

**KAIKOURA DISTRICT COUNCIL MEETING HELD AT 9.00AM ON
WEDNESDAY 19 MAY 2010, IN MEMORIAL HALL SUPPER ROOM,
ESPLANADE, KAIKOURA.**

AGENDA

1. *Apologies*
2. *Matters of Importance to be raised as Urgent Business*
3. *Open Forum – Session for members of the public wishing to comment on items included in this agenda.*

The Council meeting will adjourn following this item and will resume following the Finance and Policy Committee meeting.

4. **Minutes to be Confirmed:**
 - *Council 21/4/2010* *page 50*

Reports to be Adopted:

- *Works & Services Committee 21/4/2010* *page 58*
- *Environmental Services Committee 21/4/2010* *page 61*
- *Finance and Policy Committee 21/4/2010* *page 63*
- *Tourism & Development Committee 14/10/2010* *page 64*

Minutes to be received

- *Hearings and Applications Committee 10/3/2010* *page 68*

5. *Matters arising from Confirmed minutes*

6. Minutes Action List Update

MEETING	ACTION REQUIRED	BY	DATE ACTIONED
	21 APRIL 2010		
Council	Research criteria for semi permanent mobile shops in other districts and provide some draft terms and conditions.	Executive Officer	Report included in agenda refer page 73
Council	Provide a copy of the current Licence to Occupy agreement to Councillors	Executive Officer	Complete. Agreement also included in the agenda on page 75
Council	Obtain examples of information boards around the country regarding freedom camping.	District Planner	In Progress

7. 11.30am NZ Police Update

- **An update from Kaikoura Police will be provided in Public Excluded**

8. Public Forum

TIME	NAME	SUBJECT
-	-	-

9. University of Canterbury Engineering Society Event

- M Cook from the University of Canterbury will be in attendance to present this item.

10. Youth Council

- A representative from the Youth Council will be in attendance at 1.30pm to present this item.

11. Resignation of Councillor

page 71

12. Licence to Occupy – Allocation Criteria

page 73

- This item was carried over from the April Council meeting.

13. Committee Updates

14. Mayor’s Report

page 83

15. Urgent Business

16. Council Public Excluded Session

Moved, seconded that the public be excluded from the following parts of the proceedings of this meeting, namely

- Confirmation of Minutes of Council Public Excluded meeting on 21/4/2010*
- New Zealand Police Update*

The general subject matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) and 7(2)(i) of the Local Government Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each to be considered	Reason for passing this resolution in relation to each matter	Grounds of the Act under which this resolution is made
Minutes of the Council Public Excluded meeting 21/4/2010	The exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the Local Authority to deliberate in private on its decision or recommendation.	Section 48(1)(a) and 7(2)(b)(ii), 7(2)(c)(ii).
New Zealand Police Update	The exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the Local Authority to deliberate in private on its decision or recommendation.	Section 48(1)(a) and 7(2)(c)(ii).

Resignation of Councillor

A letter of resignation was received from Councillor McChesney on 15 April 2010 advising she would be unavailable for Council meetings following the June Council meeting on 16 June 2010. The next triennial elections are to be held on the 9th of October 2010.

Extraordinary vacancies created by the resignation of a Councillor are dealt with in section 117 of the Local Electoral Act 2001 which states;

