

In the matter of the Reserves Act 1977

and

In the matter of the proposal by Waitakere City Council to grant a lease of part of the Owens Green Reserve

Decision of the Adjudicator

Introduction

1. Owens Green Reserve ("the Reserve") is located at 436b Huia Road, Laingholm. It is classified as a Recreation Reserve under the Reserves Act 1977, and is vested in and administered by the Waitakere City Council ("Council") as a Citywide Park.
2. The area of the Reserve which is the subject of the proposal to lease is 13.59ha, Lot 1 DP 132139 ("the lease area"). The Laingholm Riding Club Inc ("LRC") has occupied this area since about 1992. Its lease expired on 28 February 2006, and it has continued to occupy the area on a month-by-month basis pending Council's decision on a new lease.
3. LRC has applied for the renewal of its lease. Another riding club, Muddy Creek Riders Inc ("MCR") has also applied for a lease of the same area. The decision whether or not to grant a lease, and if so, to which of the two contenders, has been delegated to me. Submissions were received from both clubs and from the public. A hearing was held on 1 February 2007 at which each club and their supporters spoke in support of their positions and in opposition to the grant of the lease to the other club.
4. For the reasons more fully set out below, it is my decision that a lease be granted to **Muddy Creek Riders Inc**. The term of the lease should be for 5 years, commencing on 1 June 2007, with a right of renewal for a further 5 years. I have nominated the start date three months hence to allow both clubs a reasonable time within which to rearrange their affairs. If some earlier (or later) date is more convenient to all parties, then Council should adjust the start date accordingly.

Legal matters

5. The Reserve is covered by the Reserves Act 1977 ("the Act") and Council's powers to grant a lease are subject to that Act. Section 54 states that Council may, to the extent necessary to give effect to the principles in s.17 of the Act, and with the consent of the Minister of Conservation:

"Lease to any voluntary organisation the whole or any part of the reserve for the playing of any outdoor sport, games or other recreational activity where the preparation and maintenance of the area for such sport, games or other recreational activity requires the voluntary organisation to spend a sum of money that in the opinion of the administering body is substantial."

6. The consent of the Minister of Conservation is dealt with by an Instrument of Delegation for Territorial Authorities issued pursuant to s.10 of the Act. The Minister has delegated to Council his power to give or withhold consent to the lease so long as the activity is an existing use, and the effects will be the same or similar in character, intensity and scale. The proposals by both clubs are for a continuation of the use established by LRC and will be similar in character, intensity and scale. The proposed lease is therefore within the scope of the delegation by the Minister and does not require his separate consent.
7. Before granting a lease Council must give public notice and give full consideration to all submissions received. Public notice was given and some 62 submissions were received. Several submitters requested to be heard in support of their submission, as provided for in s.120 of the Act.
8. By resolution 1977/2006 Council resolved to appoint an adjudicator to review the lease applications by the two Clubs and to make a decision as to the lessee. By notice dated 9 November 2006 I was appointed as the adjudicator in terms of the resolution and was also appointed under s.120 of the Act to hear and consider the submissions made following the public notice.

Matters for consideration

9. Council's power to grant a lease is determined by the Act. The criteria in the Act must be satisfied. These are (in short):
 - the lease must be necessary to give effect to the principles in s.17;
 - the lease must be to a voluntary organisation for outdoor sports, games or other recreational activity (and not for commercial uses);
 - preparation and maintenance of the leased area requires the lessee to spend a substantial sum of money.
10. The relevant principles in s.17 are:
 - the purposes of recreation reserves include providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, with emphasis on the retention of open spaces and on outdoor recreational activities;
 - the public is to have freedom of entry and access, but subject to Council's leasing powers and to restrictions for the protection and well-being of the reserve and for the protection and control of the public using it.
11. Council made a submission which set out its strategies and objectives in relation to parks and reserves. Although the Parks Strategy and Leisure Strategy are still in draft, they are generally consistent with the statutory criteria set out above. They have also been developed through a process of consultation and assessment and provide an important contextual framework which helps to identify the overall provision of outdoor recreation opportunities within Waitakere City. In the conclusion to its submission Council proposes that the "best community outcome" should be the main criterion in keeping with its strategies. I agree, with the proviso that this criterion is to be applied consistently with the Act.

