

Telecommunications Sub-Licence

Meeting: Kaipara District Council
Date of meeting: 27 June 2019
Reporting officer: John Burt, Property and Commercial advisor

Reason for confidentiality: S7(2)(i) enable any local authority holding the information to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations).

Purpose/Ngā whāinga

This report is seeking Council approval of a telecommunications sub-licence on the land leased to Mangawhai Bowls Club and sub-leased to the Mangawhai Club.

Executive summary/Whakarāpopototanga

Council land at 209 Molesworth Drive is leased/sub-leased to Mangawhai Bowls Club and Mangawhai Club. Currently the Clubs pay a rental of \$1.00 per year, the rent is reviewable every five years with the next review due in January 2021. Spark has recently approached the two clubs asking to site a cellphone tower on the leased land on long term basis and in return are offering a commercial rental.

Telecommunications company who want to establish a cellphone tower on Council land should really obtain a commercial lease directly from Council. However, the lease(s) Council has with the Clubs do not allow either Council or the two Clubs to grant a further sub-lease/licence without the agreement of each other.

Consequently, this report is recommending that Council approves a variation to the lease(s) to allow a sub-licence to Spark, but only on the proviso that a rent review is commissioned in conjunction with the variation. This will allow for both Council and the Clubs to benefit from the rental payable by Spark under the sub-licence.

Recommendation/Ngā tūtohunga

That Kaipara District Council:

- a) Approves a variation of the lease to allow for subletting, a rent review in 2019 and a sub-lease for a communication tower at 209 Molesworth Drive to Spark New Zealand.
- b) Delegates to the Chief Executive responsibility for negotiating the terms and conditions of the variation to the Mangawhai Bowl(s) Club Lease and the sub-lease to the Mangawhai Club.

Context/Horopaki

Council is the owner of land at 209 Molesworth Drive which is leased/sub-leased to the Mangawhai Bowls Club and the Mangawhai Club respectively (Clubs). The lease was last renewed for a term of 21 years in January 2016, however the Clubs also have perpetual rights of renewal. The Clubs currently pay a rental of \$1.00 per year but the rent is reviewable every five years under the terms of the lease.

Under the terms and conditions of the lease, the Lessee shall not unless expressly provided in the lease, alter or replace improvements or construct new improvements without first obtaining the consent in writing of the Lessor (Council). The lease also expressly excludes the ability to

sublet or further sub-lease. The lease also requires the land is only utilised for a defined permitted use, which does not include telecommunications towers.

The Clubs requested Council approval to erect a temporary cellphone tower on the land over the Christmas holidays. Notwithstanding the lease conditions approval was given for this to happen for a short term over summer 2018/2019 as it was considered to provide a community benefit. A copy of the request from the Mangawhai Bowls Club, which includes a site plan, is appended to this report as **Attachment A**.

Discussion/Ngā kōrerorero

In the past we have seen community organisations with a lease or Licence to Occupy Council land at a peppercorn rental, then apply to sub-let to a telecommunications company (or even another community group) for a market rental. They often claim this is an important funding source for them.

Council's standard Licence to Occupy template allows for Council to grant other licences over the licensee's area (though we normally limit their area to their building footprint anyway). This is intended to promote shared use and full optimisation of public land rather than exclusive use.

If a telecommunications company wants to establish a cellphone tower on a piece of Council land, ideally they should obtain a commercial lease through Council, not sublet under a sports club or community group who have a lease or licence from Council to occupy that site.

However, the lease that the Clubs have does not have a provision that would allow Council to grant a further sub-lease/licence to other organisations and as detailed above in the context section the Clubs are not permitted to sublet or sub-licence either.

Spark has recently approached the two Clubs and made a commercial offer to site a cellphone tower on a long term basis at 209 Molesworth Drive. The Clubs have requested that Council considers allowing them to sub-lease to Spark. They are now aware of the legal position with respect to lease/sub-leases.

Options

- Option 1 Do nothing
- Option 2 Agree to a variation of the lease(s) and approve the granting of a sub-lease to Spark.
- Option 3 Negotiate a variation of the lease(s) so that Council could grant a further sub-lease directly to Spark.

Assessment of Options

Option 1 – Do Nothing

Criteria	Advantages	Disadvantages
Financial		Neither Council nor the two Clubs obtain any benefit from rental income.
Economic Development		Missing the opportunity that enhanced broadband could provide to business.
Social/Community		Missing the opportunity to enhance digital accessibility for the community.

Option 2 - Agree to a variation of the lease(s) and approve the granting of a sub-lease to Spark.

Criteria	Advantages	Disadvantages
Financial	If the variation included a rent review now rather than in January 2021 Council could benefit from rental.	Rental paid directly to the two Clubs so no direct benefit to Council.
Economic Development	Improvements to mobile broadband coverage will facilitate business development.	
Social/Community	Provides an opportunity to enhance digital accessibility for the community.	

Option 3- Negotiate a variation of the lease(s) so that Council could grant a further sub-lease directly to Spark.

