
TARANAKI RACING INCORPORATED REQUEST FOR AN AMENDMENT TO THE NEW PLYMOUTH RECREATION AND RACECOURSE RESERVE ACT 1999

MATTER

1. The matter for consideration by the Council is the request from Taranaki Racing Incorporated (TRI) for the Council to promote a local bill. TRI's proposal is to amend the New Plymouth Recreation and Racecourse Reserve Act 1999 to permit TRI to assume the rights provided to the Taranaki Jockey Club Incorporated under that Act. Having considered the relevant options, staff instead recommend issuing a lease under the Reserves Act 1977 as this is the quickest and most practical solution to providing TRI with a secure long-term lease.

RECOMMENDATION FOR CONSIDERATION

That having considered all matters raised in the report, the Council:

- a) Determines not to promote a local bill as requested by Taranaki Racing Incorporated (TRI)**
- b) Agrees to offer a lease, under section 67 of the Reserves Act 1977, to TRI for 10 years at rent of \$1 per annum with a right of renewal for a further 23 years at market rent (with five-yearly rent reviews)**
- c) Delegates authority to the Property Manager to negotiate further lease terms with TRI and to seek Council agreement to the final lease, noting that negotiations may result in changes to the above decision in (b)**

COMPLIANCE	
Significance	This matter is assessed as being significant.
Options	<ol style="list-style-type: none">1. Promote an amendment bill to retrospectively change the Act2. Promote a new bill3. Offer a lease under the Reserves Act 19774. Offer an interim lease while awaiting strategic reviews5. Do nothing6. Terminate TRI's occupation

COMPLIANCE	
Affected persons	The persons who are affected by or interested in this matter are Taranaki Racing Inc., the local and regional racing industry, users of Pukekura Raceway, TSB Stadium and Pukekura Park, and the general public.
Recommendation	This report recommends Option 3 for addressing the matter.
Long-Term Plan / Annual Plan Implications	No implications for the LTP or Annual Plan.
Significant Policy and Plan Inconsistencies	No, the option is consistent with the New Plymouth Recreation and Racecourse Reserve Management Plan 1993. However, the Plan may need to be amended to reflect any decisions and future lease arrangements.

EXECUTIVE SUMMARY

2. The Council purchased Pukekura Raceway in the 1950s as the Taranaki Jockey Club (TJC) was planning to subdivide and sell its land to pay outstanding debts. Part of negotiations of this purchase involved the passing a local Act in order to provide a perpetual lease to TJC. This perpetual lease was continued by a further local Act in 1999.
3. Name and entity changes completed by TJC and its successors have resulted in the lease requirements being unable to be met. As a consequence of this, the lease has automatically been terminated and the Club no longer has a perpetual lease from the Council.
4. Therefore there is no secure lease at present for Taranaki Racing Incorporated (TRI) to use Pukekura Raceway. TRI have written to the Mayor to request the Council's support for an amendment to the 1999 Act (the letter is attached as Appendix 1).
5. In accordance with the Council's legal obligations, staff have identified and assessed the reasonably practicable options in responding to TRI's request. Officers worked with TRI late last year to move the matter forward, recommending a lease under the Reserves Act 1977 be used to manage the land as a more flexible and appropriate mechanism. TRI considered this option and rejected it.

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6. Having considered the various options and TRI's views in favour of a law change, staff continue to recommend using special provisions in the Reserves Act 1977 for racecourse leases rather than promoting a local bill. This would allow for a more flexible management environment for the TRI to operate in, particularly if it wishes to expand and/or offer a wider more accessible community asset. In addition it would provide similar flexibility for Council, particularly considering recent approaches from Taranaki Hockey for additional turf fields in New Plymouth with the racecourse area as a preferred site, the potential future redevelopment of the TSB Stadium scheduled in Council's Infrastructure Strategy between 2028 and 2033, and the Government's review of the racing industry.
 7. The proposed solution is the quickest and most practical approach to ensuring TRI are securely able to continue to race at Pukekura Raceway.
 8. If approved, the next step will be for Council staff to negotiate terms of a lease with TRI and then seek Council approval.

BACKGROUND

History of the racecourse and relevant legislation

9. The Racecourse Reserve has a long history with the Council with the first acquisition of racecourse land by the Council in 1858. The Council owned approximately the northern third and leased this to TJC, while TJC owned the rest of the course.

1950s purchase by the Council

10. In the late 1950s TJC was in financial difficulty and sought to subdivide and sell its land to pay its debts. The Council agreed to purchase the land owned by TJC on TJC's terms. The reason the Council purchased the land was to preserve the area for recreation as otherwise the land would have been sold for housing purposes.¹ The lease terms favoured TJC and were implemented through the New Plymouth Recreation and Racecourse Reserve Act 1959, which gave them a perpetual lease and full control over the buildings, race track and most of the land. TJC did not have to pay any rent or lease charge.
11. The Council purchased the land at the unimproved land value of £48,000 (\$2,152,000 in today's dollars)², with payment split into two. Firstly, a sum of £22,000 (\$986,000 in today's dollars) was paid to allow TJC to repay its debts. Secondly, the Council agreed to pay all rates (including to other local authorities) to a *minimum* value of £26,000 (\$1,166,000 in today's dollars). In

¹ As outlined in the New Plymouth Recreation and Racecourse Reserve Management Plan 1993.

² Inflation adjusted using the Reserve Bank's inflation calculator.

1992 it was calculated that the Council had paid in excess of \$400,000 in rates for TJC (nominal, approximately \$2.5m inflation adjusted).

1990s development of new Deed

12. The Council's desire, with the support of TJC, to develop the TSB Stadium in the early 1990s initiated discussions and a new lease Deed with TJC that required validation through the current New Plymouth Recreation and Racecourse Reserve Act 1999 ("the Act"). This process was time consuming and ultimately required central government endorsement.
13. The 1999 Act provided for the various uses of the land. The Act validated the Deed between the Council and TJC and the Deed of Lease between the Council and the TSB Stadium Trust Board (and a variation of that Deed to correct errors).³ It also repealed the 1959 Act.
14. The Deed with TJC provided that TJC leases the racecourse area, while the Council controlled the playing fields in the middle (subject to limits), the stadium area and an area effectively in Pukekura Park. The Deed increased the number of race days from 12 to 20 (and further increasable by Council resolution).⁴ The Council controlled area is outlined later in this report.
15. The Deed does not require payment of any rent or any other similar charge. The Deed provides that it is a perpetual lease as it has no expiry date. However, the Deed is subject to a "Date of Termination", when TJC shall cease to be entitled to the rights set out in the Deed. The rights provided to TJC under the Deed expire when:
 - a) TJC ceases, for a continuous period of two years, to hold race meetings on the Reserve, or
 - b) the number of members of TJC who have paid the annual subscription for the then current year shall fall below and remain below 50 for six consecutive months.
16. There is no leeway or discretion for the Council in the termination matter – once breached it is broken and cannot be 'forgiven' or 'overlooked'. There is also no ability for TJC to assign its rights under the Deed to other entities.

