

<b>Report to:</b>	<b>Council Public Excluded</b>	
<b>Date:</b>	30 June 2021	
<b>Subject:</b>	Old Pool Site Development MoU	
<b>Prepared by:</b>	Dave Clibbery – Senior Manager Operations	
<b>Input sought from:</b>		
<b>Authorised by:</b>	Will Doughty	

### 1. SUMMARY

A Memorandum of Understanding (MoU) between KDC and Joseph and Associates ('J&A') in respect of the potential development and operation of a hotpool, health and wellness facility on site of the old Council swimming pool on the Esplanade is proposed.

### 2. RECOMMENDATION

#### That the Council:

- a) Approves and authorises the Chief Executive to sign the attached Memorandum of Understanding between KDC and Joseph and Associates in respect of the potential development of a hotpool, health and wellness facility on the old Kaikoura Swimming Pool site; and
- b) Authorises making public the content of the MoU on Wednesday 7 July 2021; and
- c) Authorises the giving of public notice in accordance with the requirements of section 119 of the Reserves Act 1977 for the proposed granting of a lease in accordance with the Memorandum of Understanding once that lease document has been prepared.
- d) Delegates the Chief Executive to determine the release of the public excluded report.

### 3. BACKGROUND

Following an extended process in which expressions of interest were called for and public feedback on favoured proposals were invited, at its meeting of 28 April 2021 Council resolved that it:

- a) *Approves in principle the granting of an initial lease with a two year term at a rental of \$1.00 per annum to Joseph and Associates for the site previously occupied by the Community Swimming Pool Complex, for the purpose of further investigating development of a commercial Spa Pool facility on that site subject to conditions including those described in this report and favourable resolution of issues of jurisdiction; and*
- b) *Authorises staff to prepare a Memorandum of Understanding with Joseph and Associates to define the intents of the parties in respect of the further investigation and potential development of a commercial Spa Pool facility on the former swimming pool site.*

In accordance with part b) of this resolution a proposed draft MoU is attached, the content of which is a product of discussions between Councillors, Council staff and Joseph and Associates.

These discussions have resulted in a proposal to adopt a different approach to that outlined in part a) of the resolution of 28 April, because of a desire to avoid the procedural requirements of the Reserves Act 1977 associated with awarding two separate leases for the site, each of which would require public notification and opportunities for objection or submission.

A potential (but probably small) risk of the initially suggested approach of a preliminary two-year lease is the possibility that the subsequent required longer lease term of 33 years might not be

granted, and that the investment made by the developer on investigation would be wasted. Whilst such an outcome seems very unlikely it is not impossible and therefore needs to be considered. The proposed alternative is to go through the process to award a 33 year lease in the near future, but to make the commencement date for that lease approximately two years in the future, when physical works on the site begin. In that way the site would be secured for a potential development with a minimum of administrative complexity.

#### **4. PROPOSED MOU**

The proposed MoU attached to this report is largely the same as that previously presented to Councillors. The only substantial change is in respect of section 5.5 – Lease Rentals.

The major changes here are:

- Revision of the description of the proposed development to a '*hotpool, health and wellness facility*'
- Assumption of a more conservatively high demolition cost
- Lengthening period for J&A's recovery of demolition costs from 5 to 30 years
- Increasing patronage projections and accordingly reducing per-visit contributions
- Extending period before base rental approaches valuers estimate
- Removing cap on patronage share contribution
- Redefinition of the primary lease area to include the approximately 150m<sup>2</sup> gravelled area of the south-east of the pool site

The average annual rental over the first 10 years is similar to that provided by the previous model. There are some significant uncertainties in respect of any models, particularly in regard to patronage numbers, and finding a balance between the needs of KDC and J&A is challenging.

It is however believed that the currently proposed rental model presented in the draft MoU is worthy of serious consideration by Council, and it is believed there are other potential benefits of such a development on this site which include a substantial contribution to rates (potentially over \$30,000 per annum), employment opportunities and a contribution to a stronger local tourism sector and economy.

#### **5. NEXT STEPS**

It is believed that if Council approves this MoU the details of it should in the interests of transparency be made public. Before such a public release occurs it is however felt that these details should be shared with Te Runanga o Kaikoura as a key partner. To enable this it is proposed that the public release does not occur until 7 July.

It should be noted that whilst the MoU is not a legally binding document it is considered important that it genuinely reflects the intentions of Council, and that the provisions contained within it would become legally binding through the conditions of any lease that was granted. J&A understandably need to be confident in their knowledge of the terms on which KDC would permit them to occupy the site.