Criteria	Advantages	Disadvantages
Financial	Council would receive this income from its land.	The two Clubs unlikely to agree to this variation as they would miss out on any additional income.
Economic Development	Improvements to mobile broadband coverage will facilitate business development.	
Social/Community	Provides an opportunity to enhance digital accessibility for the community.	

If Council decides to do nothing both it, the two Mangawhai Clubs and the community may miss out on the benefits that the installation of a cellphone tower by Spark would provide.

If Council decides to approve a variation of the lease(s) both the Mangawhai Clubs and the wider community would receive the benefits detailed in the table above. If Council was inclined to choose this option, it should be on the proviso that the two Mangawhai Clubs agree to a rent review now rather than waiting until 2021. Council could then also share in the financial return that the cellphone tower installation would provide. [REDACTED]

[REDACTED] Its in a position to pay rental on the use of this land even before any rental from Spark is considered.

It is difficult to see the two Mangawhai Clubs agreeing to a variation of the lease(s) where by only Council is receiving rental from the tower as there would be no additional benefit to them.

Policy and planning implications

Council's Community Assistance Policy does not expressly provide for third party use of Council land where a community group has use of it. The Kaipara District Plan allows for installation of cellphone towers on rurally zoned land. Spark has already applied for a planning certificate for the tower in anticipation of Council's decision.

Financial implications

The applicant Spark and/or the two Mangawhai Clubs will be required to pay Council's legal costs in respect of any variation to the lease(s). The Mangawhai Clubs are currently only paying \$1.00 per annum for the use of the land they occupy, however a variation to the lease which includes a 2019 rent review will allow this to be reviewed in the near future.

Risks and mitigations

The financial risk to Council has been mitigated by the requiring spark or the Mangawhai Clubs to meet all costs associated with any variation to the lease.

Legal risks will be mitigated by careful following of due process and having any variation sublicense documents reviewed by Council's Solicitors.

Any risk to Council's reputation would be mitigated by making a decision in the best interests of Council's ratepayers and the wider community.

Significance and engagement/Hirahira me ngā whakapāpā

The decisions or matters of this report do not trigger the significance criteria outlined in Council's Significance and Engagement Policy. The public will be informed via the Council meeting once the decision of Council has been made.

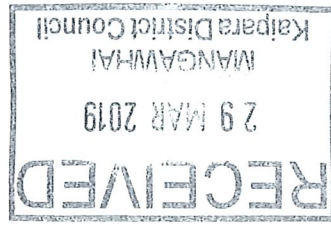
Next steps/E whaiake nei

Negotiate lease variation with Mangawhai Bowls Club incorporated and sub-lease with Spark New Zealand.

Attachments/Ngā tapiritanga

	Title
A	Request Letter from Mangawhai Bowls with site plan

John Burt, 05 June 2019



Mangawhai BOWLS Inc
Molesworth Drive,
PO Box 404039
Mangawhai Heads 0541
Phone 09 4315085.

29th March 2019

Hi John,

Further to the temporary installation of the Spark Tower over the Christmas period, we are now asking for a permanent Spark Tower to be installed. This will be for a period of 30-35 years with a 3-yearly renewal.

Mangawhai BOWLS Inc are the head lessee of this site at (Molesworth Drive)