Changing legal entities have meant the Deed has been terminated

17. The actions of the various entities have meant that the Deed has been breached and has therefore triggered the date of termination.

³ This Deed, and its variation, are now considered spent as TSB Stadium is under Council control.

⁴ In 2017/18, 13 race days were held, and a further day was abandoned due to track flooding.

A brief history of the legal entities

23-07-1923	Taranaki Jockey Club ("TJC") incorporated
16-09-1997	Most recent Deed between TJC and the Council made
22-02-1999	TJC name change to Taranaki Racing Club Incorporated ("TRC")
08-09-1999	New Plymouth Recreation and Racecourse Reserve Act 1999 enacted
06-08-2009	Taranaki Thoroughbred Racing ("TTR") incorporated
16-05-2012	TRC (TJC) was dissolved
23-05-2014	TRC (TJC) dissolution revoked
22-12-2017	TTR name change to Taranaki Racing Incorporated ("TRI")

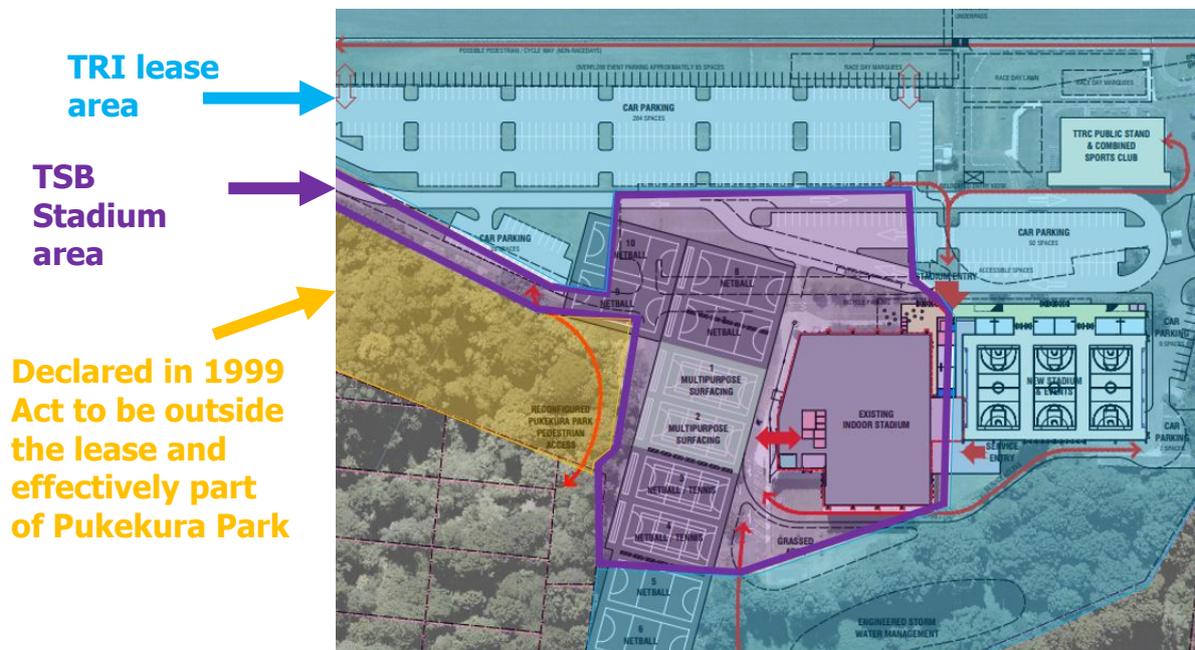
18. Taranaki Jockey Club Incorporated (TJC) was the legal entity that had rights under the 1959 and 1999 New Plymouth Recreation and Racecourse Reserve Acts.
19. In 1999 TJC changed its name to Taranaki Racing Club Incorporated (TRC). There is uncertainty as to whether this name change extinguished TRC's rights under the Deed at that point in time. The Deed had to be validated by an Act of Parliament and only a further Act of Parliament can amend or alter the Deed, even if just to reflect a new name.
20. In 2012 TRC was dissolved. It is clear that this dissolution put the termination matter beyond all doubt. While TRC's dissolution was later revoked, this was over two years later. (The dissolution was the result of the formation of Taranaki Thoroughbred Racing as a merger of TRC and the Opunake Racing Club, done for the benefit of racing in Taranaki.)
21. As TJC did not exist, TJC cannot have met the requirements of the Deed – specifically to have held any meetings for two years or to have had at least 50 paid up members for six months.
22. In summary, the Date of Termination has been triggered, arguably in 1999 but definitely in 2012. The New Plymouth Racecourse and Reserve Act 1999 provision for TJC is now "spent"; that is it no longer has any legal effect as its provisions have been used up. TRI therefore have no secure lease in place for Pukekura Raceway. This is not in dispute as TRI's letter states that TJC's right to lease Pukekura Raceway have not transferred to TRI.
23. At the moment, TRI may be considered to have a statutory lease under section 210 of the Property Law Act 2007. Such a lease is terminable at will and may be terminated by either party at any time and by not less than 20 working days' notice.

Relationship to Council assets and operations

24. Within the reserve area of the 1999 Act, the Council also has part of Pukekura Park and TSB Stadium.

TSB Stadium

25. The TSB Stadium area is outlined in the current Act. It was previously included in the racecourse area, but was excluded through the 1997 Deed, validated by the Act.
26. While the Council determined not to include the redevelopment of the TSB Stadium in the Long-Term Plan 2018-28, the Council did signal the redevelopment in the Infrastructure Strategy 2018-48 as likely occurring between 2028 and 2033. The Council has also sought further information on indoor and outdoor court requirements.
27. On the designs undertaken to date for redeveloping the TSB Stadium, amendments to the boundaries between the racecourse reserve and the TSB Stadium area would be needed. The map (below) shows an approximation of the TSB Stadium area in the Deed overlaid onto the redevelopment proposal that was included in the Long-Term Plan 2018-28 Consultation Document.