A next step after a public release on the content of the MoU would be to prepare the lease document and then go through the steps required by the Reserves Act to grant it. This requires giving public notice of the proposed leasing in accordance with section 119 of the Act and providing the public with an opportunity to make objections or submissions, and to speak to their objection or submission should they wish to do so, in accordance with section 120 of the Act. It is likely that 2 to 3 months will be required to complete the necessary process.

#### **6. COMMUNITY OUTCOMES**

The issue discussed in this report relates to the community outcomes below.



We value, protect and enhance Kaikōura's unique natural environment and biodiversity and sustainably manage disposal of waste.



Our community is resilient, safe and well and has their essential needs met



Our District is economically diverse, attractive to investment and provides certainty around business and employment continuity.

Attachment: Draft Memorandum of Understanding

**Memorandum of Understanding**  
**– Potential hotpool, health and wellness facility development**

**1. Parties**

The parties to this agreement are Kaikoura District Council (KDC) and Joseph and Associates (J&A) as an agent for an associated Special Purpose Vehicle ('SPV' - a limited liability company) established by Joseph and Associates for the purpose of conducting this project.

For simplicity in this document both Joseph and Associates and the associated Special Purpose Vehicle or their successors will be collectively referred to as 'J&A'.

**2. General Intent**

The intent of the parties is that J&A be provided with the opportunity to investigate, and if it should prove to be viable, undertake, development and operation of a commercial hotpool, health and wellness facility on the site previously occupied by the Kaikoura Community Swimming Pool and an adjacent area which are both shaded in blue in Figure 1 and have an approximate total area of 2150m<sup>2</sup>, and (subject to certain conditions) may also be permitted to incorporate part or all of an additional area similar to that shaded in purple in Figure 1.



Figure 1: Indicative Site Areas

The site is on land that is classified as Recreation Reserve under the Reserves Act 1977, and for which KDC is the administering body with authority to control and manage.

**3. Good Faith**

There is considered to be potential for both parties to benefit from a successful development of the facility proposed by J&A, and the parties will therefore work cooperatively and in good faith towards

a mutually beneficial outcome, each recognising and respecting the objectives and obligations of the other.

#### **4. Agreement Status**

This MoU is not legally binding. It is however intended that should J&A be granted a lease of the site that the key elements of this MoU will be incorporated into the conditions of that lease.

#### **5. Lease**

It is the intention of KDC that should the associated processes required by the Reserves Act 1977 be successfully completed that a lease of the site will be granted to J&A for the purpose of constructing and operating a commercial hotpool, health and wellness facility of similar form to that indicated to KDC's councillors by J&A at the meeting of 28 April 2021 (general concept shown in Appendix 1).

The lease shall be for the maximum term of 33 years that is permitted for a lease of a Recreation Reserve under Section 54(1)a of the Reserves Act 1977, in accordance with the requirements of Schedule 1 of that Act. The lease shall however contain a provision as described in Schedule 1 that: *'further similar terms may be granted if the terms and conditions of the lease have been complied with and if the lessor is satisfied that the baths, camping grounds, parking places, or other facilities, as the case may be, have been properly constructed, developed, maintained, and controlled, and that there is sufficient need for them, and that some other recreational use should not have priority in the public interest'*

It should be noted that the inclusion of such a provision cannot provide an absolute assurance that such further terms will be granted.

It is however the intent of KDC that further terms will be granted unless a compelling case can be made that the criteria required for granting of further similar terms have not been met.

The lease shall be granted upon successful completion of the associated Reserves Act processes, which shall be commenced as soon as possible (and potentially completed by September 2021) but the term of the lease shall not commence until the date which is the earliest of either:

- a) The date at which J&A have obtained all necessary resource and building consents for the construction and operation of the facility; or
- b) 31 December 2023.

Prior to the commencement of the lease term J&A shall be permitted access to the site to conduct such investigation as is necessary for the undertaking of the due diligence exercise, but the site shall not be occupied or used for any other purpose.

Should J&A at any time determine that the proposed facility development is not viable they shall immediately inform KDC of this, and this MoU shall be voided.

If J&A should determine that the proposed facility development is not viable after the lease has been awarded, they shall terminate that lease.

The lease area shall be the primary site areas approximately as shown in figure 1.

It is the desire of J&A for some or all of the parking required for customers of the facility to be provided by on-street parks. The extent to which that might be acceptable would be expected to be determined through the associated resource consent process.

