

Report to:	Council	
Date:	1 September 2021	
Subject:	Application for a Concession Lease – Joseph and Associates	
Prepared by:	Dave Clibbery (Senior Manager Operations)	
Input sought from:		
Authorised by:	Will Doughty (Chief Executive Officer)	

1. SUMMARY OF PROPOSAL

Note this report sets out information as based on Department of Conservation internal report templates, in addition to Council report formats.

Purpose of this report

This report seeks the Council's approval to taking the next steps towards potentially granting a Concession Lease in favour of Joseph and Associates ('J&A') for the area of the old swimming pool site on the Esplanade for the purpose of developing and operating a hot pool, health and wellness facility.

The Council controls and manages the proposed site as part of the Kaikōura Recreation Reserve, and under delegation from the Minister of Conservation can grant a concession lease under the Conservation Act 1987.

The Council has received an application for a lease concession from J&A.

Should the Council agree with the officer recommendations, the application will be publicly notified for at least 20 working days, and subsequently, following consideration of submissions (oral and written) by Council a final decision will be required by Council whether to approve a lease, or not.

Background and Context

Council has previously invited expressions of interest in the use of the old swimming pool site on the Esplanade in Kaikōura and subsequently sought community feedback on a preferred expression of interest, which proposed to develop a hot pool, health and wellness facility on the site.

After discussion with the submitter of this preferred expression of interest (Joseph and Associates) Council has subsequently entered into non-binding Memorandum of Understanding (MoU) with this party to potentially advance this proposal. This MoU includes the proposed key terms and conditions that would be required of a lease for the site.

Because the site is classified as recreation reserve J&A have now made application for a concession lease of the site under the Reserves Act 1977. The aforementioned MoU forms part of this application.

Legal Process - Outline

In order for Joseph and Associates to have a lease of the area required at the site, the relevant legislative provisions under the Conservation Act 1987 need to be followed. In summary:

- J&A are required to make an application for a Concession Lease under the Conservation Act.
- Council must then be satisfied the application contains sufficient information as required by section 17S of the Conservation Act. If not, the application would need to be returned (section 17SA).
- Assuming the Council is satisfied that the statutory information requirements are met (and the application does not need to be returned), and that the application is not obviously inconsistent

with any conservation management strategy or management plan, the application will then be publicly notified for at least one month for objections or submissions.

- Following the closing of submissions, a hearing body (in this case Council is recommended) will hear any submitters wishing to be heard in person.
- A report to Council will be provided with a summary of all objections and comments and recommendation for approving or declining the lease and providing for the completion and signing of a concessionary lease document, if the lease is approved.
- The Council then considers the recommendation and summary of submissions and makes the final decision whether or not to proceed with the lease having regard to the statutory matters in section 17U of the Conservation Act.

As required by section 76(5) of the Local Government Act 2002 (**LGA**), the Council will also need to comply with its decision making obligations under Part 6 of the LGA to the extent that these provisions are not inconsistent with the relevant provisions of the Conservation Act.

Further Information:

J&A submitted an expression of interest in the use of the site in response to a public invitation for such expressions in August 2020. This expression of interest proposed the development of a hot pool, health and wellness facility on the site. This was one of only two expressions of interest that were received, with the other EOI also proposing a similar type of development.

At its meeting of 28 October 2020 Council resolved to invite J&A to submit a more detailed proposal for the development of the proposed hot pool / spa facility by 1 February 2021. Council also resolved that public notice should be given of the making of the above resolution, and that public feedback should be invited. Little feedback was however received.

After some delay the applicant presented a more detailed proposal to Council in March 2021, which Councillors generally viewed positively. At Council's meeting of 28 April 2021 Council resolved to authorise staff to prepare a Memorandum of Understanding between Joseph and Associates and Council to define the intents of the parties in respect of further investigation and potential development of a commercial hot pool, health and wellness facility on the former swimming pool site.

Such an MoU was developed and given effect on 24 August 2021. The content of the MoU included details of the key terms that would be contained in any ground lease that was granted for the site. The MoU reflects the need of J&A to make significant further investments in due diligence to establish the viability of the proposal and incorporates a deferred commencement of the lease term to enable this to occur.

Information about the applicant:

Joseph and Associates is a limited liability company operating from Christchurch, Timaru and Dunedin that provides professional project management, quantity surveying and project strategy services and which has significant previous experience in the development of spa and wellness facilities.

Type of Concession sought:

Concession Lease

Term Sought: A term of 33 years, which is the maximum applicable under the under the Conservation Act.