Approximate outline of various areas of the racecourse reserve area over the LTP18-28 Consultation Document designs for the TSB Stadium re-development. The non-shaded areas are part of Pukekura Park, not the racecourse reserve. Note: this is an approximation only.

28. While this is a concept plan only, the boundaries under the Act are such that any substantive expansion of the TSB Stadium's footprint would extend beyond the 1999 Act's boundaries. If the Council choose to proceed with TRI's request, then the Council may need to seek further amendments to the 1999 Act in the future to be able to proceed with the TSB Stadium re-development.
29. Operational, TRI and the Council work together to avoid clashes between race day events and events at TSB Stadium and/or the Bowl of Brooklands. As noted below (paras 43-47), it is possible that race day numbers will increase in the

future with more clubs racing at Pukekura Raceway. This could result in more clashes with multiple events on at once, or limit operations of Council venues.

Relationship to Pukekura Park

30. There are parts of the racecourse reserve that are effectively part of Pukekura Park. While most of these were clarified in the 1999 Act, there are still some areas that are part of the racecourse lease area under the 1999 Act that are often considered part of Pukekura Park. The Council's parks operations undertake some maintenance of areas that are part of the racecourse area. Maintenance costs are met by the Council and are not on-charged.

Taranaki Hockey request

31. Taranaki Hockey has notified the Taranaki Regional Facilities Steering Group of its proposed project to undertake a collaborative master planning process for an outdoor sports hub. Taranaki Hockey have indicated an initial preference for co-location at the racecourse site, although a full selection process needs to be undertaken. As a result of this approach, staff are considering whether earlier proposals for a multi-sport facility are appropriate.
32. The playing area in the middle of the course is subject to Council control. However, under the 1999 Act's Deed (and in line with health and safety obligations) the Council cannot allow use of the playing area during any race days. This may act as a limit on return on investment for any outdoor sports hub in the future at that site. There are also restrictions of the development of buildings and structures. Similar to the issues with TSB Stadium, a possible future increase in race days may result in increased limitations on the playing area.

Rates

33. The rating situation for the current reserve is complicated. Under the Local Government (Rating) Act 2002, reserves are not rateable (other than water, wastewater and kerbside collection rates). However, this does not include reserves used primarily or exclusively for private or commercial purposes under a lease, licence, or other agreement. The reserve in this case is the whole property and so includes the TSB Stadium area, part of Pukekura Park and the playing area.
 34. The Council, to date, took the approach that the reserve is a rateable property, although the Council has not received specific legal advice on this question.
 35. The 1959 Act's Deed clearly specified that the Council would pay all rates. The 1999 Act's Deed is silent as to who pays rates. The 1999 Act's Deed includes no ability for the Council to charge TRI the rates as a fee or as part of rent. However, TRI pay for water and wastewater rates as these are service-based charges, clearly based on demand.
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36. It can be argued that TRI should be responsible for paying the rates as the Deed validated by the 1999 Act specifically removed the obligation from the Council to pay rates. However, it can also be argued that the lease would have to specify TRI as being the ratepayer and it would otherwise fall to the Council as landowner because the Local Government (Rating) Act generally requires the lease to clearly identify if the lessee is to be liable to pay rates. The latter approach has been taken to date.
 37. To require TRI to pay rates for the entire site would clearly be unfair given they only use a proportion of the site and have significant restrictions on use (such as being limited to 20 races per annum) with wider public access/use of parts of their leased areas.
 38. The total rates for the 2018/19 financial year for the reserve is \$172,000. Of this, \$166,000 is the Council's own rates (and therefore is effectively cost neutral). However, \$5,800 is Taranaki Regional Council rates and is not cost neutral.
 39. The question of which entity should be paying rates on the land used by TRI will depend on the option selected by the Council. Depending on the option selected by the Council to move the lease issue forward, and any other decisions by the Council in relation to this issue, staff will work with TRI to ensure a fair and equitable distribution of rates between the Council and TRI in the future.

Racing industry reform

40. In August 2018 the Minister of Racing, Rt Hon Winston Peters, released the "Review of the New Zealand Racing Industry" report by John Messara (the Messara report).⁵ The Messara report outlines the serious challenges the national racing industry faces and proposes a wide range of reforms. Since that time, a Ministerial Advisory Committee has considered the recommendations and issued an interim report.
41. The Government is proposing a two-pronged legislative approach to reform the industry. The first bill will create a transitional body and regime. This is expected to be in place by July 2019. The second bill will come later in the year and create wider legislative reforms to implement decisions made as a result of the Messara report.
42. There are two recommendations that are particularly pertinent to this issue.

⁵ A copy of the report is available at [https://www.dia.govt.nz/vwluResources/Racing-Report-August-2018/\\$file/Review-of-the-NZ-Racing-Industry-Report.pdf](https://www.dia.govt.nz/vwluResources/Racing-Report-August-2018/$file/Review-of-the-NZ-Racing-Industry-Report.pdf)

Consolidation of racecourses

43. Firstly, the Messara report recommends the closure and consolidation of racecourses. In Taranaki, the report recommends closing the Stratford racecourse (Stratford Racing Club) in 2019/20 and the Hawera racecourse (Egmont Racing Club) in 2022/23. It recommends both clubs race at New Plymouth racecourse. The Messara report also recommends New Plymouth course be renovated in 2021/22 (this will be funded from sales proceeds of other courses). The Waverley racecourse would not be closed, and would be the south Taranaki racecourse.
44. If implemented, this would mean the racing industry would consolidate at Pukekura Raceway as the main Taranaki course and would continue to seek to lease the site. There would need to be new arrangements for both Stratford Racing Club and Egmont Racing Club at Pukekura Raceway, the details of which are unknown at this time.
45. Mr Messara did not seek the Council's views, as landowner, on this recommendation.
46. In January 2019 New Zealand Thoroughbred Racing released its draft Venue Plan for consultation.⁶ The draft Plan proposes a similar outcome for racing in Taranaki, although with a longer implementation timeframe. Under this plan, Stratford would close in 2019/20, and Hawera in 2024/25. This draft Plan also indicates that there would be no additional races at Pukekura Raceway, so the three clubs would have reduced race days in total. Race days would be limited to 13 between the three clubs. Waverley would not be closed under this plan either.
47. The Ministerial Advisory Committee's interim report supported the proposals to reduce venue numbers, but did not arrive at a detailed proposal. The Committee has established a sub-committee (with racing board and code representatives) to develop a multi-year Industry Future Venue Plan for the final report.