A further additional area of up to a maximum of 250m<sup>2</sup> to the south- east of the primary site area (similar to that shown as a potential additional parking area in Figure 1) provided that:

1. Such an additional area is needed to meet resource consent requirements in respect of parking places for the development or there are in the opinion of KDC other compelling reasons why a lease of such an additional area should be granted; and
2. J&A, entirely at its own cost, installs and backfills to the satisfaction of KDC (including establishment of grass) a retaining wall with a length of approximately 50 metres and a maximum height of 1.0 metre along the approximate alignment shown in figure 2 that increases the useable flat grassed surface area of the playground area and its surrounds to the greatest extent possible (in most cases a width gain of approximately 5 metres); and
3. J&A meet KDC's costs of relocating the children's playground (including the existing equipment) to the necessary new position.

If such an additional lease area is for the purpose of a carpark this shall be constructed and maintained at J&A's cost to a design and specification approved by KDC.

It would be KDC's preference that the carpark is not for exclusive use of facility customers, and there is a willingness on its part to discuss what an appropriate rental rate for this additional area would be with relation to such shared use if the creation of the carpark is part of a parking plan for the facility which yields a net increase in the number of parking spaces likely to be available to the public once the facility is operational.



Figure 2 – Proposed Retaining Wall

### 5.1 Pedestrian Traffic

KDC appreciates the desire of J&A to maintain privacy for facility customers through limiting pedestrian traffic on the seaward side of the facility and believes that if a currently proposed Link Pathway Project goes ahead there is an opportunity to achieve this through development of a high quality walking/cycling path along the seaward side of the Esplanade, which would pass the facility site on the landward side, as shown in figure 3.

The implementation of the Link Pathway Project It is however dependent on obtaining external funding, and it is possible that Council may be unsuccessful in its application for this funding. Should

such funding not be obtained J&A would need to fully fund the associated costs of such landward path construction or modification.

It is however stressed that the public has a right to walk along the seaward side of the site. Whilst KDC is agreeable to putting in place facilities for pedestrians or cyclists that encourage use of alternative routes, potential public passage along the beach cannot be entirely prevented and KDC will not approve works that attempt to do so.



Figure 3 – Potential Pathway Alignment

## 5.2 Public Toilet

J&A have expressed interest in a possible relocation of the public toilet to enable potential expansion of the primary site area.

For this to occur the proposed new public toilet facility and its location must be approved by KDC and the 'additional lease area' must remain below the maximum of 400m<sup>2</sup> described in section 5.2 since the usable public area is considered too small for further reductions to take place.

In the event of such a relocation being approved J&A would be required to meet all associated costs of constructing the new toilets and demolishing the old. The new toilet must be constructed and in service before the old toilet is decommissioned.

## 5.3 Lease Rentals

It is the intent of KDC that the rental payable for a ground lease of the site reasonably reflects both the potential value of the site for commercial purposes and the loss of its availability as a potential

free recreational resource to the public. It is believed that in assessing these values account should be taken of factors that include:

- The outstanding outlook of the site over the sea to the mountains;
- Its position on an important tourist route that will be further developed in the future
- The scarcity of open spaces along the seaward side of the Esplanade and Fyffe Quay that are sufficiently large to be significantly developed for public recreational purposes.
- The exclusive leasing of such a prominent site and reserve for a commercial operation and for a long term, with potential renewals

Council does however also recognise the financial challenges associated with the initial development of such a facility in the current economic environment and intends to be realistic in setting lease rental, particularly during the earlier years of facility operation.

The broader contribution of the hotpool, health and wellness facility to the local community will not be taken account of in the determination of rental, on the basis that to do so might unfairly advantage J&A over other tourism businesses that function in an entirely commercial environment where such contributions are not formally recognised.

Annual rentals shall incorporate three components, as follows. All figures are stated as being exclusive of GST. Rentals shall be paid quarterly in advance.

- I. An annual base rental component at a set rate per m<sup>2</sup> of land area. The normally applicable rate for the first 6 year term of the lease will be \$17 per m<sup>2</sup>, but a reduced rate of \$12.50 per m<sup>2</sup> will be applicable for years 1 to 3 of the lease, in recognition of the business being in a development stage.  
Base rental rates shall be reviewed every 6 years. Such reviews shall have regard to, but shall not necessarily be determined by, the value of a rental assessment that is conducted by a Registered Valuer on a basis that does not take account of the Patronage Share described in the following section.
- II. A patronage share component, initially set at \$0.51 per person visit in year 1 and adjusted in subsequent years in proportion to movements of the Consumer Price Index (CPI). The total patronage share to be recovered through rentals in any year shall be based upon the total annual patronage in the preceding year multiplied by the current patronage contribution per person visit.
- III. A component that is deducted from the sum of the previous 2 components to compensate J&A for their costs incurred in the demolition of the original community swimming pool infrastructure.  
This demolition cost shall only be for the removal of existing structures and shall exclude costs of filling the created voids. Evidence of reasonable demolition costs shall be provided to KDC.  
The deduction shall be made at a rate of 3.3% of the demolition cost in each of the 33 years of the lease term.

