

<b>Report to:</b>	<b>Council</b>
<b>Date:</b>	14 June 2019
<b>Subject:</b>	34 Beach Road - Follow Up On Proposal to Dispose of Part of Lot 3 DP 10081 and Lot 2 DP 357657
<b>Prepared by:</b>	Susi Haberstock – Community Services Manager
<b>Input sought from:</b>	Sheryl Poulsen - Finance Manager Martin Homisan - Economic Development Officer Matt Hoggard - Strategy, Policy and District Plan Manager
<b>Authorised by:</b>	Angela Oosthuizen - CEO

**1 PURPOSE AND ORIGIN:**

This report is a follow up to the reports presented at the May 2019 Council meeting (see attachment) regarding the possible disposal of part of Lot 3 DP 10081 And Lot 2 DP 357657 (34 Beach Road).

The lot is leased/licensed in two parts:

- Top 10 Holiday Park - Long term leased (3965 square metres)
- Ministry for Business and Innovation (MBIE) the remainder until April 2020



## 2 BACKGROUND

The lot is 7665 square metres and the balance of the land (3965 square metres) is currently part of a long term lease between the Kaikōura District Council and the Top 10 Holiday Park Limited. The lessee paid a lump sum a number of years ago to secure the lease for an additional 50 years. This lease expires in December 2072.

34 Beach Road is zoned Business B in the Kaikōura District Council Plan. Business B land can be subdivided into lots of 60m<sup>2</sup>. It is believed the original reason for the purchase of this lot was to provide additional parking.

Ministry for Business and Innovation (MBIE) currently has a License to occupy the remainder of the land until April 2020. In 2017, MBIE established 7 temporary dwellings on the site to help with the accommodation needs of those displaced by the Kaikōura Earthquake and rebuild.

At the 1 April 2019, MBIE repurposed 4 of the 7 temporary accommodation units currently on the Beach Road site, expanding the scope from temporary accommodation to community housing. As community housing is not considered a core council function, MBIE and KDC have collaborated and found an approved third party to manage the 4 units until April 2020. In addition, MBIE is managing the remaining three houses as temporary accommodation for households who are undergoing earthquake repairs until April 2020.

## 3 PROPOSAL

The proposal is to dispose of the land currently licensed to MBIE.:

- An offer has been made to Council for the circa 3700m<sup>2</sup> of commercial land
- 10% deposit payable on confirmation of agreement, with settlement 6 months from confirmation date or longer if council needs time to relocate accommodation units on site.
- End date being 9 months from confirmation

This disposal would require:

- The subdivision of the lot
- The removal of the 7 temporary dwellings
- Potentially the reestablishment of the temporary dwellings on an alternative site

No offer to pay for the cost of subdivision or relocation of the temporary dwellings have been made.

## 4 DECISION

That Council make the following decision in regard to 34 Beach Road:

- Accept offer or
- Reject offer or
- Make a counter offer

### Attachments – Public Excluded as it contains commercially sensitive information

This report should be read in conjunction with the following reports:

- a. Attachment A: Update on Beach Road – Council Owned Land for Sale and Purchase - Prepared by Paul Numan Former Finance and Commercial Manager 21 May 2019

## 5 ISSUES AND OPTIONS

### *Future Development*

The parcel of land at 34 Beach Rd sits within the Alpine-Pacific corridor (from Whale Watch to Fyffe House).

It would be sensible to expect that the Council will be initiating a detailed master plan for this corridor in the not too distant future. The new master plan may alter future land use considerations within the corridor. Several significant infrastructure investment projects are already proposed within this area.

Consequently, disposing of 34 Beach Rd at present, without a detailed Proposal (Project plan) could mean non-compatible development activities on this location.

### *Parking and Safety*

NZTA plans to address the safety and parking concerns along the Beach Road corridor has not been finalised. 34 Beach Road was purchased to provide parking if needed in the future. The uncertainty of future parking needs and the development of the Beach Road corridor by NZTA, could mean the disposal of 34 Beach Road is premature at this time.

### *Future Housing Needs*

Site establishment costs for the 7 units was approximately \$90k each including transport to site, piling, building consents and small decks. The total estimate price is \$890,000 - \$940,000. This was a substantial investment by the MBIE to provide temporary housing for Kaikōura residents displaced by the 2016 earthquake.