12. In general terms, a lease to an equestrian organisation such as either of the clubs satisfies the requirements of the Act. In determining which of the clubs should be the lessee I have considered each club's proposal having particular regard to these requirements, and to the objective of achieving the best community outcome. I have also had regard to the relevant criteria in the information provided by Council as to how lease applications will be assessed.
13. Council supports the grant of a lease, but is neutral as to the choice of lessee. All other submitters were in favour of a lease being granted to one or other of the clubs. No submission opposed the grant of any lease and it is clear that the community supports the continuation at Owens Green Reserve of the equestrian activities for which it has been used over many years. It is also clear that this can best be achieved by the grant of a lease to a community organisation dedicated to such activities. Such an organisation will need to expend substantial money preparing and maintaining the lease area.
14. I therefore conclude that it is appropriate, in terms of the statutory criteria, for a lease to be granted to one or other of the clubs. It is apparent from the background information provided by Council, and accepted by the clubs, that there is no realistic prospect of both clubs being accommodated on the Reserve. I therefore address the task of determining which of the clubs should be the lessee.

Submissions and other expressions of support

15. I have read all of the submissions and studied the information provided. Each of the clubs and many of the submitters also appeared at the hearing and spoke to their submissions. I have considered everything that was said and produced at the hearing, and the extent to which it may assist in the decision I am required to make. It was useful to hear from those submitters and to be able to clarify a number of points, but all submitters are entitled to have their submissions fully considered whether or not they spoke at the hearing.
16. Of the 62 submissions received (other than Council's) 26 were in support of LRC and 36 in support of MCR. I also received a large number of chits expressing support for LRC, as well as collections of signatures in various forms. While support from the community is important in terms of the criteria I should apply, this is not simply determined by which club can produce the most submissions or signatures.
17. In the case of LRC, much of the support from the general community seems to have been canvassed on the premise that unless Council renews LRC's lease the facility will be lost altogether. For example the chits state "I/my family want this valuable resource to continue to be available to the community". A pamphlet soliciting support for LRC claimed that if Council did not renew its lease: "There will be no opportunity for current and future generations of local children to learn about and enjoy horses in a safe and professional environment".
18. I regard general expressions of support from those not directly involved or reasonably well-informed as indicating support for the continuation of a riding club at the Reserve, but of no real assistance in differentiating between LRC and MCR. Those who expressed general support for the continuation of LRC's occupation of the Reserve would mostly be indifferent as to which club is the

lessee so long as the activity continues. Whether as the result of the competition between the two clubs over the lease or otherwise, it is apparent that the local community is interested in matter, and this reinforces Council's submission that the primary consideration should be the best outcome for the community.

Issues

19. From my analysis of the matters raised in the submissions and at the hearing I have identified several principal issues or points of difference between the two clubs. Expressing them as neutrally as I can, they are more or less as follows:
 - The incumbent should be granted a renewal and to do otherwise would set a bad precedent. Conversely, it is time for a change.
 - LRC has been an exemplary tenant. Conversely, LRC has failed to take proper care of the land.
 - The fate of each club and the effect on the members of losing (in the case of LRC) or not gaining (in the case of MCR) the use of the Reserve.
 - MCR is pursuing a campaign of revenge following disagreement with and expulsion from LRC
 - LRC has the support of major sections of the community. Conversely, LRC has only become active within the community in the last year or so.
 - MCR provides more services to the wider community and has more community involvement
 - MCR provides for teenage girls whereas LRC does not.
 - MCR has more vitality and better financial and fundraising ability. Conversely, LRC's fundraising efforts have been hampered by the uncertainty and distractions caused by the present contest, and it has the costs of caring for the land.
 - LRC is undemocratic and exclusionary, as evidenced by the events in 2005 and its more recent refusal to mediate an outcome to the lease contest.
 - Each club's strategic and other plans for the future of the Reserve.
20. The submissions and presentations raised variations of these issues, and other points of less relevance. Submitters especially emphasised the benefits of horse riding and other experiences associated with a riding club. I am satisfied that whichever club has the lease, it will continue to provide many of the benefits which these submissions highlighted. Both clubs have a strong focus on family involvement; both provide riding opportunities to the public, both provide special children's programmes and lessons. Both have their supporters, and unfortunately both have their detractors.
21. LRC has advantages and opportunities by reason of its occupation of the Reserve which would become available to MRC if it was to become lessee. These include the ability to provide on-site grazing for the club's and its members'

horses; the close relationship with the immediately adjacent kindergarten and the opportunity to develop an outdoor arena and other facilities. Several of the issues of difference revolve around contest between the clubs as to which of them will make the best of these opportunities if granted the lease.