117 Extraordinary vacancy in local authority or community board

- (1) *If a vacancy occurs in the office of a member for a local authority or in the office of an elected member of a community board more than 12 months before the next triennial general election, the vacancy must be filled by an election under this Act.*
- (2) *If a vacancy occurs in the office of a member of a local authority or in the office of an elected member of a community board 12 months or less than 12 months before the next triennial general election, the chief executive of the local authority concerned must notify the local authority or community board of the vacancy immediately.*
- (3) *On receiving notice under subsection (2), the local authority or community board must, at its next meeting (other than an extraordinary meeting) or, if that is not practicable, at its next subsequent meeting (other than an extraordinary meeting), determine by resolution –*
 - (a) *that the vacancy will be filled by the appointment by the local authority or community board of a person named in the resolution who is qualified to be elected as a member; or*
 - (b) *that the vacancy is not to be filled.*
- (4) *If for any reason the person specified in the resolution is unavailable, or otherwise unable to be notified of the appointment, a further vacancy occurs in that office.*
- (5) *Despite subsection (3), if the vacancy is for the office of mayor, the vacancy must not be left unfilled but must be filled by appointment of one of the other members of the local authority as mayor.*
- (6) *If any member is appointed or elected to fill a vacancy in the office of mayor,-*
 - (a) *the person is to be treated as having vacated the offices of a member; and*
 - (b) *the vacancy in the office of a member is an extraordinary vacancy and this section and sections 118 to 120 apply.*

If Council determines by resolution to fill the vacancy by way of appointment then section 118 of the Act would apply which states;

118 Notice of intention to fill vacancy by appointment

- (1) *If under section 117(3)(a), or section 117(A), a local authority or community board resolves that a vacancy will be filled by the appointment of a person by the local authority or community board, it must immediately, unless the vacancy is for the office of mayor, give public notice of –*
 - (a) *the resolution; and*
 - (b) *the process or criteria by which the person named in the resolution was selected for appointment.*
- (2) *The local authority or community board must, at a meeting held not later than the expiry of the prescribed period, by resolution confirm the appointment described in the resolution under subsection (1); and the person appointed is for all purposes treated as having been elected to fill the vacancy on the date on which that resolution is made.*
- (3) *For the purpose of subsection (2), the **expiry of the prescribed period** is 30 days after the date of notification of the resolution under subsection (1).*
- (4) *If for any reason the person specified in the resolution is unavailable or otherwise unable to be confirmed in the appointment, a further vacancy occurs in that office.*

If Council determines by resolution that the vacancy is not to be filled then section 119 would apply which states;

119 Notice of intention to leave vacancy unfilled

If, under section 117(3)(b), a local authority or community board resolves not to fill a vacancy, it must immediately give public notice of its decision.

Council therefore has two options. Council can either resolve to fill the vacancy by appointment or not fill the vacancy. If Council was to fill the vacancy by appointment convention suggests the highest polling unsuccessful candidate from the previous election would be appointed. However, if Council was to go through this process this would be confirmed at the June meeting. The newly appointed Councillor would have their induction at the July Council meeting and at most would attend three Council meetings prior to elections.

The alternative is to not fill the vacancy and reallocate Councillor McChesney's portfolio for the three months. There will only be one Social Services Committee meeting following the date Councillor McChesney's resignation is to take effect. Therefore it is not considered necessary to fill the vacancy as Mayor Heays could chair the August meeting as he is deputy chair of this committee.

Recommendation:

It is recommend that Council accepts Councillor McChesney's resignation effective as of 17 June 2010 and that the vacancy is not to be filled as per section 117(3)(b) of the Local Electoral Act 2001.

LICENCE TO OCCUPY SITES –ALLOCATION CRITERIA

This item was carried over from the Council meeting of 21 April 2010 pending further investigation. The report included on the agenda for that meeting follows. A copy of the current licence to occupy agreement has been circulated to Councillors and is also attached.

Research regarding Licence to Occupy sites / semi – permanent stalls was undertaken prior to the creation of the new licence. On that occasion only one other Council (Nelson City) was identified as having a similar set up to what Kaikoura proposed. The agreement currently used is based on their agreement. Further investigation has revealed that they like to ensure a variety of stalls on their sites and if a site becomes available during the year they call for expressions of interest. Other Councils have been contacted however a very limited response has been received. In Southland the local community board would make a decision on any stalls and at Kapiti Coast only charity stalls are allowed.

At the previous meeting it was noted the aim of creating the areas in the Coastal Management Strategy was to obtain a vibrant coastal feel. In order to do this the following selection criteria will be used to allocate sites unless Council directs otherwise;

- Allocation will endeavour to provide a variety of product mix.
- Allocation will endeavour to ensure applicants physically utilise any allocated site.
- Allocation will not be given to any applicant wishing to sell alcohol from the site.
- An extra site will be made available for local non profit making organisations to use for one off fundraising activities.
- Allocation will require the licence holder to commence trading by 1 October in the licence year.