MBIE and KDC have collaborated and found an approved third party to manage the 4 units until April 2020 to address current housing shortages. In addition, MBIE is managing the remaining three houses as temporary accommodation for households who are undergoing earthquake repairs until April 2020.

Community feedback in the 2018/2019 Resident Satisfaction Survey shows that over half of the surveyed homeowners in our district required or still require work to their homes following the quake, with many still unsure when the work will be carried out, even though they had found a contractor to complete it. It also shows slow progress for residents who are needing repairs or to rebuild. Housing availability plays a part in this delay. There is currently no budget to relocate these dwellings at present.

### *Uncertainty of Development*

No site plan of the proposal has been included. The agent stated:

- a. The plan for Beach Road is not available at this stage
- b. The development will be a mix of accommodation and retail and the reason for wanting the council land is to push back the buildings to allow room for parking at the front

Council could ask for a covenant to be placed on the property in order to ensure the site is developed as proposed. If there was a breach in the covenant, the Council would be forced to take legal action to enforce the covenant.

### *Options Analysis*

<b>Dispose of Property</b>	<b>Keep Property</b>	<b>Defer Sale</b>	<b>Make Counter offer</b>
Lack of flexibility to develop Beach Road to maximise potential and address safety concerns. Potential for larger profit from future sale Significant establishment costs to relocate the temporary houses	Inability to sell the property in the future at current price offered	Loss of Sale Inability to sell the property in the future at current price offered	Loss of Sale Inability to sell the property in the future at current price offered

## 6 COMMUNITY OUTCOMES:



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



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



Our community participates in decisions and planning in a way that benefits our future.



Our infrastructure, housing and community facilities are easily accessible, cost effective and able to withstand our natural hazards.



Residents and visitors enjoy an improved quality of life in our District.

## 7 FINANCIAL IMPLICATIONS AND RISKS:

The financial implications and risks associated with the proposed sale include:

- a. Provision of sale proceeds will generate funding for Council. This can be applied to reduce current debt by – savings would be approximately 5% on the loan servicing.
- b. The return from a lease of the site has not been valued, but using the valuer's rationale of 6% return on land value.
- c. The loss would be greater than this if the Council opts to sell the portion of land that extends into the existing Top 10 Holiday Park. In addition there are lease provisions would prevent a sale of this site occurring
- d. Council should bear in mind that the establishment funds were provided by MBIE. If Council does proceed with selling the land, Council should be aware that MBIE has made a sizeable investment to-date. MBIE would be concerned about the loss of the land for the. MBIE also administrates the PGF Growth Fund. This could impact other funding applications currently in progress.

## 8 SIGNIFICANCE OF DECISION

This matter is not a matter of significance in terms of the Council's Significance and Engagement Policy.

## 9 DELEGATIONS

- Local Government Act 2002
- Clause 32 of Schedule 7(c)

Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except— (c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.

## 10 RECOMMENDATIONS:

***It is recommended that Council declines the offer to purchase 34 Beach Road until a comprehensive master plan to develop the area is undertaken.***

***Reasons for this recommendation include:***

- ***The income derived from the disposal of 34 Beach Road does not justify losing the potential of future development of the site.***
- ***Income derived does not generate sizeable savings in loan servicing***
- ***Sizeable Investment by MBIE and the concomitant loss of land for the TAS units could affect further funding applications***
- ***Retention of flexibility of future design of the Beach Road corridor***
- ***Uncertainty over New Zealand Transport's development plans for the Beach Road corridor***