The events of 2005

22. Much of what was raised in the submissions and at the hearing involved allegations and counter-allegations about events in 2005 and subsequently which have contributed to the present situation. I do not regard it as important that I reach any conclusion as to who was in the right over the events of 2005, although they were indicative of certain deficiencies to which I refer later in this decision. Those events are of some importance in understanding the present situation with both clubs, and it is relevant to refer to some aspects of them.
23. What does not seem to be in dispute is that there was a breakdown in relationships among LRC committee members and efforts to mediate a settlement were unsuccessful. The result was that the Bodenstein and Doering families withdrew their support and were eventually excluded from the club.
24. It is likely that the actions of some members of those families and others involved on both sides were disproportionate and unnecessarily confrontational. However, the present exercise is not about the rights or wrongs of those events, but about the future use of the Reserve. I therefore refer to those events only where necessary.

Background

25. LRC was established in 1992 and has occupied the Reserve under the lease which expired in 2006. The Reserve is divided into a number of paddocks, which are used for a variety of club activities. Over the years LRC has cleared areas for grazing and has undertaken pasture management, weed clearing and other maintenance. In 2002 an area was taken back by the Council and developed as a sportsfield. After that, work was done to prepare a nearby area as an all-weather arena, but this was not completed. Some shelter buildings and other improvements have been constructed by LRC members with the assistance of community service workers.
26. As is common to most riding or pony clubs, the paddocks are grazed by horses owned by the club and its members. LRC charges grazing fees and these make up a sizeable proportion of its revenue. In previous years LRC has advertised the availability of grazing space, particularly in the summer months when more feed is available. In winter the number of horses reduces to the "permanent" grazers and extra feed may need to be bought in. The club seems to have had a system of temporary or "associate" membership for the owners of horses grazing over the summer.
27. I do not have historical membership figures but in 2004 / 2005 it seems that there were about 30 members from fewer than 10 families (including those who have since shifted to MCR). I was told that there had been a marked reduction in membership after 2002 when the area available for grazing space was reduced, and the decline in subscription revenue confirms this. My impression is that

membership of the club was linked to the use of the property for grazing members' horses, rather than for the wider community.

28. One of the criticisms levelled against LRC is that it is run by and for a select few members. I regard this as a reasonable assessment of the situation in the years before 2005. While that situation would not be acceptable in terms of the criteria which should now be applied, there was no explicit requirement for the lessee to have open membership or provide services to the wider community. Whether for this reason or not, the club had only modest membership numbers and therefore limited resources to devote to the management of the club's affairs and stewardship of the land.
29. In 2005 there was major disagreement among members of LRC's management committee, ostensibly about the manner in which it dealt with the Lawrie family, who were declined permanent membership or grazing. The club sought outside assistance to mediate the dispute, from Council's leisure services manager. The issues were not resolved to the satisfaction of some members (particularly the Bodensteins and the Doerings) who resigned from the committee. Both families were subsequently ejected from LRC and are now actively involved in MCR.
30. Since its formation in 2005 the membership of MCR rapidly increased from an original 15 to about 120. Membership of LRC over the same period has also experienced a remarkable increase to about 140.

Preference for the incumbent, or time for a change?

31. A number of submissions advocated that as the incumbent, LRC has a "right" to the lease. I was told that it would set a bad precedent and be viewed with concern if the lease is granted to MCR. The LRC lease has run its full term and I consider it entirely appropriate that Council should use the opportunity to re-assess what is in the best interests of the community. If such a re-assessment concludes that a change is called for, then Council should make the change.
32. This is not a situation where Council is terminating a lease or refusing a right of renewal. Clubs and other organisations should not assume that once they obtain the lease of a community facility they will be able to use it indefinitely. They should be aware that they enjoy a privilege extended to them by the community and risk being displaced when their time is up if another option produces a better outcome for the community.
33. That is not to say that in determining what may be the best community outcome, I should disregard the consequences to LRC and the community it represents of the loss of their premises. I deal with that issue below.
34. The submission from the Titirangi Ratepayers and Residents Assn expressed the view that LRC's lease should be renewed unless there was a "proper case for a change". I accept the proposition that if the case for granting a lease to MCR is not significantly better than for LRC, then the status quo should prevail. I see that my task is to determine the points of difference and to assess whether those which favour MCR as lessee are of such significance as to warrant making a change.