Consolidation of industry assets

48. Secondly, the Messara report also recommends outright vesting race club property and assets to the Code regulatory bodies for the benefit of the industry as a whole rather than in individual clubs. If implemented, this could mean that any lease to Taranaki Racing Incorporated may need to be assigned to New Zealand Thoroughbred Racing.
49. The Ministerial Advisory Committee supported the principle of the recommendation but did not believe the Messara report's approach to be the

⁶ A copy of the report is available at <https://loveracing.nz/OnHorseFiles/No.26%20-%2029-1-19%20NZTR%20Venue%20Plan%202019.pdf>

right vehicle. Instead they recommended that the code governing bodies be given the legal ability to put clubs into administration when their venue is no longer required for racing. This would then enable the governing bodies to sell the land for the benefit of the wider industry if the club is uncooperative. If this position is taken, then the lease would remain with TRI, although other leases may then be needed for Stratford and Egmont Racing Clubs.

Implementation

50. The Government has yet to issue a final position on the recommendations of the Messara report or the Ministerial Advisory Committee's interim report. A final report from the Ministerial Advisory Committee is expected to be received by the Government by the end of June 2019. As noted above, the Government has signalled a two-stage legislative approach, with transitional arrangements enacted first and then detailed policy decisions implemented shortly afterwards.
51. In staff's views, it appears likely that racing in Taranaki will consolidate at Pukekura Raceway in the coming years. The Raceway will need to accommodate three clubs racing at the site, and consequential there may be more demand for races and related events (although this is less certain). What is currently unclear is the how the relationship works, such as if there is a single tenant with sub-leases or if there are multiple tenancies, how race days are organised etc.

Who are Taranaki Racing Incorporated?

52. TRI was formed in 2009 as a new incorporated society to combine the Taranaki Racing Club (the re-named Taranaki Jockey Club) and the Opunake Racing Club. This was to allow for efficiencies in scale, consolidation and collaboration within thoroughbred racing in Taranaki. TRI was originally known as Taranaki Thoroughbred Racing Incorporated, but changed its name in December 2017 to Taranaki Racing Incorporated. TRI's primary objective is to promote, conduct and control thoroughbred horse racing.
53. TRI have approximately \$5.7m in assets, with around \$5.5m in property, plant and equipment, and \$227,000 in current assets. TRI's net racing income has been steady to falling in recent years. While making cash profits, after accounting for depreciation and impairment, TRI have made losses for the seven financial years to 2017/18. For example, in 2017/18 the net cash flow was \$75,000, and the loss after depreciation/impairment was \$134,000.
54. There are over 300 members of TRI at present. As per racing industry requirements, members have no ownership interest in the Club.

Options for moving forward

55. While the current legal position is clear – TRI have no ability to assume the rights of TJC and therefore have no formal lease to Pukekura Raceway – the
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Council can determine how to respond to that issue. The Local Government Act 2002 requires the Council to identify and assess all reasonably practicable options in its decision-making. Staff have identified that there are effectively six options available to the Council:⁷

1. Promote an amendment bill to retrospectively change the Act
 2. Promote a new bill
 3. Offer a lease under the Reserves Act 1977 (recommended option)
 4. Offer an interim lease while awaiting strategic reviews
 5. Immediately discontinue TRI's occupation
 6. Do nothing
56. There are a number of potential objectives in assessing these options in responding to TRI's request. Staff have assessed these options using the objective of retaining TRI's use of Pukekura Raceway in the long-term whilst ensuring flexibility for TSB Stadium redevelopment, the Messara review and other changing circumstances, as well as the ability to implement relatively quickly and successfully.

Option 1 – Promote an amendment bill to retrospectively change the Act

57. Promoting an amendment bill is what TRI have requested. It would be a relatively simple bill, not requiring significant drafting. It would alter the Deed in the Act to reference TRI and retrospectively undo the triggering of the termination clause.
58. This may encounter the least local opposition as it retains the status quo. However, Parliament is reluctant to approve retrospective validating legislation. (It is a fundamental constitutional aspect of the Rule of Law that Parliament does not change the law after the fact.) Such a bill may face opposition from constitutional scholars and lawyers, potentially including the Crown Law Office. There is a possibility that Parliament will delay such a bill until final decisions are made on the Messara report,⁸ and could reject the bill if it is inconsistent with the outcomes. There is also a risk that the purpose of such a bill (a lease to TRI) can now be achieved without the use of specific legislation and for that reason may not be successful. There may also be submissions from third parties seeking changes to the bill, especially if TRI continue to receive rent concessions (which could be seen as ratepayer subsidies).
59. If this option were successfully promoted, TRI gets what it seeks (a perpetual lease). However the Council would need to come back to Parliament in the

⁷ Staff do not consider it a reasonably practicable option to sell the Raceway area to TRI. This is because of two factors. Firstly, it would require revoking reserve status, which requires Ministerial approval. Secondly, TRI do not appear to have the financial resources to be able to purchase and/or pay a significant mortgage.

⁸ The Department of Internal Affairs' advice on a current local bill before Parliament dealing with transferring a drinking water supply scheme was to delay the bill until the Three Waters Review is complete.

future to clarify and include, via an amendment, other matters as they arise (e.g. TSB Stadium redevelopment, future proposed community uses, future racecourse renovations/expansions and lease re-assignments as recommended in the Messara review). This approach is therefore not recommended as it may require ongoing legislative amendments which are costly, time consuming with no guaranteed outcome.