## APPENDIX A

### Portable Cabin Hire Agreement

#### Information Schedule

<b>Background:</b>	<p>As a result of the Kaikoura earthquake, the Council identified the need for temporary accommodation in the Kaikoura District. The Council made the Site available to the Owner to install buildings for the housing of displaced residents in the Kaikoura District. The land is currently being used for the Owners purposes, however some cabins are currently unoccupied.</p> <p>The community have indicated there is a housing shortage in Kaikoura. The Hirer has agreed to hire a portion of the cabins from the Owner, and enter into arrangements to make the cabins available to residents who require housing.</p>
<b>Date of agreement:</b>	The date that this Agreement has been signed by each of the parties.
<b>Council:</b>	Kaikoura District Council ( <b>Council</b> )
<b>Contact address:</b>	Level 2, 96 West End, PO Box 6, Kaikōura 7340 Attention: Angela Oosthuizen
<b>Email:</b>	<a href="mailto:angela.oosthuizen@kaikoura.govt.nz">angela.oosthuizen@kaikoura.govt.nz</a>
<b>Owner:</b>	Her Majesty the Queen acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment ( <b>Owner</b> )
<b>Contact address:</b>	15 Stout Street, PO Box 1473, Wellington 6140 Attention: Alan Bruce
<b>Email:</b>	<a href="mailto:Alan.Bruce@mbie.govt.nz">Alan.Bruce@mbie.govt.nz</a>
<b>Hirer:</b>	Te Whare Putea Charitable Trust (incorporated under the Charitable Trusts Act 1957) ( <b>Hirer</b> )
<b>Contact address:</b>	78 Beach Road, Kaikōura 7371 Attention: Barbara Timms
<b>Email:</b>	<a href="mailto:tewhareputea@xtra.co.nz">tewhareputea@xtra.co.nz</a>
<b>Cabins:</b>	4 Cabins comprising: 4 x 2 bedroom cabins
<b>Cabin Rent:</b>	\$1 inclusive of GST per year
<b>Site Rent:</b>	\$1 inclusive of GST per year
<b>Payment period:</b>	Annually Payment date: 20 June 2019
<b>Site Address:</b>	1/34 – 4/34 Beach Road, Kaikōura, 7300 ( <b>Site</b> )
<b>Term</b>	The Term shall begin on the Start Date and continue until the End Date (unless terminated earlier in accordance with this Agreement). The Hirer may seek to extend the Term of this Agreement with the consent of the other parties. If the Hirer wishes to extend the Term it must provide the Owner and the Council with one month's written notice prior to the expiry of the current Term ( <b>Renewal Request</b> ).

The Owner and the Council will notify the Hirer as to whether they approve the Renewal Request within 10 Business Days of receipt.

**Start Date:** 20 June 2019  
**End Date:** 1 April 2020

**Signed by the Owner:**

\_\_\_\_\_  
Signature:

Alan Bruce, National Manager, Temporary Accommodation Service

\_\_\_\_\_  
Date

**Signed by the Hirer:**

\_\_\_\_\_  
Signature

Marion McChesney, Chairperson, Te Whare Putea Trust

\_\_\_\_\_  
Date:

**Signed by the Council:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date:  
Name: Angela Oosthuizen, Chief Executive, Kaikōura District Council

**Signed by the Hirer:**

\_\_\_\_\_  
Signature

Hariata Kahu, Trustee, Te Whare Putea Trust

\_\_\_\_\_  
Date:

## **1. Term and Acknowledgements**

- 1.1 The Owner agrees to hire the Cabins (as described in the Information Schedule above) and the Hirer agrees to take the Cabins on hire for the Term of this Agreement at the Cabin Rent set out in the Information Schedule.
- 1.2 The Council owns the Site where the Cabins will be located. The Council agrees to grant the Hirer a license to store the cabins on the Site during the Term of this Agreement at the Site Rent set out in the Information Schedule.
- 1.3 The Council further agrees to grant the Hirer and the Owner a license to access, occupy and generally use the Site as contemplated under this Agreement. For the avoidance of doubt, the benefit of the license granted to the Hirer is intended to extend to any occupants of the Cabins.
- 1.4 The term of this Agreement commences on the Start Date and continues until the earlier of the End Date (as described in the Information Schedule) or the date upon which this Agreement is otherwise terminated in accordance with clause 9 of this Agreement.
- 1.5 The Owner and the Hirer acknowledge:
  - (a) that the Cabins to be hired are in a reasonable condition;
  - (b) hire of the Cabins is a commercial chattels lease and does not create any lease or tenancy subject to the Residential Tenancies Act 1986 or the Property Law Act 2007.