The effect on the Clubs and their members if granted / refused the lease

35. LRC is concerned that if it loses the lease of the Reserve it will go out of existence. Likewise, MCR says that unless it obtains the lease it will not survive. LRC makes the point that MCR became established and quickly built up its membership without the use of the Reserve. There is an attraction to the ideal of the two clubs continuing to operate and catering to a larger number of members and horses than could just one club occupying the Reserve. However I consider this to be an unrealistic prospect. Both clubs have stressed the need for a base to provide grazing for horses and proper facilities to conduct club activities. MCR has succeeded thus far without a base but I find that this is not sustainable in the longer term. My view is confirmed by the plea of LRC that their club will go out of existence if they cannot occupy the Reserve.
36. What is the effect of one or other of the clubs ceasing to exist, in terms of the criteria I have to apply? LRC points to the fact that it has been in existence for 17 years, whereas MCR has been going only since 2005. Preservation of a club's longevity is not a major consideration. It is the members of the club and the community represented by those members which is of more concern. In that respect I note that the membership numbers of the clubs are similar, and most members are from the local Titirangi, Laingholm and Parau communities.
37. LRC makes the point that its members are of longer standing whereas all of MCR's membership is only recent. The previously low membership numbers, and LRC's current membership information shows that the bulk of its members have joined since 2005, most in 2006. My impression is that many (if not all) of the more recent members would be just as likely to have joined the MCR if that club was the lessee of the Reserve. It is what the club has to offer, rather than the individuals who make up the club, that is the primary consideration for new members.
38. I must also consider the effect on the horses currently being grazed at the Reserve. If LRC is to lose occupation then its horses are likely to be displaced in favour of MCR's. There is not enough grazing space for all horses currently associated with both clubs to be accommodated on the Reserve. A decision to grant MCR the lease may result in a few of the LRC horses currently grazing there being able to remain if their owners were to join MCR. There will be a problem for most of the LRC horses, but that should be of short duration while other arrangements are made. I have provided for this to some degree by directing that the new lease to MCR should commence on 1 June 2007. I also expect, consistent with their claims to be responsible and inclusive, that the management of MCR will do their utmost to accommodate LRC members and their horses, and to cause the minimum of distress to any horses it cannot accommodate.
39. LRC also points to the fact that its members have developed improvements in the lease area including fencing, shelter and storage buildings, the makings of an arena and some horse jumps. LRC has the mistaken understanding that all improvements belong to it and can be removed. In fact they reverted to the Council on termination of the lease. Council would presumably intend that they be taken over by MCR if the lease was granted to that club. I do not regard as particularly significant the fact that these improvements were undertaken by LRC or while it was lessee. Some of them were undertaken by community service workers and by Council. As to the rest, occupation of the Reserve is a

concession by the community, usually for community purposes, and there is no unfairness if developments are retained by the community at the expiry of the lease.

40. On the issues discussed under this heading, the balancing of considerations would favour LRC remaining as lessee. They are not, however, of particular significance in terms of the criteria which I am to apply.

Teenage girls' membership

41. At the hearing LRC spoke of the benefits to young people, especially adolescent girls, from involvement with horses through membership of a riding club. This aspect was also emphasised by MCR which actively encourages involvement by this group and claimed that teenage girls make up 58% of its membership. The detailed information provided by MCR at the hearing did not support this figure. It indicates that 31 of the club's 115 members are in the age group 13 – 19 years, and that 21 of them are female.
42. On the other hand, the lease application by LRC in 2006 identified only one member in the age group 14-19 years. Current membership figures provided by LRC indicate some improvement, with 8 members out of a total of 137 in this age group.
43. The membership of both clubs is predominantly made up of families with children, with the adult members being a mix of active riders (especially among the young adults) and parents, some of whom also ride.
44. I was told that riding is the third most popular sport for teenage girls. There are benefits to the individuals concerned, and the community at large, in providing opportunities for adolescents girls and young women to participate in a riding club. MCR has demonstrated, by its success to date, its better ability to provide for this group.
45. In terms of assessing the significance of this issue, I note the importance placed on it by both clubs. However in terms of community participation and outcomes, it is also important to recognise that the major support for both clubs comes from families, and not any particular age group.

Compliance by LRC with previous lease terms – maintenance and improvement of the Reserve

46. LRC claims to have been an “exemplary” tenant and points to the report prepared by Council staff describing it as a good tenant. MCR contests this claim and alleges that LRC have not taken the good care of the land required by the lease, especially the term that requires the removal of all weeds. MCR have produced photographs showing that even now there are areas of gorse and other weeds, and showing poor pasture management practices. I heard from Mr Phillip Clark, a committee member of LRC with responsibility for the land. While Mr Clark impressed me with his experience and knowledge, he has been involved with the Club only for only a few months. He acknowledged that at the time of his arrival, a lot of work was needed.