Report to Council 21 April 2010

Council currently has seven sites within Kaikoura; three at Jimmy Armers, two on the Esplanade and two in South Bay, where a Licence to Occupy is required. The Licence allows food stall holders to operate from dawn to dusk during the licence period and Licensees are restricted to 16 covers. These Licences became operational for the first time in 2009/10.

Initially there was a lot of interest in the sites particularly for those at Jimmy Armers and the Esplanade. Sites in 2009/10 were allocated on a first come first serve basis. A waiting list was operated and if an interested party decided not to go ahead after viewing the agreement then the site was offered to the next person on the list.

In the end not all sites were occupied for the 2009/10 year. This occurred due to people not wishing to operate from South Bay, however one licence was issued for this area. Two people who had signed up for sites had met with unforeseen circumstances and those who were offered sites later in the year after others had turned then down declined the licence due to the non pro rata of the licence fee.

All current Licenses expire on the 30 of June 2010. Over and above those people currently holding a Licence, expressions of interest for sites in the coming year have been received. It is anticipated the most desirable areas will have more people interested than sites available. Direction is sought from Council regarding criteria for the allocation of sites in future years.

Council may like to consider setting criteria to assist with the allocation process. These could be based around the type of food or beverage sold.

- Does Council wish to see a variety of food and beverages sold from the sites?
- Does Council wish to push the Seafood theme?
- Are there certain types of stalls that Council wish to exclude?

The current Licence to Occupy agreement requires Licence holders to operate for at least six months of the year. A further condition could be added to the Licence agreement which requires Licence holders to have commenced trading by 1 October. If Licence holders failed to commence trading by this date the Licence could be deemed terminated. The introduction of this clause would deter people who had no intention of trading but wished to restrict the number of stalls and would also allow time for the reallocation of the site if a Licence holder could not meet the Licence conditions.

Recommendation:

a) That Council agree to the criteria for the allocation of sites for future years as outlined in the report.

BETWEEN
KAIKOURA DISTRICT COUNCIL

AND

[]

FOOD STALL

LICENCE TO OCCUPY

LICENCE TO OCCUPY

BETWEEN **KAIKOURA DISTRICT COUNCIL** a local authority having its office at 34 Esplanade, Kaikoura (“Licensor”)

AND [] of [] . Vendor (“Licensee”) trading as [].

BACKGROUND

- A. The Licensor is the administrator of reserve land laid out in the district of Kaikoura located generally in the area known as [].
- B. The Licensor has agreed to grant the Licensee a personal and non transferrable licence to occupy the land referred to in the Schedule to this Licence for the purpose of operating a Stall, upon the terms and conditions of this Licence

IT IS AGREED:

1. Interpretation

1.1 In this Licence:

- (a) “Licence Fee” means the Licence Fee described in the Schedule to this Licence.
- (b) “Licensed Area” means the land described in the Schedule to this Licence
- (c) “Permitted Hours” means the hours during which the Licensee is permitted to occupy the Licensed Area, described in the Schedule to this Licence
- (d) “Permitted Use” means the permitted use described in the Schedule to this Licence
- (e) “Persons” included an individual, the Crown, a corporation sole, trust and any body of persons (whether corporate or unincorporate)
- (f) “Persons under the Licensee’s control” includes employees, agents, contractors, suppliers, customers and invitees of the Licensee
- (g) “Stall” means all structures and equipment brought onto the Licensed Area for the Permitted use that have been approved in writing by the Licensor
- (h) “Term” means the term of this Licence described in clause 3.1 of this Licence
- (i) “Working Day’ shall have the meaning given to those words by the Property Law Act 2007.

1.2 In this Licence

- (a) Where obligations bind more than one person those obligations shall bind those persons jointly and severally;
- (b) Words importing the singular number include the plural, and vice versa;
- (c) Any schedule to this Licence shall have the same effect as if set out in the body of this Licence;
- (d) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence.

