPLEMENT TO A MEETING OF THE COUNCIL TO BE HELD IN
THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON WEDNESDAY, 27 JULY 2005,
COMMENCING AT 5.30 PM.**

10 WESTPARK MARINA - UPDATE

PURPOSE OF THE REPORT

The purpose of this report is to update Elected Members with respect to issues at Westpark Marina, and where appropriate to obtain necessary authorisations to facilitate addressing matters of concern.

BACKGROUND

The history of development at Westpark Marina, and the restricted tenure entitlements held by Westpark Marina Limited on the one hand, and the Council's role as regulatory authority, beneficial owner of the underlying onshore landholding and head licensor with respect to the seabed component of the marina on the other hand, have made ongoing interface issues inevitable.

However, after some years of relative "standstill", and with the recent transfer of shareholder proprietorship accompanied by a heightened focus on more intensive implementation (and potential expansion) of the marina concept, together with the imminent expiry of the initial terms under the Seabed Sub-Licence (October 2005) and land allotment Leases (September 2006), these contacts have intensified.

In addition, the marina has the potential to be a key site for a "park and ride" ferry operation and provision of sufficient public parking to support this initiative consistent with regional public transport strategies is identified as being required.

Further, residential development has recently occurred within the marina precinct, also consistent with Council's strategic objectives, but which has significantly reduced areas potentially available for boat trailer parking in association with public use of the marina boat ramp and constrained the former practice of parking boat trailers along Clearwater Cove.

CURRENT ISSUES

Seabed Sub-Licence

At its June 2005 meeting Council received a report detailing the settlement reached under the rent review provisions of the Seabed Head-Licence and Sub-Licence respectively for the five year period from October 2000. The backdated increment in licence fees was mandated to be cleared on 30 June 2005 and that has occurred.

Concurrently, authority was granted to make application to the Crown to renew the Seabed Head Licence at Westpark Marina for a further term of 20 years commencing on 8 October 2005 and a formal application and new licence document has been submitted to the Department of Conservation as manager of the crown seabed estate, in accordance with the Foreshore and Seabed Act 2004.

Similarly, Westpark Marina Limited have sought the identical renewal of their Seabed Sub-Licence, including as a prerequisite to the related renewal by that entity of berthholder licences. Renewal has been authorised by Council subject to Council's Manager, Legal Services being satisfied with respect to compliance by Westpark Marina Limited of its obligations under the sub-licence (1153/2005).

Berthholders are currently expressing concern that some terms of the sub-licence are not being strictly observed, particularly in relation to dredging of the boat harbour and its environs, and as to accounting for and use of funds by Westpark Marina Limited charged to/levied against berthholders for that purpose under the birth licenses.

The license is also required that on renewal provision is to be made to meet the cost of any major replacement or renewal of any marina structures or other improvements of any kind which can reasonably be foreseen to be necessary during the term of renewal, including the reservation of funds for that purpose.

Berthholders have raised other contentions with the marina operating company as to the appropriateness and transparency of charges levied by Westpark Marina Limited to cover operating expenses.

Westpark Marina Limited has been asked to respond in relation to these matters and an assessment will be made when proper information is to hand. There will be an appropriate degree of rigour imposed around actual renewal of the Seabed Sub-Licence, consistent with its terms and intent, albeit some berthholders' concerns derive from the terms of their berth licences rather than the Sub-Licence and can be expected to remain to be negotiated between their Association and Westpark Marina Limited.

Boat Trailer and Car Parking and Lot 2 DP159238 (Boat Ramp)

The current situation is as follows:

- a) Council has served Notices of Desire under the Public Works Act to acquire the estate of leasehold in Lot 2 DP159238 containing 1576m² being the boat ramp and associated manoeuvring area from Westpark Marina Limited, together with the adjoining vacant residential sites being Lots 45 and 49 DP211038 from private ownership and for boat trailer parking and the parking of associated vehicles in conjunction with the use of the public boat ramp (2065/2004).

Based upon Council's valuation advice (late 2004) the aggregate cost of these three acquisitions was anticipated to be \$730,000, but it is evident that the owners can also provide independent valuers reports supporting higher figures.