47. Over the period of LRC's occupation of the Reserve, the standard of maintenance has fluctuated, and this is evidenced from an analysis of the LRC's financial reports, indicating fluctuating amounts spent on ground maintenance and weed control.
48. From my observations on site, and from the photographs produced in evidence, I regard much of the criticism by MCR as justified. However, I do not regard this as indicating a serious breach of the lease. The Council regards the previous standard of pasture management and weed control as sufficient, and LRC's performance, although not ideal, was adequate in the circumstances.
49. LRC has no actual management plan with a programme for annual and longer-term management of the land resource. LRC has prepared a strategic plan which includes statements of intent, but no scheduling of the actual work, with budgetary provision. The minutes of the LRC management committee meetings show that land management is regularly discussed and acted upon. Although the results have been adequate, I consider that attending to the care of the land on an ad hoc basis is not indicative of good management practice.
50. MCR also criticised the inflexibility of LRC's management with particular reference to closing the grounds during the winter months regardless of actual ground conditions. It is the function of the club's management to strike a balance between taking proper care of the land and making it available for reasonable use by club members and others. Such decisions can easily be criticised and I do not accept the particular criticism.
51. The point was made that it has been LRC, and not MCR, that has had the burden of maintaining the grounds, and that it is easy to criticise looking over the fence. I reject MCR's criticisms of LRC's performance to date. The issue for my decision is not so much about compliance with previous lease terms but about future compliance. I would expect that either of the clubs, if granted the lease, would put in place a management plan and make ongoing budgetary provision for maintenance and upkeep of the grounds.
52. Both clubs described plans for the future development of the Reserve, including completion of the outdoor arena and construction of a clubhouse. With assistance from Council, LRC has developed a strategic plan, an updated copy of which was presented. MCR also presented a detailed set of objectives and strategy for the Reserve.
53. Both clubs appear to recognise the desirability of preserving the stream margins and wetland area to maintain water quality. The approach of each is different, but not significantly so.
54. I was impressed by the forward-looking approach taken by MCR to the future management of the Reserve, and less impressed by the lack of planned management shown by LRC. While I consider that both clubs will comply with the requirements of the lease, I have more confidence in MCR to take better care of the Reserve. For reasons discussed below, I also consider the MCR will have the better financial ability regarding both maintenance and improvements on the Reserve.

Financial matters

55. MCR presented financial statistics and graphs highlighting fluctuations in LRC's income from various sources, and its expenditure. This was put forward in part to show the declining financial performance of the LRC. Although it shows the expected mix of good years and bad, it also demonstrates that the LRC's overall finance performance has declined, at least until the recent increase in membership.
56. The improvements to the leased area, in particular the partial development of the arena and the construction of shelter buildings, were mainly the result of work undertaken by the Council and community service workers. While LRC says it would like to have completed the arena and carried out other improvements, it has not had the funds to do so. LRC has had a regular source of income from grazing fees and this would have been enough to cover expenses, but it seems that nothing much else was done to fund further development of the arena or other facilities.
57. MCR sought to contrast this with the success of its own fundraising and other efforts, resulting in the club having a healthy bank balance and plans for the future which enable it to claim with confidence that it will be able to complete the arena and build a clubhouse on the Reserve. LRC's response to this was that its financial efforts suffered from the drop in membership after 2002, and more recently because of the uncertainty surrounding the lease.
58. For reasons given elsewhere in this decision, I do not accept LRC's declining membership as a sufficient answer. I was told that LRC had not sought external funding because of its understanding (although apparently not tested) that prospective funding sources would require the club to have the security of a lease of the Reserve. I am not persuaded that this explains the apparent lack of fundraising efforts in previous years. I accept that the management committee of LRC has had to devote a great deal of its time over the last two years to the more pressing problems facing the club, including the challenge to its position as lessee of the Reserve. However the lack of financial planning predates those problems.
59. I was impressed by the evidence of a recently joined member of LRC with experience in fundraising who told me that once the lease was renewed LRC would easily be able to raise funds to complete the arena and carry out other improvements. While I accept that the skills of this particular member will enable LRC to achieve considerably more than in the past, she is a recent arrival and would no doubt have been equally prepared to provide her expertise to MCR if that club had been the lessee when she joined.
60. The MCR evidence was that it undertakes fundraising as a normal part of club activities, which is what I would expect of any community-based organisation. It has raised a considerable sum without the benefit of revenues from grazing (although also without the costs of maintaining the land). MCR has been in existence only a short time, and that is relevant to consider whether its recent efforts are likely to be sustained in the longer term. MCR takes a business-like approach to its financial management and I do not consider that its success to date was simply a cosmetic exercise to persuade the Council to grant it the lease.

61. One of the statutory criteria under the Reserves Act for the grant of a lease is that the lessee is expected to spend a substantial sum of money on the preparation and maintenance of the leased area. It is therefore a significant matter, and relevant to my choice of lessee that I decide which club is likely to have the better ability to raise funds and carry out the improvements which both clubs have indicated they intend. My conclusion is that the MCR has shown itself to have the better prospect of so doing.