## **2. Title to the Cabins and PPSA**

- 2.1 Title in the Cabins will not pass to the Hirer. However, hire of the Cabins may create a security interest in the Cabins under the PPSA and the Owner may register a financing statement on the Personal Property Securities Register in respect of the security interest.
- 2.2 The Hirer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest created by this Agreement.
- 2.3 The Hirer:
  - (a) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement, or the security interest created by this Agreement; and
  - (b) waives its right to:
    - (i) receive a statement of account under section 116 of the PPSA;
    - (ii) receive notice of the Owner's proposal to retain personal property under section 120(2) of the PPSA;
    - (iii) object to the Owner's proposal to retain the Cabins under section 121 of the PPSA;
    - (iv) not have goods damaged when the Owner (or any person on its behalf) removes an accession under section 125 of the PPSA;
    - (v) receive notice of the removal of an accession under section 129 of the PPSA; and
    - (vi) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA.

## **3. Insurance**

- 3.1 The Hirer and/or its permitted occupants will be solely responsible for obtaining any insurance cover required for the contents of the Cabins.

## **4. Cabin Site**

- 4.1 The parties acknowledge that, as at the Start Date of this Agreement, the Cabins have been placed on specific sites located at the Site Address 1/34 – 4/34 Beach Road, Kaikoura, 7300 which is owned and controlled by the Kaikoura District Council.
- 4.2 The Council agrees to provide and maintain to each of the Cabins for the Term of the Agreement, all services reasonably required to allow occupation of the Cabins, including but not limited to:
  - (a) fresh water;
  - (b) electricity; and
  - (c) waste water disposal.

## **5. Payments**

- 5.1 The Hirer will pay:
- (a) the Cabin Rent to the Owner by an annual payment; and
  - (b) the Site Rent to the Council by an annual payment,
- in each case, in accordance with the Information Schedule and together with any other payments required under this Agreement.

## **6. Restrictions on use of Cabin and maintenance obligations**

- 6.1 The Hirer is responsible for ensuring that the Cabins and the chattels contained in the Cabins are not damaged during the Term of this Agreement, except for ordinary wear and tear occurring through reasonable use. The Owner will not repair or replace any chattels that are damaged during the Term of this Agreement.
- 6.2 The Hirer shall not alter or modify or allow the alteration or modification of the Cabins during the term of this Agreement without the prior written consent of the Owner, and will not do anything which will or may have the effect of voiding any manufacturer's warranty for the Cabins, with any agreed alterations to the Cabins vesting in the Owner.
- 6.3 The Hirer will ensure that:
- (a) the Cabins are maintained and kept reasonably clean and tidy at all times;
  - (b) all reasonable care is taken in handling and care of the Cabins; and
  - (c) the Owner is notified immediately if the Cabins are damaged or if there are any structural issues with the Cabins.
- 6.4 The Hirer will allow the Owner (or its representative) to inspect the Cabins at all reasonable times if the Owner has given 48 hours' notice to the Hirer (except in an emergency).
- 6.5 The Hirer will be responsible (at the Hirer's expense) for:
- (a) all necessary servicing relating to the Cabins ; and
  - (b) all regular and ongoing maintenance in relation to the Cabins and ancillary services, which is reasonably necessary for the use and enjoyment of the Cabins by the occupants; and
  - (c) keeping and maintaining the outdoor areas surrounding the Cabins and located on the Site in a clean and tidy condition.

## **7. Restrictions on Dealing with the Cabin and Tenancy Arrangements**

- 7.1 Subject to clause 7.2, the Hirer will not without the prior written consent of the Owner (which shall be at the Owner's sole discretion):
- (a) move, relocate, sell, transfer or assign or sublease, licence, hire or part with possession of the Cabins;
  - (b) assign the Hirer's rights under this Agreement; or
  - (c) mortgage, charge, pledge or grant any security interest over the Cabins to anyone other than the Owner.
- 7.2 Notwithstanding clause 7.1 above, the Owner expressly consents to the Hirer renting the Cabins to persons identified by the Hirer as needing temporary housing, provided that:
- (a) the maximum rent payable by the person(s) renting a Cabin shall not exceed \$225 per week (unless otherwise agreed in writing with the Owner); and
  - (b) the maximum occupancy of any one Cabin shall not exceed four persons (unless otherwise agreed in writing with the Owner).
- 7.3 All property management services in relation to the tenancies granted by the Hirer pursuant to clause 7.2 of this Agreement will be the sole responsibility of the Hirer and will be managed exclusively by the Hirer and its appointed property manager (as applicable).
- 7.4 The Hirer and the Owner acknowledge that during the Term of this Agreement some of the Cabins may cease to be required for occupation by people in need of temporary housing.
- 7.5 Where the Hirer no longer requires the Cabin pursuant to clause 7.4, the Hirer will give notice of the availability of the relevant Cabin to the Owner, and the Owner may terminate this Agreement in respect of that Cabin.
- 7.6 The Hirer will not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Owner. The Hirer will keep the Owner



informed of any matter known to the Hirer which could reasonably be expected to have such an effect.