Subsequent to service of these notices, the registered proprietor of Lot 49 applied formally under the Public Works Act for consent to undertake construction of a dwelling on that site, consistent with the relevant building consent issued in 2003. Refusal of that application has led to an objection to the Environment Court.

S1

- b) Westpark Marina Limited have offered a sub-lease of part Lot 7 DP110480 for car and boat trailer parking, as shown on the plan attached at page S1. Officers recommend that authority be granted to proceed with a temporary sub-lease for a term of two (2) years (thereafter the lease could be terminated upon three (3) months notice by either party) with an annual rental, \$15,000 plus GST, and a pro-rata contribution to rates.

Initially the car parking would be configured for boat trailer parking, pending completion of the acquisition of Lots 45 and 49 and physical redevelopment of those lots, at which point the sub-leased parking area would be reconfigured for park and ride users. The existing pay and display plinth would be included and a charge parking regime would be permitted.

The sub-lease would not commence until Westpark Marina Limited has sealed and upgraded the relevant area for car parking purposes. The site is assessed as suitable for up to 20 boat trailer parks (Lots 45 and 49 DP 21138 provide 14 such parks in conjunction with their joining rigging and manoeuvring area) initially up to 56 car park spaces.

Concurrently, Westpark Marina Limited are prepared to include Lot 2 DP195238 as part of the sub-leased area subject to Council completing an upgrade of that site, and assuming responsibility for rates and any rent payable under the head-lease for that Lot (\$10 per annum currently).

This arrangement will “buy time” to facilitate resolution of the remaining more complex issues and provide a prompt short-term solution for boat trailer parking meantime. If it is endorsed, Council staff will actively seek to conclude the acquisition of Lots 45 and 49 DP211038 from this point. It is believed that the present owners will not further contest that approach, subject to agreement being reached as to price.

Public Works Act

Council has also mandated service of Notices of Desire under the Public Works Act to acquire the leasehold estates held by Westpark Village Limited in Lots 7 and 8 DP110480 “for public works purposes, including provision of car and trailer parking and commercial development and/or provision of recreational amenities”.

At an early stage, it was agreed to stand aside service of any formal notices of compulsory acquisition (including in relation to Lot 2 DP195238) on the basis that representatives of both parties engage in negotiations to seek to achieve broader outcomes on a constructive basis.

Indications from these discussions are that each party could now engage valuers and investigate whether it is possible to agree as follows:

- a) Westpark Marina Limited relinquish its leasehold estate in Lot 2 DP195238 and Lots 10 and 16 DP110480 and reconfigure Lots 7 so as to relinquish its leasehold interest in the proposed car park area, and
- b) Council direct Waitakere Properties Limited to convey to Westpark Marina Limited the underlying fee simple estate in the remaining marina allotments presently leased to Westpark Marina Limited or its subsidiaries for the approved consideration. That receipt would be returned to Council as a distribution under the terms of the relevant Declaration of Trust.

It is reasonable to assume that an exchange on this basis of such agreed values would be cash positive for Council. Future interface issues should then be substantially limited to Council’s regulatory role.

Therefore, it is appropriate to identify whether there is approval in principle to carry such negotiations forward, or whether Council prefers the status quo or any alternative outcome.

S2-S3

Reference can be made to the plans attached pages S2 to S3. Note that Council would retain its existing ownership of Lot 15 (bund/esplanade) and the two breakwater arms.

RECOMMENDATIONS

1. That the Westpark Marina - Update report and related attachments be received.
2. That the proposed temporary sub-lease of Lots 7 DP110480 and Lot 2 DP195238 be approved in principle, subject to the terms and conditions being to the satisfaction of the Director: Corporate & Civic Services and Council's Legal Services Manager and authority be given to execute the document under seal.
3. That resolution 2065/2004 to acquire Lots 45 and 49 under the provisions of the Public Works Act be affirmed and that action to acquire the land continue, if necessary in the opinion of Council's Legal Services Manager, through service of formal notices of intention to take such lands for the purposes outlined.
4. That the proposal to seek to negotiate an exchange of the estates and interests in land as set-out be approved in principle provided that no binding commitment is made pending presentation of a detailed report to Council.

Report prepared by: Graham Wakefield, Consultant, and Denis Sheard, Legal Services Manager.