- 5.6 The Licensee shall immediately make good any damage to the Licensed Area caused by the use of the Licensed Area by Licensee or Persons under the Licensee's control. Without limiting the foregoing, any stained or damaged paving or footpath must be cleaned or replaced by the Licensee to a standard approved by the Licensor.
- 5.7 The Licensee shall comply with all statutes, ordinances, regulations, rules, codes of practice, and by-laws, and with all requirements or notices or orders which may be given by any competent authority in respect of the Licensed Area, anything located on the Licensed Area, or use of the Licensed Area.
- 5.8 Without limiting anything in clause 5.7, the Licensee shall at all times during the term of this Licence comply with its obligations under the Health and Safety in Employment Act 1992 and regulations, rules, guidelines and codes of practice made there under, as amended, and any legislation in substitution therefore. Without, limiting the foregoing, the Licensee shall take all practicable steps to:
- (a) provide and maintain a safe working environment
 - (b) ensure that persons on, or on land in the vicinity of, Licensed Area are not exposed to hazards that are under the control of the Licensee;
 - (c) develop procedures for dealing with emergencies that may arise at the Licensed Area.;
 - (d) ensure that there are in place effective methods for identifying existing hazards and new hazards and determining whether a hazard is a significant hazard, and give written notice to the Licensor of hazards and significant hazards identified by the Licensee.
 - (e) immediately give notice to the Licensor of any accident that harms (or as the case may be, might have harmed) any person at the Licensed Area.
- 5.9 If the Licensee shall default in carrying out its obligations under clause 5.8 and if the Licensor shall choose to carry out any necessary work to remedy the default then the Licensee shall forthwith upon demand reimburse to the Licensor all money so expended or incurred by the Licensor.
- 5.10 The Licensee shall collect all litter from within the Licensed Area, and all litter within a 10 meter radius of the Licensed Area that is attributable to the Licensee's use of the Licensed Area. The Licensee shall take all practicable steps to prevent litter from escaping from the Licensed Area. The Licensee shall deposit the litter collected by it in suitable receptacles provided by the Licensee. The Licensee shall not deposit litter in the Licensor's litter receptacles.
- 5.11 The Licensee shall not erect any structure other than the Stall on the Licensed Area, or make any alterations or additions to the Licensed Area.
- 5.12 The Licensee shall not attach anything to the Licensor's fixtures or chattels (including bollards, chains, seats, plant protector frames, trees and other plantings).
- 5.13 The Licensee shall at all times ensure that the Licensee's Stall does not impede the view of the adjoining road by persons using the road. There shall at all times be a vertical clearance of 2.1m between the ground and the Licensee's awnings, verandahs, or sunshades.
- 5.14 The Licensee's awnings, verandahs or sunshades shall not extend on to any carriageway.
- 5.15 The Licensee shall not assign its rights or obligations under this License to Occupy to any Person.