Description of proposed activity

Joseph and Associates seek a lease concession under Section 59A of the Reserves Act 1977 and Part 3B of the Conservation Act 1987 to lease the area of recreation reserve off the Esplanade in Kaikōura that was previously occupied by the old Kaikōura Community Swimming Pool. The purpose is for the construction and management of a commercial hot pool, health and wellness facility.

A potential general layout concept is provided in the application, though it is recognised that final details will be dependant upon outcomes of the diligence process and may vary from this concept.

Description of Location where activity is proposed

The proposed location is within the current Kaikōura Recreation Reserve adjacent to the Esplanade in Kaikōura – being within Part Section 468, Town of Kaikōura. See attached aerial map of the area together with the Site Plan in the Appendices to the Application.

2. RECOMMENDATION

It is recommended:

THAT the Council:

- (a)** Receive this report;
- (b)** Accept that the application is complete, meets the information requirements in section 17S of the Conservation Act 1987, and does not need to be declined under section 17SB of that Act;
- (c)** Approves in principle the grant of a concession lease to Joseph and Associates, subject to compliance with statutory requirements and processes in accordance with the Conservation Act 1987 and (where relevant) the Local Government Act 2002;
- (d)** Agrees that the application be publicly notified in accordance with sections 17SC and 49 of the Conservation Act and that for public notification purposes the Council is satisfied that the concession would be of local or regional interest;
- (e)** Accordingly instructs the Chief Executive to proceed with public notification in the Christchurch Press, Kaikōura Star, and on the Council's website with submissions closing not less than one month after first public notification;
- (f)** Agrees that Council shall hear any person or organisation wishing to be heard in support of their objection or submission and that staff shall present a recommendation to the Council with a summary of all objections and comments received as to the extent to which they should be allowed or accepted;
- (g)** Sets Wednesday 13 October 2021 at 4.00pm as the date and time for the hearing referred to in (f) above;
- (h)** Notes that the Council will then consider the recommendation and the contents of the summary of all submissions and comments received before deciding whether or not to proceed with the proposal having regard to the statutory matters in section 17U of the Conservation Act;
- (i)** Notes that if the Council decides to proceed with the proposal it delegates to the Chief Executive authority to approve the terms and conditions of the lease concession consistent with section 17X of the Conservation Act, with the key terms and conditions generally being in

accordance with what was indicated in the Memorandum of Understanding between Joseph and Associates and Council.

3. INFORMATION AVAILABLE FOR CONSIDERATION

As noted in the summary above, Council is aware of the background to the proposal. This information is recorded in the reports and minutes referred to in section 1 above.

4. ACKNOWLEDGEMENT OF COMPLETE APPLICATION (SECTION 17S)

The application is, in the opinion of council staff, complete (following receipt of the initial application staff have sought and received further information) and meets the information requirements for applications under the Conservation Act (section 17S). There is no statutory reason for the Council to decline the application at this stage or return it to Joseph and Associates.

5. ANALYSIS OF PROPOSAL (SECTIONS 17T, 17U, 17V, 17W, 17X, 17Y)

Public notification ss 17SC and 49

The application is required to be notified publicly for at least 20 working days in accordance with Section 17SC (1) and Section 49 of the Conservation Act, and for at least one month in accordance with Section 120 (1)b of the Reserves Act 1977. If the application is approved in principle, public notification will first occur on 8 September 2021, and will close on 8 October 2021. In accordance with Section 49 this issue is a local/regional issue and does not require notification outside the region.

Analysis of Effects s 17U(1) and (2)

The applicant has provided in the Application information about the proposal and environmental impacts relevant to the Conservation Act. Officers are satisfied with that analysis and the mitigation measures and that there are no such adverse environmental effects requiring special conditions. There will however be measures open for objection or submission as a result of public notification of the proposal.

Commencement of the lease term will also be conditional upon the applicant obtaining a resource consent for the activity which may require mitigation of environmental effects outside of those encompassed by the Conservation Act. The proposed activity is in general considered to be a continuation of the previous use of the site.

An archaeological authority may be required due to the significance of the location. Full engagement with Te Rūnanga o Kaikōura is expected through the consenting process including obtaining a Cultural Impact Assessment.