Democratic structure and management

62. The most recent membership figures provided by LRC show current membership at 137, of which 57 are under the age of 14 and a further 8 are under 20 years. Despite this, the voting rights are restricted to senior (18) and life (8) members. Only voting members have a say in the appointment of the club's management committee, and can serve on that committee. Control of the affairs of the club is therefore entirely in the hands of 26 members, who come from 13 of the 39 families in the club. Only a handful of the members who have joined in the last 12 months (and who make up the majority of members) have the right to vote or to participate in club management.
63. I queried this situation at the hearing, and in response LRC's president said that the club was considering changing its rules to address this. There was a change to the rules in 2006 which provided an opportunity to extend voting rights and committee membership to the general membership, but this was not done. Indeed, the change reinforced the limitations on the rights of other members and increased the powers of the management committee. The perpetuation of this structure protects the established core of senior members against the risk that the influx of new members might result in unwelcome changes. I would expect any club wanting a lease of the Reserve to be more democratic about accepting new and perhaps different ideas from a broad membership base, rather than to take the overtly defensive approach demonstrated by LRC.
64. Regardless of the events of and since 2005, LRC did not and still does not have a membership structure which can be regarded as inclusive and appropriate for a community-based organisation. As well as denying the great majority of members any say in the club's affairs, it does not allow an aggrieved member recourse to the membership at large in the event of (real or perceived) unfair treatment by the committee.
65. The MCR rules provide that all members over the age of 12 can vote, and that membership of the committee is open to all adult members and up to two junior members 12 - 17 years old. The MCR rules are not ideal in that (as with LRC) membership is at the discretion of the committee which also has the right of expulsion. However accountability is to the membership at large, rather than in the hands of a select few. The MCR committee is also much larger, although this may have disadvantages unless a sub-committee structure is developed as I refer to below.
66. The recent reconfirmation of LRC's undemocratic structure shows that its core members are less encouraging of involvement by the community in club affairs than they claim. I do not see the criterion of best community outcome being achieved by granting the lease to a club which has the membership structure of the LRC. The operation of the LRC under this structure has seen membership

decline to the point where the club was largely run for the benefit of a select few. Whether or not it was a contributing factor in the events of 2005, the structure does not allow for a democratic means of resolving differences by making the committee accountable to the membership as a whole.

67. While I also have concerns about some of the rules and management structure of MCR, they are considerably more open and democratic, and what would be expected of a community based organisation. I find that there is a significant tipping of the balance in favour of MCR on this issue.
68. While I am unable to resolve the truth of the competing claims about the events of 2005, they highlight the obvious point that the use of the grounds for the grazing of members' horses can become a highly charged issue and at times will require sensitive and skilled management. It is also apparent that the care of the horses and the supervision of novice and less experienced riders requires the club's management to be knowledgeable and proficient in these areas as well.
69. It is therefore important that the management of the lessee club must be able to deal with these matters, preferably without resorting to Council when things go awry. LRC's preferred management structure is to limit decision-making and committee membership to its most experienced members, who for the most part are also grazing members. MCR's approach has been to provide a large committee with all members over a certain age able to vote for, and serve on, the committee. While I prefer this structure in terms of democratic, community involvement, it has the disadvantage that decisions that require special skill and experience may be in the hands of people who lack them.
70. My expectation is that if granted the lease, MCR would establish a sub-committee structure so that senior members particularly suited to making decisions associated with the management of the Reserve would be empowered to do so, albeit that they would be answerable for those decisions to the committee and the broader membership.

Involvement of the community in the clubs

71. In 2005, before the events leading to the formation of MCR, membership of the LRC was modest. Since MCR came on the scene LRC has achieved a marked increase in membership, although mostly in the non-senior categories. The fact that over the same period MCR has also recruited a substantial membership from among the same community, shows that there was a large, untapped interest for the opportunities offered by these clubs. By the end of 2006, as between the two clubs, the membership totalled in excess of 240 individuals, from about 60 families.
72. I questioned the LRC's representative, Dr Mels Barton as to whether there were any practical limits on the membership of her club. She told me that the club could accommodate a large number of members, not limited by the availability of grazing space or the number of horses. If that is so, and having regard to the obvious community interest in belonging to a club, it is relevant to consider why the club membership was so modest in 2005 and earlier.
73. LRC said that when the Council took away a large area of the Reserve in 2002 to create the sportsfield, it substantially reduced the available grazing space,

resulting in the loss of many club members. It appears that the club (or its continuing members) did not do much to rebuild its membership by tapping into the demand in the community from those who are interested in riding but do not own horses. These factors support my conclusion that the club's membership focus was on the ownership of horses for which grazing was available on the Reserve.