- 5.16 The Licensee shall not display or place, or permit to be displayed or placed, any signs, notices, advertisements or posters within the Licensed Area unless they promote the Licensee's Stall, are fixed to the Stall, and are located entirely within the Licensed Area.
- 5.17 Prior to the Commencement Date, the Licensee shall pay the Licensor an Administration fee for the preparation of this License, being the amount described in the Schedule to this Licence.
- 5.18 The Licensee acquires no legal interest in the Licensed Area. The right to possession and control of the Licensed Area remains vested in the Licensor at all times.
- 5.19 The Licensee shall not store or display goods or personal belongings outside of the Licensed Area.
- 5.20 Except in an emergency, the Licensee's Stall shall be attended by the Licensee, or the Persons under the Licensee's control, at all times while the Stall is present on the Licensed Area. The attendant must act in a courteous manner, maintain a tidy appearance, be competent to carry out the Permitted Use at the Licensed Area, and do nothing to prejudice the good name and reputation of the District of Kaikoura.
- 5.21 The Licensor may direct the Licensee to remove from the performance of services at the Licensed Area any person if the Licensor considers that the conduct of that person is prejudicial to either the business carried on at the Licensed Area, or the good name or reputation of the District. The Licensee shall comply with such direction to the extent permitted by law.
- 5.22 The Licensee shall obtain all necessary consents, approvals or permits for its use of the Licensed Area.
- 5.23 The Licensee shall permit the Licensor, its employees, or contractors and agents to inspect the Stall on the Licensed Area at any time for the purpose of examining the condition of the Stall and to check whether the Licensee is complying with the terms of this Licence. The Licensee agrees to authorized officers conducting regular inspections of the movable food premises at all reasonable times to ensure compliance with all appropriate legislation, bylaws and licence conditions.
- 5.24 The Licensee shall ensure that tow bars attached to the Stall are not an actual or potential cause of injury to any person.
- 5.25 The Licensee shall actively occupy the Licensed Area during the Permitted Hours for a minimum of 5 days per week for 6 months of each year, wet days excluded. The Licensee shall keep a written record of those days the Licensed Area is actively occupied, and those days when wet weather prevents the Licensed Area being occupied.
- 5.26 The Licensee shall not supply or provide goods at the Licensed Area that are, in the opinion of the Licensor, unsatisfactory in any respect. The Licensee shall not conduct themselves in a manner that is, in the opinion of the Licensor, unsatisfactory in any respect.
- 5.27 The Licensee will operate only from a movable food premise which has undergone a pre-licence inspection by authorized officers and is approved and registered with the Council under the Food Hygiene Regulations 1974.
- 6. Insurance and indemnity**
- 6.1 The Licensee shall not do, or permit to be done, anything in the Licensed Area that causes any insurance effected by the Licensor or by the Licensee to be rendered void or voidable or (except with the Licensor's prior written approval) caused the premiums payable on any such

insurance to be liable to increase. The Licensee shall pay all extra premiums payable by the Licensor resulting from any extra risk caused or permitted by the Licensee.

- 6.2 The Licensee agrees to occupy the Licensed Area at the Licensee's risk and releases to the full extent permitted by law the Licensor from all claims and demands of any kind and from all liability which may arise in respect of any damage to any property or injury to any person as a result of the Licensee's use and occupation of the Licensed Area.
- 6.3 To the extent permitted by law, the Licensee shall keep the Licensor indemnified against all liability, fines, penalties, damages, losses and costs of any nature which the Licensor may suffer or incur or for which the Licensor may become liable in respect of, or arising out of:
- (a) the neglect or careless use or misuse by the Licensee, or Persons under the Licensee's control, of the Licensed Area;
 - (b) any damage to property or injury to any person on, or in the vicinity of, the Licensed Area caused directly or indirectly by any act or omission by the Licensee or Persons under the Licensee's control.
- 6.4 The Licensee shall effect, and keep current, in respect of any Licensed Area and the Licensee's use of the Licensed Area. A policy of public risk insurance for an amount not less than \$1,000,000 for any one occurrence with a substantial reputable insurer first approved in writing by the Licensor (such approval not to be unreasonably withheld). Prior to the Commencement Date, the Licensee shall deliver to the Licensor a certificate from the insurer confirming that the insurance required by this clause is in force.