## **8. Hirer to Notify Change of Details**

8.1 The Hirer will notify the Owner and the Council in writing at once of any change of the Hirer's name, address or contact details.

## **9. Termination**

9.1 This Agreement will terminate on the End Date, unless extended pursuant to a Renewal Request (as described in the Information Schedule).

9.2 The Hirer may terminate this Agreement prior to the End Date by giving the other parties at least a month's prior written notice of termination.

9.3 The Owner may terminate this Agreement and repossess the relevant Cabins:

(a) if notice is given by the Hirer under clause 7.5; or

(b) upon giving the other parties one month's notice, if the Owner requires the use of the Cabins for other purposes.

9.4 The Council may terminate this Agreement prior to the End Date by giving each of the other parties at least a month's prior written notice of termination.

9.5 Any party may immediately terminate this Agreement if another party commits a material breach of this Agreement and such breach cannot be remedied, or in the event that such breach is capable of remedy, the party in breach fails to remedy the breach upon receiving notice from the other party specifying the breach and requiring the breach to be remedied within ten Business Days of such notice. For the avoidance of doubt, a breach of clause 7.6 will be deemed to be a material breach.

9.6 Termination of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to termination.

## **10. Protection of the Owner's Interests**

10.1 On or before the End Date of this Agreement (or upon earlier termination in accordance with clause 9 above), the Hirer will surrender control of the Cabins to the Owner and will ensure that any occupants placed in the Cabins by the Hirer have been relocated prior to the End Date (or earlier termination).

10.2 The parties acknowledge that neither the Owner nor the Council is responsible or liable for any acts or omissions of the Hirer in respect of the Cabins or in respect of the occupants or tenancies in relation to the Cabins.

10.3 The Hirer indemnifies the Owner against all liability, losses, damages, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by the Owner resulting from:

(a) this Agreement, or

(b) the possession or use of the Cabins by the Hirer or any occupant of the Cabins.

10.4 The Owner's maximum aggregate liability arising in relation to or in connection with this Agreement is, in respect of all losses (being all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis)), limited to the total value of the Rent payable under this Agreement.

## **11. Entire Agreement and Variations**

11.1 This Agreement contains the entire Agreement between the Council, the Hirer and the Owner in relation to the Cabins and cannot be altered, amended, modified or otherwise changed except in writing signed by both parties.

## **12. Miscellaneous Provisions**

- 12.1 **Definitions:** In this Agreement:
- (a) References to “**Cabins**” will refer to the Cabins described on the front page of this Agreement.
  - (b) References to “**Business Day**” mean a day (other than a Saturday, Sunday or public holiday) when banks in Kaikoura and Wellington are open for business.
  - (c) References to “**PPSA**” refers to the Personal Property Securities Act 1999.
- 12.2 **Headings:** The headings in this Agreement merely give an indication of the content of the clauses or terms to which they are related, and are included only for the purpose of assisting the reading of the document. Headings do not affect the meaning of the terms or clauses of this Agreement themselves.
- 12.3 **Notices:** Notices to any party under this Agreement may be sent to the relevant address as shown in this Agreement.
- 12.4 **Waiver:** A delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing.
- 12.5 **Variation:** No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties.
- 12.6 **Severance:** If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the offending provision shall be severed and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
- 12.7 **Counterparts:** This Agreement may be signed in any number of counterparts (including scanned copies) and provided that each party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the parties.
- 12.8 **Jurisdiction:** This Agreement will be governed by and construed in accordance with New Zealand law. Each party submits to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute connected with this Agreement.
- 12.9 Nothing expressed or implied in this Agreement will be deemed to constitute between any party a partnership, agency, or joint venture with any other party.