

# Attachment D

## Childcare and young education centres on Reserve Land per the Reserves Act

This statement is provided in relation to the presentation from submitters concerning the childcare centre at 7A Prole Road during the Notice of Requirement hearing on 15 September 2023. The Panel asked a number of questions concerning the compatibility of childcare centres and public reserves. This statement records my oral response.

Childcare and young education centres on Reserve Land controlled under the Reserves Act are typically not desirable for various reasons, mostly through mutual incompatibility and risk. In my opinion the concerns outlined in this statement would apply to the proposed Active Recreation Reserve in Ōmokoroa.

Often councils have specific policies against such activity being permitted. Western Bay of Plenty District Council has a policy and does not generally allow concessions for private commercial use of reserve land, and where they do, the policy refers to not allowing exclusive use of any part of a reserve (see **Attachment 1** - extract from the 'WBoPDC District Wide Reserve Management Information' publication).

The few relatable examples in the country, present through historical arrangements, are generally phased out where possible. Where permitted in the past due to older leases, the operations have tended to be non-commercial in nature, i.e., playcentres, kindergartens and Plunket rooms. At the hearing I described a local example at Blake Park, Mount Maunganui, where some considerable time has been spent removing the Blake Park kindergarten, at the request of the Blake Park kindergarten.

Commercial child care centres, being a commercial business activity, tend to not be permitted on parks due to there being no particular need for councils to provide public land / parks for this activity.

There are various reasons contributing to the mutual incompatibility and risk:

1. The Reserves Act 1977 obliges a statutory Reserves Act Classification requirement on the administering authority (for example, as a recreation reserve, scenic reserve, conservation area, or amenity reserve). A childcare or young education centre is unlikely to be compatible with a Reserve Classification.
2. Reserves Act Classification can activate a separate statutory process, which is subject to public consultation where objections are able to be received. This opens the possibility of challenge and uncertainty that activities proposed to be accommodated under a proposed classification, and a proposed classification itself, can be altered through that process.
3. Commercial child care centres need to seek a lease on Reserve Land under the Reserves Act. The grant of a lease is subject to a test of public interest, and generally requires a decision of council. If successful, a lease would be subject to lease term limits that typically do not suit a commercial activity, even for renewal terms.
4. The Reserves Act lease limits are designed to prevent long term security of term. A Reserves Act lease is limited to a maximum term of up to 33 years, with the suitable term determined in consideration of other property related requirements. The lease, if approved, can have extensive conditions, posing limits on the activity. The lease also would be geared to revenue collection by council on a commercial activity, generally at market rates, and reviewable throughout the lease term.
5. The Reserves Act also requires the administering authority to undertake a Reserve Management Plan, and periodic reviews of such a plan, as a separate statutory process. This involves public consultation where submitters can oppose activities on the reserve, and the

process could influence decisions to not renew lease terms, exit leases, or to not approve specific leases at all.

6. Undertaking a commercial activity on a reserve has a significant impact on commercial sector financial issues, through increasing difficulty to finance against an asset on land with an underlying public status, the limited tenure and loan terms, issues with obtaining insurance for an asset on public land, and the inability to transact land / facilitate with ease business on-selling. Business expansion is unlikely beyond the lease footprint.
7. Reserves Act constrictions on business operations both limit a typical business model and introduce contingent liability on the community. Should a business lease on a reserve fail or languish, it is obviously still present on public land and would pose further issues to ratepayers, including substantial costs, if abandoned.
8. The environment around a lease area can and is likely to change, without any recourse available to the leasee. Aside from ongoing development for active reserve users, reserves sometimes experience vandalism and unwanted public behaviour after hours and during the day. Other nuisance issues such as litter and mess will still have an impact before a council can stage an intervention or a corrective action.
9. Maintenance activities can introduce noise and access irritations at the same time as the operation of the commercial activity. Additionally, regular maintenance and seasonal renovation activities such as chemical weed control on sportsturf and fertiliser / lime application is usually an immediate source of contention from locations where children are contained and concentrated nearby (see for example, Te Puna School and tensions with spray operations in neighbouring Kiwifruit orchards). For the Ōmokoroa Active Reserve, sportsturf areas will require chemical applications that would likely be right on the boundary of the childcare centre. This presents an undesirable situation for both care givers and Council, given that the hours of spray application are not conducive to other times (i.e., outside of childcare centre hours and subject to weather conditions being suitable where little notice can be given).
10. As a public place, people can be present up to the lease boundary and pose management issues and potential civil / criminal law issues on the childcare operation. Councils face undesirable situations from time to time involving individuals where an immediate police response is not necessarily the first course action, and lengthy trespass action, or where social services and the police combined, may have to be involved.

**Geoff Canham**

29 September 2023

## Attachment 1 – extract from ‘WBoPDC District Wide Reserve Management Information’ publication

### Policy 5 - Concessions

The temporary or permanent private commercial use of public reserves will generally not be permitted.

From time to time, however, Council may determine that a commercial activity is complementary to the purpose of a particular reserve, will assist in the public use and enjoyment of the reserve, is compatible with or will avoid or mitigate any potential adverse effects on neighbours and will not adversely affect the general character and amenity of the reserve. In such cases Council may determine that it is appropriate to provide for the activity by way of a concession.

Any concession for use of a reserve will:

- Define and limit the area within which the activity is to be carried out.
- Specify the times (over the year and during the day) during which the concession can operate.
- Specify the nature of the activities the concession operator can provide.
- Define the signage (if any) permitted in association with the concession.
- Specify the fee or bond amount.

Concessions will not provide for the exclusive use of any part of a reserve and will not function to the disadvantage of general public use of the reserve.

Any concession permitted by Council will be specific to the operator identified and will not be transferable.

Any concession granted by Council will be for a specified period with no automatic rights of renewal.

The following criteria will be used to assess any concession applications received:

- The extent to which the proposed activity is compatible with the designated purpose and use of the reserve.
- The extent to which the proposed activity will assist the public use and enjoyment of the reserve and not disadvantage other users.
- The compatibility of the proposed activity in relation to neighbouring properties and the ability for any adverse effects on neighbours to be avoided, remedied or mitigated.
- The extent to which the proposed activity will impede on the physical attributes and spatial qualities of the reserve.
- The need for permanent structures that could detract from the character of the reserve when the concession is not in operation.

Any application to operate commercial activities on a reserve should be made to the Reserves and Facilities Manager, Western Bay of Plenty District Council in writing and include information in relation to:

- A description of the proposal and its proposed location within the reserve.
- A description of the potential effects of the proposed activity and the methods to be employed to avoid, remedy or mitigate adverse effects on reserve users and/or neighbours (i.e. noise from generators).
- The duration of the activity (hours of operation, days over which the concession will function and period of the year over which it will operate).
- The experience and resources of the concessionaire to successfully operate the concession.

Council will charge a levy for the commercial use of reserves. A bond will also be required for any commercial activities for which concessions are granted.

The applicant concessionaire will be responsible for ensuring that they fully comply with and receive any necessary consents in relation to the Resource Management, Building, Health and Safety at Work Act and other relevant Acts as well as the District Plan and comply with any relevant bylaws.

**Explanation:** Public reserves are for the use and enjoyment of the community. In general reserves provide respite from commercial facilities and provide opportunities for families, groups and individuals to pursue recreational activities away from commercial environments. From time to time, however, there will be temporary and/or permanent commercial activities that are fully compatible with the purpose of the reserve and that can assist or enhance the use and enjoyment of the reserve for a significant number of reserve users. Council will consider applications for concessions on reserves and where appropriate provide for such activities as an adjunct to the reserve.