Option 2 – Promote a new bill

60. The Council could alternatively promote a new bill that repeals the 1999 Act and puts in place a new framework for the racecourse. This would take more resource than developing an amendment bill but is less likely to be challenged. This could include a new perpetual or long-term lease for TRI. This option also presents opportunities to provide greater clarity and flexibility moving forward – such as enabling the Council and TRI to agree to boundary adjustments without further amendments, ability for the parties to agree to assign leasing rights (such as if the Messara reports findings are implemented) etc. It could include requirements for TRI to pay market rent to the Council.
61. While this would give TRI what it ultimately seeks (a perpetual lease), TRI or parts of the community may not support other potential changes. It would not receive parliamentary opposition on the basis of being retrospective, but may be subject to submissions from third parties (such as criticising lease terms or seeking changes). There is also a risk that the purpose of such a bill (a lease to TRI) can now be achieved without legislation and for that reason may not be successful.

Option 3 – Offer a lease under the Reserves Act 1977 (recommended option)

62. The third option is to not promote a bill and instead issue a lease to TRI under the Reserves Act 1977. The Reserves Act includes specific provisions for issuing leases for “recreation reserves set apart for racecourse purposes”. This would place TRI and Pukekura Raceway into the standard way of leasing land from the Council, on par with all other clubs and facilities in the district on Council land. This is applied to other racecourse land owned by communities across New Zealand. The maximum term of such a lease is 33 years under the Reserves Act. Any rents could only be used for the racecourse area (unless ministerial consent is obtained to use it for other purposes). Further rights of renewal are available under the specific provisions.
63. In officers’ opinion, this is the quickest, least costly and most flexible option for both the racecourse and the Council. It acknowledges an existing appropriate legislative tool under the Reserves Act 1977. It best meets the objective outlined above.
64. While not a perpetual lease, it would still provide a very significant period of time on their lease that would provide sufficient confidence for future investment. There is no statutory requirement for community consultation

under the Reserves Act for racecourse leases (although general local government obligations would apply).

65. Under this option, staff recommend that TRI receive a 10 year lease at \$1 rent per annum. A single right of renewal would be included for 23 years with rents set at market rate if that right is exercised (and reviewed five-yearly). The market rate could be set as a percentage of turnover or profit, or as a ground lease for areas with exclusive use rights (e.g. stables, buildings, race track). This provides TRI with sufficient time to prepare to pay rent and benefit from the enhanced outcomes delivered by the Messara report's outcomes. Other terms of the lease would be subject to negotiation, with staff using the expired Deed's provisions and standard lease terms for organisations on reserves as starting points for negotiations.
66. There is also an option under the Reserves Act to provide rights of renewal beyond the 33 year term. Staff would not recommend an automatic right of renewal be included as it would be appropriate to review the operation of the lease at that time (noting it would be in or after 2052). Therefore, staff recommend the lease create a mechanism (such as a working party) for a new lease to be negotiated relatively easily nearing the end of the 33 year term.
67. This approach provides the greatest flexibility in the future, whilst still providing certainty. The lease can be amended by mutual agreement, enabling any changes to readily be reflected. This would include any changes to lessee, area being leased, number of race days etc.

Option 4 – Offer an interim lease while awaiting strategic reviews

68. The Council could also determine to offer a short-term lease whilst it undertakes the work to identify the future areas of TSB Stadium, and undertakes wider planning of the area. This would include considering Taranaki Hockey's recent approach to Taranaki Regional Sports Facilities Steering Group for additional turf fields in New Plymouth. This would also provide time for the Government to consider, and implement, its response to the Messara report and providing greater certainty to the future of racing (including potentially who is the lessee, see **paragraphs 48-51**). This could take the form of a short-term lease (e.g. 3-5 years) or an agreement not to terminate TRI's occupation.
69. This option enables the Council to consider its wider strategy for the area and the national/regional situation for racing before making decisions that are long-lasting and difficult to change. However, it risks placing TRI in a difficult position in light of the Messara report as without surety of a lease the Government could decide to consolidate racing elsewhere in Taranaki to avoid uncertainty.

Option 5 – Do nothing

70. The Council also has the option to do nothing – effectively deferring decision-making. This would leave both TRI and the Council in limbo. Again, this risks
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placing TRI into a difficult position in light of the Messara report as without surety of a lease the Government could decide to consolidate racing elsewhere in Taranaki to avoid uncertainty.

Option 6 – Discontinue TRI's occupation

71. This report does not address the termination option but Councillors may request a further report if they wished to explore terminating TRI's occupation. While it is a reasonably practicable option, it does not achieve the stated objective.

Summary of options

72. The six options have been summarised in the table below against a number of different criteria. A more detailed assessment of each option is outlined in the options assessment later in this report.

	Option 1 Retrospective bill	Option 2 New bill	Option 3 Reserves Act lease	Option 4 Interim lease – strategic review	Option 5 Do nothing	Option 6 More information on termination
Retains racing at Pukekura Raceway	Yes	Yes	Yes	Yes, at least in the short-term	Yes, although continues significant uncertainty	No
Long-lasting solution	Yes but inflexible	Yes	Yes	No	No	Yes
Enables Messara review outcomes	No, would require further law changes	Yes	Yes	Yes, although some uncertainty	Maybe, continues uncertainty	No
Enables TSB Stadium re- development	No, would require additional law changes	Yes	Yes, through lease amendments	Yes, through strategic process	Maybe, leaves uncertainty	Yes
Opportunity for Māori engagement	No	Yes, through new legislation	Yes, through reserve management plan	Yes, through strategic process	No	Yes, in deciding future use of area
Opportunity for wider community engagement	No	Yes, through new legislation	Yes, through reserve management plan	Yes, through strategic process	No	Yes, in deciding future use of area
Key risk	Not enacted given multiple downsides	Not enacted as a lease can be issued under the Reserves Act 1977	TRI do not agree to proposal	Creates uncertainty for Messara review	Creates uncertainty for Messara review	Legal proceedings
Estimated cost	\$50,000	\$50-100,000	\$5,000	\$5,000, plus unknown in future	No further costs	Potentially high costs through legal action

TRI's views

73. TRI have been informed of these various options and that staff recommend issuing a lease under the Reserves Act 1977. TRI have discussed this at their Board and with their membership. They still wish to retain a perpetual lease through a law change.

Next steps

74. If the Council agrees with the recommended option – to offer a lease under the Reserves Act 1977 – then staff will outline the Council's decision and offer to negotiate a lease with TRI. If TRI agree to negotiate a lease, then a draft lease will then be reported back to the Council for final approval. If TRI do not agree to reasonable terms, or to a Reserves Act lease, then a report will be prepared to the Council for further consideration.