74. LRC is to be commended for the efforts made since coming under threat from MCR, but I am left with the clear impression that little was done before then to encourage involvement in the club by the wider community. This impression is reinforced by the membership structure and the club's constitution, keeping control of the club (including the admission of new members) in the hands of a select few. Although I do not agree with the claim that LRC was operated as a "private" club, its primary focus was on the interests of its (relatively few) members rather than on community participation.
75. While both clubs have succeeded in their efforts to attract greatly increased involvement by the community since 2005, LRC has had the distinct advantage of the Reserve as a base. Whether because of its better membership structure, or the enthusiasm of its leadership, the success of MCR has been all the more remarkable because it has had the major disadvantages of having no fixed abode, and active competition from LRC.
76. Both clubs also put forward the success of their efforts to involve other sectors of the community in their activities. Understandably, the LRC focus was on the kindergarten next door. While it is to be commended for its work with the kindergarten, I would expect the same of any club occupying the Reserve. Both clubs offer riding opportunities to the general public, provide pony rides for local school events and birthday parties, and in the case of LRC it has recently held a well-attended open day at the Reserve.
77. MCR also points to the success it has had with disabled groups, and this is a matter in its favour, although of less significance than the more extensive involvement by both clubs in the local community.
78. Both are riding clubs and therefore are less focused on competitive involvement with other clubs, although MCR has encouraged more participation by its young members with other riding clubs. Both clubs provide a range of other activities for their members. LRC has the advantage again of the availability of the Reserve, but MCR must be given credit that it has been able to provide a good range of services without such an advantage.
79. In my assessment the main points of difference between the two clubs, in terms of involving the community, significantly favour MCR.

Community support

80. There are many expressions of support from members of the community, and community organisations, in favour of renewing the LRC's lease. As previously indicated, I have discounted these where they appear to have been based on a misapprehension that unless LRC was to have its lease renewed, the facility would be lost. I do not consider that those supporters, if fully informed would regard MCR as any less deserving of their support.

81. Several of those who made submissions and appeared at the hearing were more informed about the respective clubs and about the issues involved. I heard expressions of support for LRC which belied a number of the reservations I have expressed about that club, and have given them particular consideration. Some submitters have come only recently to the situation, but some have also been around for a longer time. I do not discount these expressions of support from informed and knowledgeable sources.
82. There were also many expressions of support for MCR, also from well informed commentators. As with those favouring LRC they belied many of the criticisms levelled against MCR and some of its members.
83. Both clubs have their detractors, some based on personal experience and others on their assessment of the various matters of dispute between the clubs or their members. Despite these negative points, the submissions show that on the whole, both clubs do a good job providing services to their members and the wider community. The many expressions of support (as well as opposition) serve to emphasise that my task is to determine whether the differences I have identified, and in particular those which favour MCR, are of such significance as to justify a change.

Divisions within the community

84. It is unfortunate, and some might say deplorable, that in a relatively small and contained community such as Laingholm (including parts of Titirangi and Parau) there is such a polarisation of views about the respective clubs, based largely on personal criticism and conflict. The situation has been reached where it is plain that the animosity is such that some of the senior members of each club will probably never reconcile their differences.
85. I heard accusations by LRC members that those who broke away from it and formed MCR, and have now applied for the lease of the Reserve, have done so out of revenge and a desire to destroy LRC. Whatever the merits of the causes of their disaffection with LRC, the families directly concerned (and possibly others) felt that they could not be resolved from within LRC. They believed they could make a better club and make out a stronger case for the lease of the reserve. In order to do so, they have seen fit to criticise aspects of the LRC and some of its members. I do not accept that the destruction of LRC is their primary motivation, and note that the criticisms are reciprocated with equal enthusiasm by LRC.
86. Efforts to resolve the personal conflicts and explore possible ways in which the interests of the members of the two clubs could be provided for were unsuccessful. The reason given by LRC for withdrawing from that process did not strike me as particularly convincing. Dr Barton told me that it was because they did not believe that they should have to come to any accommodation with a group intent on destroying their club. I do not accept this as a proper reason but do accept that having regard to the history of animosity, as continued to be played out before me, there was little prospect of the current management of the two clubs putting that aside in the interests of the wider community.
87. The attitude conveyed by LRC is that if anyone belonging to MCR wants to use the Reserve they can become members of the LRC. While it is correct that anyone can apply to join LRC, their membership is entirely at the discretion of

the committee, and unless they were accepted as senior members, they would have no right to a say in any of the club's decisions or management. Presumably MCR members were aware of their choice to have joined LRC in the first place, but chose not to do so.