7. **Termination**

- 7.1 The Licensor may terminate this Licence at any time if;
- (a) The Licence Fee is unpaid and in arrears for 10 working days after any of the days appointed for payment of the Licence Fee and the Licensee has failed to remedy the breach within the period specified in a notice given in accordance with section 245 Property Law Act 2007;
 - (b) the Licensor gives written notice to the Licensee specifying a breach of one or more of the provisions of this Licence, and the Licensee has failed to remedy the breach within the period specified in a notice given in accordance with section 246 Property Law Act 2007.
 - (c) The Licensee, if an individual, is adjudged bankrupt;
 - (d) The Licensee, is a company or incorporated society or trust board, is put into liquidation or placed in receivership or under official or statutory management;
 - (e) The Licensor requires the Licensed Area for other appropriate uses (which may include car parks), or a footpath, and has given three month's written notice of termination to the Licensee.
 - (f) The Licence shall be revoked if it can be shown that the operator and/or licence holder is not operating the movable food premise in accordance with appropriate legislation, bylaws or licence conditions.
 - (g) The Licence shall be revoked if it can be shown that the movable food premises does not meet appropriate legislation, bylaws or licence conditions.
- 7.2 Termination of this Licence for any reason shall be without prejudice to the rights and remedies of either party against the other.
- 7.3 Upon the expiry of termination of this Licence, the Licensee shall forthwith remove the Stall and all of the Licensees' chattels from the Licensed Area and make good any damaged caused by such removal.
- 7.4 The Licensee may terminate this Licence by notice in writing to the Licensor at any time provided the License Fee is paid up to date.

7.5 Any person who obstructs or hinders any officer in the execution of their legislative powers shall be in breach of the Licence.

8. **Alteration to Licence**

8.1 The Council may by resolution, from time to time, amend the terms and conditions of the Licence.

Dated 2009

SIGNED on behalf)

KAIKOURA DISTRICT COUNCIL)

As Licensor in the presence of:)

----- Witness

----- Address

----- Occupation

SIGNED by)

As Licensee in the presence of:)

----- Witness

----- Address

----- Occupation

SCHEDULE

Licensed Area:	Part of the reserve known as [] Kaikoura, outlined in red on the plan attached. The Licensee shall be able to provide up to 16 covers.
Licence Fee:	\$2,000 plus GST per annum. The Licence Fee shall be reviewed on an annual basis prior to 31 May in the year preceding the 1 July of the next financial year.
Frequency of Payment of Licence Fee:	[]
Permitted Hours:	Dawn to Dusk during the Term of this Licence.
Permitted Use:	The sale of the following goods:
Commencement Date:	1 July 2009
Expiry Date:	30 June 2010
Administration Fee:	\$0.00
Default Interest Rate:	12% per annum

Mayor's Report

Mayors Report – May 2010.

Greetings all,

Activities regarding the Mayoralty Office and its Mayor can be summarized as

- 1080 working group continues – the next meeting being a day after council. A draft recommendation for council has been distributed to members for comment.
- Friday 23 March – I assisted with the hosting of the NZ Planning Institute groups visit to Kaikoura- a valuable and well-supported experience for our Planners, I believe.
- The Kaikoura Enhancement Trust met Tues 27th to receive the Innovative Waste Annual report.
- As the Auctioneer, I assisted with the Suburban School Swimming Pool fundraiser on Sat 1st April – over \$6000.00 raised, I believe, on the day.
- Mon 3rd saw the quarterly Mayoral forum meeting in CHCH. This meeting was focusing on two areas. * Meet the commissioners of E-Can and * to present those commissioners with the Cant. Water Strategy update and to look for their support for further progressing that strategy. Both focuses were successful in their purposes.
- The attendance at the Zone 5 & 6 forum (all South Island) in Dunedin dominated the remainder of that week. Speakers and presenters included,
 - Dr. Bollard – Reserve Bank.
 - Nick Smith – M o E.
 - Lyn Provost – Auditor General.
 - Environment Southland – Collaborative Planning
 - Fed Farmers.
 - Rodney Hide-MoLG
 - LGNZ.

Copies of these presentations can be attained from my Office.

A brief report but one which has had me focus on regional issues a little more than usual.

I can confidently say that the Commissioners appointed do indeed reflect the importance of the ECan organization to the Govt. as per the calibre of the appointees. It seems that the way they have organized themselves with the various departments of Ecan leads me to believe they are there to **fix** and not necessarily dismantle. Dame Margaret reiterated that the task is clearly defined and her job is to deliver to the Govt. what has been set out for her to do.

Noting that this year is local body elections and that there are rules and regs to follow if we intend to stand for re-election. Please check with Stuart in the first instance if you need advice on pre-election activities.

Cheers - Mayor Kevin