SIGNIFICANCE AND ENGAGEMENT

75. In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as being significant because of the potential impact on the racing industry, the interests of the district, the likely public interest and the potential irreversibility of decision-making.
76. Community consultation will depend on the Council's preferred option. Offering a lease under the Reserves Act 1977's provisions for recreation reserves set aside for racecourse purposes would not specifically require consultation under the Reserves Act, but the Council needs to comply with the general obligation in section 78(1) of the Local Government Act 2002. This requires the Council to consider the views and preferences of interested and affected persons in making any decision and will apply to a leasing decision under section 67 of the Reserves Act. Promoting a local bill to Parliament would require community consultation before the bill was presented to Parliament.
77. Once the Council has determined its preferred option, staff will be able to advise the appropriate level and form of consultation with the community, if any.

OPTIONS

Option 1 Promote an amendment bill to retrospectively change the Act

This option would involve the Council promoting a local bill to amend the New Plymouth Recreation and Racecourse Reserve Act 1999. The bill would seek to amend the 1999 Act to retrospectively allow for the Deed to be changed including the party to which the Deed grants rights. It would retrospectively declare that the date of termination had not been triggered.

The next step under this option would be for a bill to be drafted. This would then be subject to community consultation, using the special consultative procedure.

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- a) **Financial and Resourcing Implications**
This would require external legal advice and support, as well internal resource. It is estimated that external legal advice would be approximately \$50,000. This may be higher if there is significant community opposition.

There is no funding in the Long-Term Plan or Annual Plan for this option. If the Council were to pursue a local bill it could be subject to Taranaki Racing Inc. paying all the legal and other external costs for the bill and its enactment.

- b) **Risk Analysis**
As this would be a retrospective bill, there is risk that the Government will oppose or reject the bill on constitutional grounds. Another risk is that the purpose of such a bill can be achieved without a bill and for that reason may not be successful.

There is a risk that the Council would need to seek further legislation in the near future, such as for the TSB Stadium redevelopment or as a result of the Messara report's recommendations being implemented.

- c) **Promotion or Achievement of Community Outcomes**
This option would provide longer-term security for the racecourse, thereby providing assurance of the current impacts on the Council's community outcomes.

- d) **Statutory Responsibilities**
This bill would continue the 1999 Act overriding standard Reserves Act 1977 provisions.

- e) **Consistency with Policies and Plans**
This is consistent with the New Plymouth Recreation and Racecourse Reserve Management Plan 1993.

- f) **Participation by Māori**
Mana whenua – Te Ātiawa Iwi and Ngati Tuparikino Hapū – have not participated to date. This option has little opportunity for Māori input into the outcomes as it the current Act does not include references to mana whenua.

- g) **Community Views and Preferences**
This is what Taranaki Racing Inc has requested. The views of the wider public are unknown.

- h) **Advantages and Disadvantages**
This is what Taranaki Racing Inc has requested and would effectively retain the status quo in terms of its occupation of the land. However, it does not use the opportunity to provide improvements to the status, and has risk on constitutional grounds against retrospective validation bills.

Option 2 Promote a new bill

This option would involve the Council promoting a new local bill that would repeal the 1999 Act and replace it with a new Act. The new bill could include a perpetual lease to TRI. This option would require careful drafting to ensure that similar issues do not arise in the future. It would also present an opportunity to provide greater flexibility to address future changes (such as the TSB Stadium redevelopment, re-assigning lease rights etc.).

The next step, under this option, would be for staff to seek the Council's approval of the policy content for a bill. This would then be subject to community consultation, using the special consultative procedure.

a) **Financial and Resourcing Implications**

This would require more resourcing than option 1, although it may not be significantly more. External legal advice is likely to be in the range of \$50-100,000.

There is no funding in the Long-Term Plan or Annual Plan for this option. If the Council were to pursue a local bill it could be subject to Taranaki Racing Inc. paying all the legal and other external costs for the bill and its enactment.

b) **Risk Analysis**

There is lower risk than option 1 in being rejected. However, there may be higher risk that further changes to the legislative framework by third parties. There is still a risk that the purpose of such a bill can be achieved without a bill and for that reason may not be successful.

c) **Promotion or Achievement of Community Outcomes**

This option would provide longer-term security for the racecourse, thereby providing assurance of the current impacts on the Council's community outcomes.

d) **Statutory Responsibilities**

This bill would override standard Reserves Act 1977 provisions, just as the 1999 Act did.

e) **Consistency with Policies and Plans**

This is consistent with the New Plymouth Recreation and Racecourse Reserve Management Plan 1993, although the Plan may require amendment to reflect any changes by the bill. An amendment may be required to the Pukekura Park Management Plan in the future to reflect any new areas brought into the Park.

f) **Participation by Māori**

Mana whenua – Te Ātiawa Iwi and Ngati Tuparikino Hapū – have not participated to date. This option would enable mana whenua participation in the bill's development process, and could include appropriate references to mana whenua, such as through engagement requirements in the bill.

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- g) **Community Views and Preferences**
While this is not what TRI have requested, it would substantively provide TRI with what they have requested (a perpetual lease). The views of the wider community are not known.
- h) **Advantages and Disadvantages**
This option provides an ability to enhance the status quo in regards to leasing of Pukekura Raceway. It would provide security of tenure for TRI, whilst also enabling a more flexible approach in the future – including for TSB Stadium redevelopment or to implement the Messara report’s recommendations.

Option 3 Offer a lease under the Reserves Act 1977

The Council could offer to use the existing powers under the Reserves Act 1977 to grant a new lease to TRI.

Under this option, the site would continue to be considered as ‘racecourse reserve’ and a new lease would be issued under the Reserves Act 1977 for a term up to 33 years. Subject to the statutory procedures, the Council could use the Reserves Act’s reserve reclassification provisions to adjust some boundaries around TSB Stadium and Pukekura Park (likely reclassifying them as recreation reserve). It would treat the 1999 Act as spent. At an appropriate time, the Council may wish to consider having the 1999 Act formally repealed to reflect this status.

