

STAFF REPORT

TO: Community Services Committee

FROM: Chief Executive / Manager Property Services

DATE: 19 January 2010

SUBJECT: Touch the Sea Aquarium –RCS10-02-04

PURPOSE

To report on a petition received from Mr M Goss and approximately 2014 other persons requesting “We the undersigned ask you the Tasman District Council to accept the offer by Touch the Sea Aquarium of a 60% increase in rent to enable this aquarium to keep operating and continuing with the education of Nelson/Tasman schools, preschools, residents and visitors.”

BACKGROUND

The Council owns a property at 8 Aranui Road, Mapua which is leased to Mapua Holdings Ltd. The directors of this company are C R and D F Yelverton. The improvements (buildings) on the property are either owned by the lessee or by sublessees. A large building at the rear of the property containing approximately 400 m² is occupied under three subleases and the building on the front part of the property is sublet to New Zealand Seahorses Ltd whose directors are J R and M S Goss. This sublease is further divided into separate occupancies including the aquarium shop, Touch the Sea Aquarium, a consultant landscaping architect and some container storage.

The lease of the property with Mapua Holdings Ltd was renewed on 1 May 2002 and expires on 29 April 2012. The only rent review for the period of this lease was due on 1 May 2007. The commencing rent for the property on 1 May 2002 was set at \$11,560.00 plus GST, and was unchanged for five years. At the review date of 1 May 2007, the rental was reassessed at \$25,000.00 per annum following the receipt of the valuer’s assessment and subsequent negotiation with the lessee. It is understood that the lessee, Mapua Holdings Ltd oncharges the rent increase to the sublessees in proportion to the area occupied (37%). As with the first term, this reviewed rent will be held for five years.

The actual on charge for 37% of the space was originally \$4,277.00. The new on charge for 37% of the space is now \$9,250.00.

Since Mapua Holdings notified their sublessees of the rental increase, Mr Murray Goss representing New Zealand Seahorses Ltd has made verbal and written

submissions regarding the extent of the increase in rent that has been passed onto him from Mapua Holdings Ltd. He has met with the writer, the Mayor and the Chief Executive and a reasonable amount of time has been incurred in responding to his written communications.

Copies of correspondence between the Council and Mr Goss, plus the covering letter and an extract from the petition are appended to this report.

DISCUSSION

Council owns land at 8 Aranui Road, Mapua. This is leased to Mapua Holdings Ltd who have a sublease in place for part of the land with New Zealand Seahorses Ltd. New Zealand Seahorses Ltd appear to have occupancy agreements in place to cover the aquarium and other users of the sublease. The contract for the occupation of the property is between Council and Mapua Holdings Ltd. Touch the Sea Aquarium or New Zealand Seahorses Ltd are contracted to Mapua Holdings Ltd. It is important to understand this legal relationship. The obligations of the sublessees are with the lessee, not the Council. In entering into a sublease they have undertaken to honour the terms and conditions of the sublease and to ensure that they do not do anything that would put the lessee in breach of the head lease with Council.

The rental increase for the property as at the review date of 1 May 2007 was reasonably substantial. This was due to two factors, the length of time since the last review and the movement in market rentals during that time. Leases these days generally have review periods between one and three years. By way of comparison, in 2002 the total leased area was assessed to have a market value of \$185,000.00 whereas in 2007 it was assessed at \$480,000.00. The May 2007 rental represents a return to Council of about 5.2% on the value of the property. The original valuer's recommendation of 6.25% return was reduced following negotiations with the lessees. By way of comparison, the Council's cost of borrowing is 7.1%.

As owner of land held for commercial purposes, the Council is entitled to receive a fair return on the value of its property assets. The negotiated rental for 8 Aranui Road is less than the percentages which are currently paid for businesses operating from other Council premises in this vicinity which are in the region of 6.25%. The terms and conditions of the lease between Council and Mapua Holdings Ltd required that the rent review be undertaken in accordance with Section 22 of the Public Bodies Leases Act 1969. This process requires the Council to "cause a valuation to be made by a person whom the leasing authority reasonably believes to be competent to make the valuation of the fair annual rent of the land for the next ensuing period of the term of the lease, so that the rent so valued shall be uniform throughout the whole of that ensuing period."

In assessing the rental the valuers looked at a wide range of commercial evidence and came up with a range of values before making their assessment for the site. Unlike many leases, this lease does not specify the use that the lessee may undertake from the premises. Provided the lessee complies with the terms and conditions of the lease, the Council is not able to question the use undertaken thereon. By way of explanation, the original lease was set up between the Nelson

Harbour Board and the Apple and Pear Board. It was in a format approved at the time and subject to the legislation at the time and contained a provision that any renewal would be on the same terms and conditions as the previous lease.