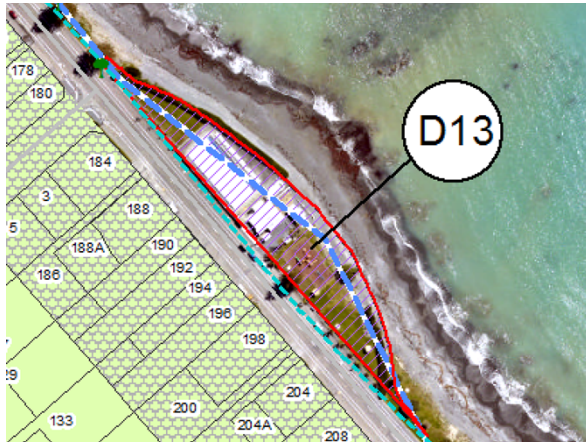
Purpose for which the land is held s 17U(3)

The land proposed to be leased is part of a Recreation Reserve. The proposed activity is not contrary to the Conservation Act or the purposes for which the land is held.

The land is gazetted as recreation reserve. Section 17(1) of the Reserve Act states: "It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as recreation reserves, for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside."

Section 54(1) of the Reserves Act specifically identifies leasing for the purpose of constructing, developing, controlling or managing baths to be appropriate for recreation reserves, and the proposed activity is of a similar nature.

Consistency with Relevant Management Strategies and Plans s 17W



The land is part of the area designated D13 under Council's District Plan, for which the purpose is classified as 'Swimming Pool'. Recreational activities are defined within the District Plan and the proposed hot pool, health and wellness facility is consistent with this definition, providing a facility to provide for and improve the physical welfare and enjoyment of the public.

The old swimming pool has been abandoned because of damage sustained in the 2016 earthquake and the current configuration of the site makes it unsuitable for other recreational purposes without a substantial investment to remove existing structures and rehabilitate the site. The public are currently excluded from the site in the interests of safety and as such the site at present has no recreational value.

Kaikōura fits under the Nelson/Marlborough Conservation Management Strategy 1996 2006 (CMS). The CMS is a high level document, and due for review. Section 18 Recreational Facilities recognises:

The main points of the recreation demand are:

- *most visitors are urban-based and must travel to areas administered by the department;*
- *most recreation is family based with popular activities being swimming, picnicking and short-walks; and*
- *favoured sites are concentrated a few areas*

The overall objective for the recreational facilities is *"To provide facilities to enhance visitor experience, minimise visitor impacts and to manage visitor numbers"*.

The proposed hot pool, health and wellness facility fits well with the direction of the CMS, providing recreational opportunities in an urban area where there is already a significant concentration of visitors.

Sections 17X and 17Y - Conditions may be imposed by council, and rental

The site has previously been fully developed and as such has no conservation value and no associated conditions are therefore proposed to be imposed.

More generally it is proposed that the Chief Executive is authorised to finalise and sign the final lease document on the Council's behalf in a manner consistent with sections 17X and 17Y and the Memorandum of Understanding between Joseph and Associates and Council if the Council ultimately decides to approve the lease.

6. RELEVANT INFORMATION ABOUT THE APPLICANT

Convictions on any charge related to the activity applied for or any consideration related issue: Council staff are not aware of any relevant convictions.

Past compliance with concession conditions: Council staff are not aware of any breaches, non-payment of fees, illegal operation, whether upheld or unresolved complaints in relation to the Applicant.

Credit check result: No credit check has been undertaken.

7. PROPOSED OPERATING CONDITIONS

Concession activity: The activity proposed is the construction and management of a hot pool, health and wellness facility.

Term (section 17Z): The proposed term is 33 years, the maximum permitted for recreation reserves under the Reserves Act. The term is to commence at the date upon which the applicant obtains all necessary consents and permissions necessary for the construction of the proposed facility or 31 December 2023, whichever is earlier.

Fees (section 17Y): Fees shall be set in accordance with the Memorandum of Understanding between Joseph and Associated and Council.

Summary of special conditions as listed in effects assessment above: None proposed although lease will note that any discovery of archaeological matters will follow the existing accidental discovery protocol, and the wording noted in the Application reserves use of the leased site.

Other Conditions: Various other conditions are applicable as outlined in the Memorandum of Understanding. One such condition is that the facility is commissioned and operating within not more than 5 years of the commencement of the lease term.

Applicant's comments on draft officer's report: The applicant is aware of the key conditions being included, as these were included in the Memorandum of Understanding.

All of the matters referred to above are however subject to ultimate consideration by the Council following public notification.

Summary and conclusions

The application received is not contrary to legislation and is consistent with plans. Potential adverse effects have been appropriately considered and will be mitigated by the special conditions or through other regulatory processes. Officers recommend progressing with public notification and subsequent processes.