The next step for this option would be for staff to offer to negotiate a lease with TRI. The proposed approach is to offer TRI a lease for 10 years with \$1 per annum rent, with a right of renewal for a further 23 years with market rent. The remaining terms of the lease would be a matter to be worked on once a decision has been made. Staff would use the expired Deed’s provisions and standard lease terms for organisations on reserves as starting points for negotiations. Just as Council would, TRI would be within its rights to seek to negotiate different terms.

The final draft lease would be reported back to the Council for approval following statutory processes under the Reserves Act 1977. Consideration would also have to be given as to whether to consult the community or not, and how.

- a) **Financial and Resourcing Implications**
A cost estimate of \$5,000 (plus GST and disbursements); that figure could increase if negotiations with Taranaki Racing Inc. proved to be difficult. Such costs may be recoverable from TRI under a lease provision.
- b) **Risk Analysis**
The risk for this option is considered low. Any perceived inconsistency between the leasing provisions of the Reserves Act and the requirements of the Act caused by the grant of a lease could be addressed on the basis that the Deed provision is now spent and therefore can be ignored until it is repealed.

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- c) **Promotion or Achievement of Community Outcomes**
This would provide medium-term security for the racecourse, thereby providing assurance of the current impacts on the Council's community outcomes.
- d) **Statutory Responsibilities**
All the 1999 Act does is to validate a Deed that the Taranaki Jockey Club and the New Plymouth District Council entered into on 16 September 1997, and validate a Lease between the Council and the TSB Stadium Trust Board dated 16 March 1994, and a subsequent variation of that Lease dated 16 September 1997.

Granting a new Lease to Taranaki Racing Inc. would resolve a matter that has cost Council approximately \$33,700 in legal costs since late 2013.

The provisions of the Reserves Act 1977 would apply to the new lease. Section 67 provides that the Council can issue racecourse reserve leases for 7 years, or up to 33 years with the approval of the Minister of Conservation (for which the Council holds a delegation to exercise the ministerial powers).

- e) **Consistency with Policies and Plans**
This is consistent with the New Plymouth Recreation and Racecourse Reserve Management Plan 1993, although amendments may be required to reflect new lease arrangements. An amendment may be required to the Pukekura Park Management Plan in the future to reflect any new areas brought into the Park.
- f) **Participation by Māori**
Mana whenua – Te Ātiawa Iwi and Ngāti Tuparikino Hapū – have not participated to date.

The Council has to interpret its Reserves Act 1977 obligations in a manner consistent with the principles of the Treaty of Waitangi, so the Council would need to consider the views of Te Ātiawa Iwi, Ngāti Tuparikino Hapū and other mana whenua groups in progressing a new lease and reserve management plan processes.

- g) **Community Views and Preferences**
The views of the wider community are unknown.
- h) **Advantages and Disadvantages**
This option provides medium-term certainty for Taranaki Racing Inc. It would provide a secure, fixed-term tenure enabling TRI the ability to invest in the racecourse although with some longer-term uncertainty.

This option would enable the Council to reconsider the use of the reserve and racecourse area on the expiry of the lease.

Option 4 Offer an interim lease while awaiting strategic reviews

Under this option, the Council would use the Reserves Act powers to provide a short-term lease to TRI to assure them of their immediate use of Pukekura Raceway. This would enable the Council to consider a number of other issues, including identifying land required for any TSB Stadium redevelopment and the Government's decisions on the Messara report, before making a final decision on the future of Pukekura Raceway.

- a) **Financial and Resourcing Implications**
The interim lease has a cost estimate of \$5,000 (plus GST and disbursements); that figure could increase if negotiations with Taranaki Racing Inc. proved to be difficult. Such costs may be recoverable from TRI under a lease provision.

There would be additional financial implications arising from future discussions, this would likely be similar to those in options 1 through 3 – if the Council decided to retain the use of the land as racecourse.
- b) **Risk Analysis**
There is a risk that the additional uncertainty this option provides means that the racing industry determines to consolidation elsewhere in Taranaki rather than at Pukekura Raceway.
- c) **Promotion or Achievement of Community Outcomes**
This option would enable the Council to strategically consider the future of the site that best promotes its community outcomes.
- d) **Statutory Responsibilities**
The provisions of the Reserves Act 1977 would apply to the new lease. Section 67 provides that the Council can issue racecourse reserve leases for 7 years without approval of the Minister of Conservation.
- e) **Consistency with Policies and Plans**
This is consistent with the New Plymouth Recreation and Racecourse Reserve Management Plan 1993.
- f) **Participation by Māori**
Mana whenua – Te Ātiawa Iwi and Ngati Tuparikino Hapū – have not participated to date. This option would enable their views to be sought as a key part of the strategic considerations.
- g) **Community Views and Preferences**
This option would likely be opposed by TRI. The views of the wider community are unknown.
- h) **Advantages and Disadvantages**
The advantage of this option is that it enables time for good decision-making, in light of a number of reviews by the Council and the Government. However, in delaying a decision it places TRI into a difficult position until a permanent

decision is made. TRI would be unable to commit to being the consolidated racecourse, so consolidation may occur elsewhere in Taranaki.

Option 5 Do nothing

The Council is not required to do anything. However, in making such a decision, this will leave the matter unresolved and only further delay the resolution of this matter. A future Council would have to consider resolution at some point. Such uncertainty may result in difficulties for TRI during the implementation of the Messara report.

This would mean that TRI would continue to be considered to have a statutory lease under section 210 of the Property Law Act 2007. Such a lease is terminable at will and may be terminated by either party at any time and by not less than 20 working days' notice.

This option may have precedent implications for other lessees of Council land once their lease has terminated in trying to continue to occupy land without formal approval.

Option 6 Seek further information on terminating TRI's occupation of Pukekura Raceway

TRI are considered to have a statutory lease under section 210 of the Property Law Act 2007. Such a lease is terminable at will and may be terminated by either party at any time and by not less than 20 working days' notice. Under this option, staff would provide Councillors with information on terminating TRI's occupation of Pukekura Raceway, including details of how to proceed, potential legal risks etc.

Recommended Option

This report recommends Option 3 (Issue a lease under the Reserves Act 1977) for addressing the matter.

APPENDICES

Appendix 1: Letter from Taranaki Racing Inc.