Because the use is not specified, any complying activity could be undertaken. The valuer's assessment would be required to take this into account.

It is possible to enter into a lease which sets rentals based on the affordability of the businesses undertaken thereon. That provision does not apply to this lease. Most prudent landlords would be very reluctant to consider such an option as it would require an analysis of the financial accounts for each activity operating within the lease and without the ability of the landlord to influence how the business functions it poses a reasonable risk to the property owner. There are occasions when this process is used, such as Council's camping grounds, but there are provisions in place that protect the Council's interests. If the Council were to agree to undertake a review process that was based on affordability for one sub tenant regardless of the activity undertaken, it could then expect to be asked to provide the same consideration to other sublessees and for any other leasing agreement not just at Mapua.

Touch the Sea Aquarium has provided a document from their accountant showing the financial situation of the aquarium division of New Zealand Seahorses Ltd. The report shows an improved financial situation over the previous year's trading. While the accounts show a trading surplus, it is not possible to comment further on the trading situation or the viability of the business without investigating the revenue and expenditure streams. However while the accounting information is interesting, it is not relevant to the Council in its role as owner of the property and lessor to Mapua Holdings Ltd, as New Zealand Seahorses Ltd is not contracted to Council.

THE PETITION

The signatures on the petition have probably provided Touch the Sea Aquarium with valuable information on the location of their client base. That information and a show of support for the aquarium would be a pleasing indicator for the business. However, the wording of the petition suggests that most of the petitioners would have had very limited information before them when being invited to sign. The wording of the petition is:

"We, the undersigned, ask you, the Tasman District Council, to accept the offer by Touch the Sea Aquarium, of a 60% increase in rent, to enable this aquarium to keep operating and continuing with the education of the Nelson/Tasman schools, preschools, residents and visitors....."

The petition asks Council to accept an increase from an entity with which it has no contract or obligation. The petition is specific in some respect and vague in others as Council is not privy to how its lessee, Mapua Holdings Ltd, oncharges the rent. Because there is no contract between Touch the Sea Aquarium and Council, the request cannot be agreed to. There are however alternative options which, while not satisfying, the desired outcomes of the petition may assist Touch the Sea Aquarium.

POSSIBLE ASSISTANCE

Touch the Sea states that they are an educational facility and have provided examples of how other aquaria either run at a loss or are subsidised. Touch the Sea have indicated that they expect their subsidy to occur by way of a relaxation of the rental charges. This is not an appropriate method of subsidising a business as it has the effect of providing a false indication of the business position as well as reducing the return that the landowner should rightly expect to receive.

There is nothing to prevent Touch the Sea from applying to the Council for a grant on the basis of their claimed education activities. However the Council grants budgets are limited and are already under pressure. A grant to a business such as Touch the Sea may also create a precedent for other organisations that claim an educational aspect to part of their activities.

A further option for Touch the Sea Aquarium to consider could be the engagement of a small business advisor to analyse the operation of Touch the Sea Aquarium and assess their business opportunities, marketing and their charging regime.

In newspaper reports, Mr Goss is quoted as saying that about 25,000 people visit the aquarium each year. On this basis, a price increase of \$0.20 per person would cover his entire increased rental. However this is a matter for the aquarium and the Council should not be involved in providing business advice.

OPTIONS

- (a) The Council may receive the petition but because of its contractual obligations with Mapua Holdings Ltd, it cannot agree to institute the request contained within the petition. The rental has been determined by a legal process and there is no valid reason in law to review that.
- (b) If the Council was to indicate support in principle for the Touch the Sea Aquarium operation, then it may indicate some support either for grants or subsidies through the Council.
- (c) The Council can receive the petition and effectively decline the request by taking no further action.

SIGNIFICANCE

This matter is not significant under the Council's policy on significance.

CONCLUSION

Neither Touch the Sea Aquarium or New Zealand Seahorses Ltd have any contractual relationship with Council regarding the occupation of the premises at 8 Aranui Road. The rental for the premises at 8 Aranui Road was set and agreed to

between the lessor (Council) and the lessee (Mapua Holdings Ltd). How Mapua Holdings Ltd reassess the rental and pass it on is a matter between them and their sublessees. Council cannot influence that process and neither can it become involved in the operation of any of the sublessees businesses provided the terms and conditions of the subleases are observed.

RECOMMENDATION

THAT the report from the Manager Property Services dated 19 January 2010 be received.

THAT the petition from Touch the Sea Aquarium, dated 11 January 2010, be received and that no further action be taken.

Paul Wylie / Jim Frater

Chief Executive / Manager Property Services

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