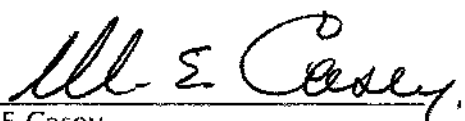
88. Both of the clubs and their supporters sought to blame individuals currently involved in the senior management of the opposing club for the current state of affairs. I am unable to attribute particular blame either way, and doubt that doing so would assist the decision I must make in any case. It is however relevant that the senior management of MCR can be replaced at any time by majority of that club's members if they consider them unsuitable for any reason. This mechanism is not available to members of LRC.
89. I have not made my decision based on any judgement as to the conduct of any individual within either of the clubs. It has been based on my consideration of the objective facts as they have been presented, and applying the criteria which I have identified at the beginning of this decision.

Significance and conclusions

90. In this decision I have covered what I regard as the issues of significance raised through the submission and hearing process. While many important issues are evenly balanced, I have identified several areas where I consider that MCR would be the more suitable lessee. I therefore move on to consider whether, in respect of those matters, the difference is sufficiently significant to warrant a change. In determining significance I have particular regard to the statutory and other criteria.
91. In relation to membership structure and community involvement, the issues are clearly relevant to the principal criterion of best community outcome and are significant. The structure and rules of LRC are exclusionary, and the recent changes show that the club wishes to keep them so. The recent successes of both LRC and MCR to attract new members indicate that there is strong interest and support among the community, which was largely untapped by LRC until the recent threat presented by MCR. Council needs to have confidence that the lessee is and will continue to be a community-focussed organisation. Even taking into account its recent efforts to engage more with the community, the LRC still appears intent on resisting changes that might result from a more democratic membership.
92. In relation to matters of financial and other management, the ability to raise funds and progress long awaited improvements to the Reserve is significant both in terms of the statutory criteria and best community outcome. MCR has demonstrated by its achievements already that it is likely to be much better able to fundraise and to undertake financial and other management more effectively than LRC.
93. Although the other matters raised in submissions and considered by me are not insignificant, my conclusion is that MCR has demonstrated that it will do a better job than LRC in satisfying relevant and significant criteria, such that the case for a change has been made out.

94. I regret that my decision will probably do little to resolve the underlying conflicts between the two groups. I do not think that a decision preferring either of the clubs would have achieved this. My decision should not be regarded by any of the individuals involved as a victory or defeat, as my focus has been on outcomes for the community, not for the clubs or individuals. If it is so regarded, with the result that the past animosity continues to be played out in public, the community will be the loser, especially families with children keen to develop an interest in riding.

Dated 26th February 2007



M E Casey
Adjudicator

Received 28/4/07



Office of Hon Chris Carter
MP for Te Atatu
Minister of Conservation
Minister of Housing
Minister for Ethnic Affairs

24 APR 2007

Mels Barton
President
Laingholm Riding Club
PO Box 60-458
Titirangi
WAITAKERE CITY

Dear Mels Barton

Thank you for your letter of 5 March 2007, seeking a review of a decision by the Waitakere City Council to grant a five-year lease to the Muddy Creek Riders Inc over the Owen's Green Reserve. Your club also challenges the council's decision to delegate the decision-making to an adjudicator.

I am advised that the reserve is owned by the council, which arranged to have it classified and managed as a recreation reserve under the Reserves Act 1977. The powers derived by the council from the Act include the ability to grant leases over the reserve or to exchange part of the reserve in return for other land. Only in particular instances does the council need to seek my consent to any action, none of which apply in this case. In the circumstances, neither my department nor I can intervene in the decision to grant the lease to the Muddy Creek Riders Inc, or formally review the merits of that decision.

On the question of the delegation to a third party adjudicator, I am advised that the council considered it was able to take this course of action under the Local Government Act 2002. My department's view is that the council's powers do not substitute for the specific delegation powers expressly provided for under the Reserves Act, and has suggested that in order to complete the process, the decision reached by the adjudicator be confirmed by the council acting as both the owner and administering body for the reserve and thus making the final decision itself. In undertaking such action, the council would be applying those powers expressly delegated to local authorities acting in their capacities as administering bodies of reserves under the Reserves Act. I support my department's suggestion.

I have therefore forwarded our correspondence to the Mayor of Waitakere City inviting him to consider my department's suggestion. You must appreciate that I do not have the ability to direct the council in this regard, but I consider it would be a prudent step for the council to take in light of the nature of the issues you have raised with me.

Yours sincerely

Hon Chris Carter MP
Minister of Conservation

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