Appendix 2: Draft Motions – All Options

Report Details

Prepared By:	Greg Stephens (Senior Policy Advisor)
Team:	Policy Development
Approved By:	Liam Hodgetts (Group Manager Strategy)
Ward/Community:	New Plymouth City
Date:	22 March 2019
File Reference:	ECM 7809467

-----**END OF REPORT**-----

APPENDIX 1 : LETTER FROM TARANAKI RACING INC.

Chief Executive Officer: C.C. Hobbs | PO Box 453, New Plymouth | Phone: (06) 757 5759 | Fax: (06) 758 2909
Office: Pukekura Raceway, New Plymouth | Email: taranakiracing@xtra.co.nz



25 May 2018

Mayor N Holdom
New Plymouth District Council
Private Bag 2025
NEW PLYMOUTH

Dear Neil

Taranaki Racing Inc request New Plymouth District Council support for an amendment to the 1997 New Plymouth Racecourse & Reserve Act that will ratify the historical rights for Taranaki Racing Inc at Pukekura Raceway, initially given to the Taranaki Jockey Club in the 1959 Racecourse & Reserve Act after the club gifted the racecourse to the New Plymouth District.

This will overcome the administrative technicality that has seen these historical rights of the Taranaki Jockey Club not transferred to the newly named racing entity at Pukekura Raceway; Taranaki Racing Inc . Taranaki Racing Inc is the racing club at Pukekura Raceway, is seen as the same racing club by New Zealand Thoroughbred Racing our governing body, has the same personnel and carries on the identical function at Pukekura Raceway for a at least the past 30 years I have been here.

Taranaki Racing is an important fabric in the New Plymouth district. Racing and associated industries are large employers and bring significant revenue into the New Plymouth district. Latest IER figures show that racing contributes \$135m a year to the Taranaki/Wanganui/Manawatu area. A conservative estimate is that Pukekura Raceway will bring approx \$20m a year into the New Plymouth economy.

Taranaki racing helps maintain Pukekura Raceway as a community asset. The same IER report states Pukekura Raceway aids over 20 community groups per year. This includes regular school rugby and cricket, Jujitsu, New Plymouth Pony Club and many other users i.e. Cancer Relay for Life, Taranaki Womens Refuge Pop-Up Shop, Round the Mountain Relays, Womad and this isn't taking into consideration the many groups that utilise the TSB Stadium.

We have stated publicly we will continue to support the New Plymouth community whilst still ensuring our core activities of horse racing and training can continue to give enjoyment and financial input into the New Plymouth district.

We have always supported the New Plymouth District Council and sincerely hope the New Plymouth District Council support his request. We welcome the opportunity to further this process with the New Plymouth District Council.

Regards

A handwritten signature in blue ink that reads "Carey A". The signature is written in a cursive style with a large, stylized 'A' at the end.

Carey Hobbs
Chief Executive Officer
Taranaki Racing Inc

APPENDIX 2: DRAFT MOTIONS FOR EACH OPTION

OPTION 1 – RETROSPECTIVE AMENDMENT BILL

That having considered all matters raised in the report, the Council:

- d) Determines to promote a local bill as requested by Taranaki Racing Incorporated (TRI) to retrospectively amend the New Plymouth Recreation and Racecourse Reserve Act 1999**
- e) Agrees that the bill seek to retrospectively undo the triggering of the Date of Termination and to instead re-assign the lease of Pukekura Raceway to TRI**
- f) Instructs staff to develop a draft bill and statement of proposal for community consultation**

OPTION 2 – NEW BILL

That having considered all matters raised in the report, the Council:

- a) Determines to promote a local bill to repeal and replace the New Plymouth Recreation and Racecourse Reserve Act 1999**
- b) Agrees that the bill seeks to provide a new legal regime for the management of Pukekura Raceway, including a perpetual lease to Taranaki Racing Incorporated (TRI) with a more flexible arrangement for future changing circumstances**
- c) Instructs staff to develop a draft bill in consultation with TRI, Te Kotahitanga o Te Atiawa Trust and Ngati Tuparikino, and then develop a statement of proposal for wider community consultation**

OPTION 3 – RESERVES ACT LEASE (RECOMMENDED OPTION)

That having considered all matters raised in the report, the Council:

- a) Determines not to promote a local bill as requested by Taranaki Racing Incorporated (TRI)**
- b) Agrees to *offer* a lease, under section 67 of the Reserves Act 1977, to TRI for 10 years at rent of \$1 per annum with a right of renewal for a further 23 years at market rent (with five-yearly rent reviews)**
- c) Delegates authority to the Property Manager to negotiate further lease terms with TRI and to seek Council agreement to the final lease, noting that negotiations may result in changes to the above decision in (b)**

OPTION 4 – INTERIM LEASE DURING STRATEGIC REVIEWS

That having considered all matters raised in the report, the Council:

- a) Determines not to promote a local bill as requested by Taranaki Racing Incorporated (TRI) at this point in time**
- b) Agrees to *offer* a lease, under section 67 of the Reserves Act 1977, to TRI for 3 years at \$1 per annum**
- c) Delegates authority to the Property Manager to negotiate further lease terms with TRI and approve the lease**
- d) Instruct staff to undertake a strategic review of the Pukekura Raceway area (potentially including development of a new reserve management plan) in consultation with TRI, Te Kotahitanga o Te Atiawa Trust, Ngati Tuparikino and the wider community as appropriate, to consider:**
 - i) Any future plans of TRI for Pukekura Raceway**
 - ii) Future re-development of TSB Stadium**
 - iii) Requests for an outdoor sports hub from Taranaki Hockey**
 - iv) Government-led reforms of the racing industry**
 - v) Any other matter relevant to the raceway**
- e) Instruct staff to report to the Council on the outcomes of the review, including options for the future of Pukekura Raceway explored in this report**

OPTION 5 – DO NOTHING

That having considered all matters raised in the report, the Council:

- a) Determines not to promote a local bill as requested by Taranaki Racing Incorporated (TRI)**
- b) Determines to not undertake any other action at this time**
- c) Notes that TRI continue to be considered to have a statutory lease under section 210 of the Property Law Act 2007**

OPTION 6 – TERMINATE OCCUPATION

That having considered all matters raised in the report, the Council:

- a) Determines not to promote a local bill as requested by Taranaki Racing Incorporated (TRI)**
- b) Seeks a report from staff on the process and approach to terminating TRI's occupation of Pukekura Raceway**