The following table is a possible example – illustrative only of the proposed methodology – of the first 10 years under this approach, assuming 2400 m<sup>2</sup> occupied, \$150,000 demolition cost and an increase of the Base Annual Rental rate to \$21.00 per m<sup>2</sup> following a first rental review in year 6, and hypothetical figures for CPI movements and annual patronage.



	Column	A	B	C	D	E	F	G	H	I	\$150,000	Demo Cost
											30	Years to recover
		Assumed Annual	Annual	CPI	Patronage Contribution		Annual Base Rental	Patronage		less %	Annual Rental	
		Patronage (visits)***	CPI Movement	Adjustment Factor	Per Person Visit	Base Rental per m2	for 2400m2 (E x 2400)	Share Previous Year A x D)	Base Rental Plus Patronage Share	of Demolition Cost per Year	(GST exclusive) (F+G-I)	
Year	Year No.	(visits)***	Movement	Factor	Person Visit	Base Rental per m2	(E x 2400)	Previous Year A x D)		Cost per Year	(F+G-I)	
2023/2024	1	10000	1.7%	1.000	\$0.51	\$12.50	\$30,000	\$0	\$30,000	\$5,000	\$25,000	
2024/2025	2	15000	2.0%	1.017	\$0.52	\$12.50	\$30,000	\$5,187	\$35,187	\$5,000	\$30,187	
2025/2026	3	25000	1.8%	1.037	\$0.53	\$12.50	\$30,000	\$7,936	\$37,936	\$5,000	\$32,936	
2026/2027	4	35000	2.5%	1.056	\$0.54	\$17.00	\$40,800	\$13,464	\$54,264	\$5,000	\$49,264	
2027/2028	5	45000	2.0%	1.082	\$0.55	\$17.00	\$40,800	\$19,321	\$60,121	\$5,000	\$55,121	
2028/2029	6	60000	1.9%	1.104	\$0.56	\$17.00	\$40,800	\$25,338	\$66,138	\$5,000	\$61,138	
2029/2030	7	70000	2.3%	1.125	\$0.57	\$21.00	\$50,400	\$34,426	\$84,826	\$5,000	\$79,826	
2030/2031	8	80000	2.2%	1.151	\$0.59	\$21.00	\$50,400	\$41,088	\$91,488	\$5,000	\$86,488	
2031/2032	9	80000	1.5%	1.176	\$0.60	\$21.00	\$50,400	\$47,990	\$98,390	\$5,000	\$93,390	
2032/2033	10	80000	2.0%	1.194	\$0.61	\$21.00	\$50,400	\$48,710	\$99,110	\$5,000	\$94,110	
									\$657,460	sum over 10yrs		
									\$65,746	av/10yrs	\$60,746	
*** allow for steady growth of new business and limitations imposed by covid recovery of international tourism and development of domestic tourism offering.												
Example values only - actuals determined in future					Proposed set input values				Calculated values			

**Illustrative example of methodology to calculate annual rentals. All figures are GST exclusive.**

J&A will provide KDC with reliable information on facility patronage numbers for each preceding year for the purpose of revising the Patronage Share calculation.

**5.4 Other Lease Conditions**

Other conditions typical of ground leases shall be present, including that J&A shall meet all costs of rates, utility services and insurances for the site.

**5.5 Lease Termination**

KDC may only terminate the lease if:

- J&A fail to pay the applicable rentals for a period of more than 12 months; or
- The Spa Pool facility is not commissioned within 5 years of the commencement of the lease; or
- The facility is not adequately maintained and falls into a severe state of disrepair; or
- There is major ongoing non-compliance with Resource consent conditions applicable to the site.

Should the lease be terminated all site improvements shall become the property of KDC.

**6. Regulatory Matters**

The proposed development of the site will require obtaining of relevant consents from KDC. Neither this MoU or KDC’s granting of the initial lease for the site should be assumed to imply that such consents will necessarily be granted.

**7. Development Contributions**

J&A shall meet the cost of any Development or Financial Contributions that are applicable to the development in accordance with the prevailing KDC policy at that time.

**8. Project Costs**

All costs associated with the investigation and potential advancement of the project other than the costs of preparing the Memorandum of Understanding and the associated ground leases shall be met by J&A.

**AGREEMENT**

So agreed by

\_\_\_\_\_ Will Doughty for KDC \_\_\_\_\_ Date

\_\_\_\_\_ Tony Joseph for J&A \_\_\_\_\_ Date

Appendix 1 – General Development Concept

# Site Layout