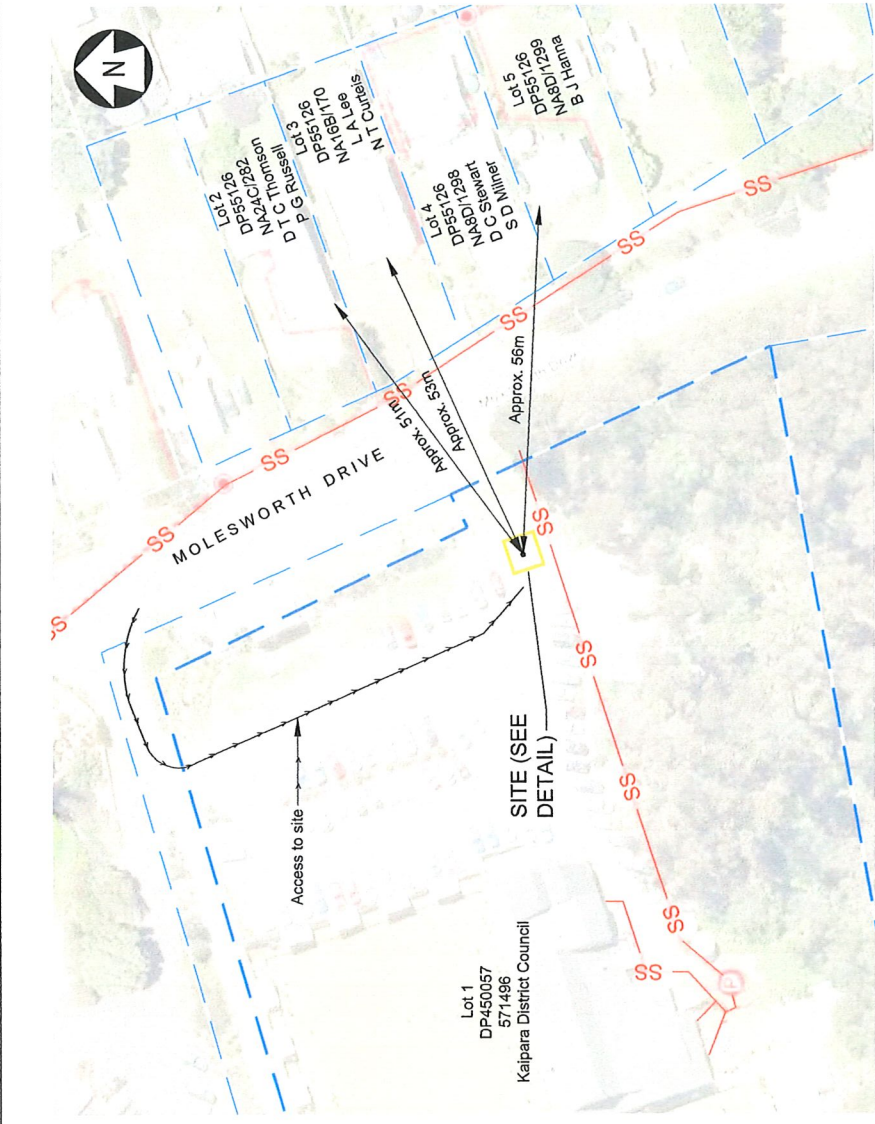
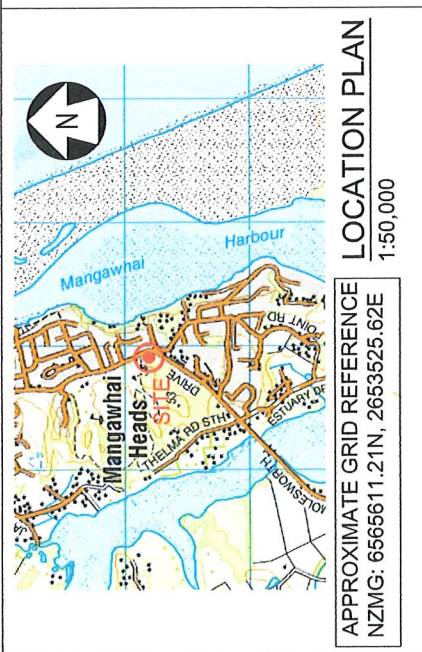
We look forward to your response.

Thanking you

Dundee Henwood

President

Mangawhai BOWLS Inc

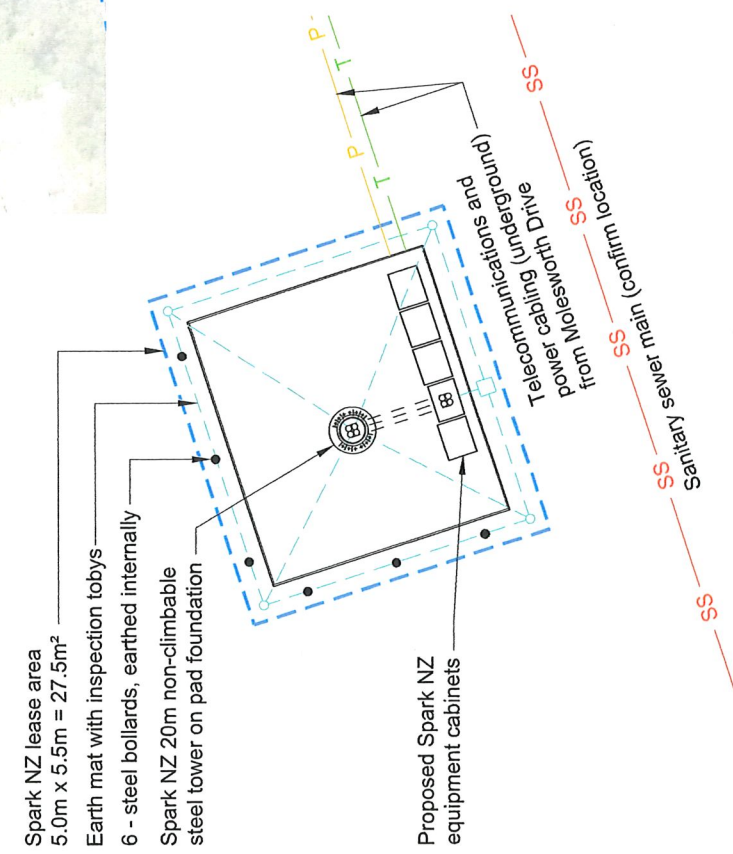


LEGEND

Stormwater	SS
Power	P
Fibre	T

NOTES

1. The North point is indicative only.
2. Boundaries, bearings and distances shown are approximate and subject to survey.
3. Power and telecommunications services are to be sourced from supply authority in the Molesworth Drive.
4. Levels given are from ground level and are approximate only.
5. Proposed access route is from Molesworth Drive, through the Club car park, to the site.
6. Tower foundation is subject to Geotechnical investigation and design. Existing services information has been obtained and plotted from local authority GIS records. It is the contractor's responsibility to locate and protect all existing services in the vicinity of the site. These services have not been confirmed on site. Any damage to existing services shall be made good at the contractor's expense.
- 7.



PROPOSED
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