8. ISSUES AND OPTIONS

As required in making its decision, Council must consider options and the advantages and disadvantages of those options. These are as follows:

1 Acceptance of application and public notification

Option 1A -Recommended option; to accept the application as complete and approve the public notification of the Application.

Advantages (if application is approved)

- Results in the removal of existing damaged and redundant infrastructure
- Provides a much greater recreational usage of the reserve
- Improves physical welfare and enjoyment of users
- Will achieve these with no adverse environmental effects
- Will generate employment contributing to economic wellbeing
- Generates a worthwhile revenue stream for Council

Disadvantages

- ☐ Potentially restricts other future alternative uses of the site

Option 1B – No other options:

Previous invitations for expressions of interest in the use of the site have yielded only proposals similar to that of the applicant and leaving the site in its current dilapidated form is not considered appropriate in the longer term.

Other approaches to the restoration of the site would have significant initial and on-going costs that would have to be met by the community and are considered unaffordable at this time.

As such there does not currently appear to be any other viable options at this time.

Given that the information requirements for the application have been met and there are no grounds to decline the application at this stage, there are no other reasonably available options but for the Council to proceed with public notification. In particular, section 17SC provides that the application **must** be publicly notified if the preliminary statutory requirements are satisfied.

2 Hearings process Option 2A; Hearing by specially constituted Sub-Committee

Under this option, the Council could delegate responsibility for a hearing to a specially constituted committee or sub-committee. A committee or sub-committee must have at least one elected representative and can comprise other members selected for specific knowledge or skills. Officers recommend a subcommittee of three elected representatives.

The committee/subcommittee would hear any person or organisation wishing to be heard in support of their objection or submission.

The committee/subcommittee would then make a recommendation to the Council with a summary of all submissions and comments received (together with a full copy of the submissions being made available to the full council)

Advantages

- The Council can step away from the hearings processes as far as it is able under the Local Government Act 2002, thus minimising any risk of perceptions that the Council has already formed a view about the proposal.
- The Department of Conservation considers that, as the Minister's delegate, all decisions should be made by the Council itself, therefore whilst council will receive a recommendation, Council will make the final decisions (and will have made available to it all submissions in full).

Disadvantages

- ☐ The Department of Conservation considers that, as the Minister's delegate, all decisions should be made by the Council itself, and may not be comfortable with the Council removing itself from this part of the process (however the decision is clearly reserved for council and Council will have full access to all submissions).
- ☐ Some committee or subcommittee members may have little familiarity with background issues relating to the matter.

Option 2b – Hearing determined by Council (Recommended Option)

Under this option, all of Council hears and deliberates on matters put before it by members of the public with respect to the proposed lease.

Advantages

- All members of the Council will have heard from the public on the proposed development and will have a high degree of familiarity when it comes to making a final decision.
- The involvement of all of the Council sends a signal to the community that the Council is very interested in hearing from it.

Disadvantages

- Similar to Option 2a, this will require an additional and potentially time consuming meeting for all Councillors in a busy schedule.

Option 2c -Hearing by Council Committee

Under this option, the Council could use an existing committee to hear and decide on submissions or specially constitute a sub-committee.

Advantages

- The Council would be using an existing structure or well-known process to appoint a new hearing body

Disadvantages

- Officers believe there is not an appropriate committee for this purpose

9. COMMUNITY VIEWS

Two previous opportunities have been provided for expression of community views in respect of potential uses of the site (the call for expressions of interest and subsequent invitation for public feedback on Council's preferred proposal from that process) but neither drew significant responses, suggesting that there is not significant opposition to the proposed use of the site.

10. FINANCIAL IMPLICATIONS AND RISKS

10.1 Financial Implications

There are not currently any financial implications arising for Council out of the proposed concession lease. No assumptions have been made in future budgets that rental revenue will be obtained from this source.

10.2 Community Implications

The proposed lease is believed to have potential benefits for the community through associated contributions to local employment, both directly and indirectly.

11. RELEVANT LEGISLATION

11.1 Policy and Legislation

See above re Conservation Act, Reserves Act, District Plan

11.2 Delegations

Council is required to make these decisions as the Minister of Conservation's delegate.

12. SIGNIFICANCE AND ENGAGEMENT POLICY

This decision is not deemed significant under the Councils significance and engagement policy because community views on the issue have been sought and obtained through previous consultation.

Notwithstanding this, a public notification process is required as per the Conservation Act.

13. COMMUNITY OUTCOMES SUPPORTED



Community

We communicate, engage and inform our community



Development

We promote and support the development of our economy



Environment

We value and protect our environment



Future

We work with our community and our partners to create a better place for future generations