

Notice is given that a Submissions Hearing meeting will be held on:

Date: Thursday 9 June 2016
Time: 3.30 pm or at the conclusion of Full
Meeting Room: Council
Venue: Tasman Council Chamber
189 Queen Street
Richmond

Extraordinary Submissions Hearing Meeting (Deliberations)

AGENDA

MEMBERSHIP

Members Cr P L Canton
Cr B F Dowler
Cr T B King

(Quorum 2 members)

Contact Telephone: 03 543 8405
Email: pamela.white@tasman.govt.nz
Website: www.tasman.govt.nz

AGENDA

1 OPENING, WELCOME

2 APOLOGIES AND LEAVE OF ABSENCE

Recommendation

That apologies be accepted.

3 REPORTS

3.1 Proposed New Lease for the Motueka Top 10 Holiday Park5

3 REPORTS

3.1 PROPOSED NEW LEASE FOR THE MOTUEKA TOP 10 HOLIDAY PARK

Decision Required

Report To:	Submissions Hearing
Meeting Date:	9 June 2016
Report Author:	Gene Cooper, Commercial Manager; Susan Edwards, Community Development Manager; Anna Gerraty, Policy Advisor
Report Number:	SH16-06-01

1 Summary

- 1.1 This report provides the Hearing Panel with the opportunity to deliberate on the submissions received on the proposed new lease for the Motueka Top 10 Holiday Park, located on Fearon Bush Recreation Reserve (**see Attachment 1**). The Hearing Panel also needs to make recommendations to the Council (who is the administering body for the reserve) on the extent to which submissions should be accepted or not and also whether the new lease should be granted. The Hearing Panel heard the submissions on the proposed new lease at its meeting on 18 November 2015.
- 1.2 The formal consultation process is required by the Reserves Act 1977 as there is currently no Reserve Management Plan in place for this site. The report also provides advice and guidance to the Hearing Panel to assist with its decision.
- 1.3 The Council received four submissions on the proposed new lease. All submitters were heard. The issues raised by submitters fall into five main categories:
 - a) Potential impacts on the natural value of the reserve and visual amenity
 - b) Public access to the reserve
 - c) Traffic concerns
 - d) Commercial terms
 - e) Concerns about process and perceived bias.
- 1.4 At the hearing, some submitters challenged the Council's ability to issue the lease on legal grounds and the independence of the Hearing Panel. The legal ability to issue the lease is permitted under section 54 (1) & (2) of the Reserves Act 1977. The Hearing Panel has no decision-making powers under the Reserves Act – it can only make recommendations to the administering body (i.e. Full Council).
- 1.5 Staff consider that many of the issues raised by submitters can be dealt with by including appropriate clauses in the terms and conditions of the new lease. Other concerns are addressed by existing management processes, e.g. requirements for building and resource consents under the Tasman Resource Management Plan (TRMP).

2 Draft Resolution

That the Submissions Hearing:

- 1. receives the Proposed New Lease for the Motueka Top 10 Holiday Park report (SH16-06-01); and**
- 2. notes that both the existing lease and the proposed new (i.e. replacement) lease contain terms and conditions dealing with tree protection and public access; and**
- 3. notes that staff will be working with the lessee on a new design for the Holiday Park entrance and parking areas, to help address the submitters concerns about the traffic and parking, and that this matter will be reported to the Commercial Subcommittee at a future meeting; and**
- 4. notes that, in its view, there are no conflict of interest issues with the Hearing Panel making these recommendations to Council, as only Full Council has delegated authority for decision-making from the Minister of Conservation. It is the role of Councillors to balance competing requirements and to make decisions which are in the overall best interest of the community having considered the relevant information; and**
- 5. notes that, in its view, the granting of the lease extension is likely to have minimal impact over and above the lease which is currently in place; and**
- 6. recommends to Council that all objections/submissions to the proposed lease not be accepted for the reasons outlined by the Hearing Panel in Attachment 1 to this report; and**
- 7. recommends to Council, under section 54 of the Reserves Act 1977, the granting of a new lease to Motueka Top 10 Holiday Park Ltd with an expiry date of 30 June 2049 (over Part Section 156 Block IV Motueka Survey District, 3.0351 hectares subject of leasehold Computer Interest Register 388487, and registered lease contained in Instrument 7592740.2) for the continued operation of the holiday park on the land; and**
- 8. recommends to Council that the terms and conditions of the current lease be included in the new lease documentation.**

3 Purpose of the Report

- 3.1 To provide the Hearing Panel with the opportunity to:
- a) Deliberate on the submissions received on the proposed new lease for the Motueka Top 10 Holiday Park and recommend to Full Council on the extent to which they should allow or accept or disallow or not accept every objection or submission; and
 - b) make a recommendation to Full Council on whether or not the lease extension should be granted.

4 Background and Discussion

- 4.1 Report FN15-11-01 (**Attachment 2** including submissions) was prepared for the Submission Hearing held on the lease proposal. The hearing was held on 18 November 2015. A copy of the minutes of the hearing are attached (**Attachment 3**).
- 4.2 At the conclusion of the hearing the Chair advised the submitters that the Hearing Panel would look into the legal issues raised in the submissions, deliberate and report to a Full Council meeting. This meeting provides the Panel with the opportunity to deliberate on the submissions and to make recommendations to Full Council on the extent to which the submissions should be accepted and whether to grant the lease (and if so, on what terms).
- 4.3 The current lessee at the Motueka Top 10 Holiday Park has a lease for a term of 33 years from 1 July 2007, expiring 30 June 2040.
- 4.4 During negotiations to buy back lessee-owned assets (implementation of the Council's campground financial strategy) during 2015, the period of the lease arose as a key issue in determining the asset purchase cost. The proposal to replace the current lease with a new lease (with a 33-year term, expiring 30 June 2048) had a material downward impact on the asset purchase price agreed with the lessee. This is because the purchase price of the assets transferred to Council was discounted by the improved cash flows for the lessee - the benefits to the lessee of granting a new lease expiring in 2048 under different terms.
- 4.5 Agreement between the Council and the lessee on the asset buy back proposal was reached, subject to a formal notification and approval of a new lease, expiring 30 June 2048.
- 4.6 The land occupied by the Motueka Top 10 Holiday Park at Fearon Bush is a Recreation Reserve. Council is the administering body of this reserve.
- 4.7 The proposed new lease would enable the current lessee to occupy the site until 2048. The Council is required to publicly notify the intention to grant the lease under the Reserves Act 1977. Section 54 (2) of the Act states:
- “Before granting any lease or licence under subsection (1) ... the administering body shall give public notice in accordance with section 119 specifying the lease or licence proposed to be granted, and shall give full consideration in accordance with section 120 to all objections and submissions in relation to the proposal received pursuant to the said section 120.”*
- 4.8 The holiday park lease proposal was advertised in September 2015 and submissions closed on 12 October 2015. While the Reserves Act does not provide any constraint on what can be commented on by submitters, our public notice suggested that submitters may wish to comment on a range of matters including:

- the benefits and disadvantages of continuing to use the reserve for a commercial camping ground;
- the length of the proposed lease; any positive or negative impacts on the reserve from the camping ground activity;
- any positive or negative impacts on recreational and cultural values;
- and public access.

4.9 Four submissions were received. Copies of the full submissions are included in with the report FN15-11-01 **Attachment 2**.

4.10 A summary of the issues raised by submitters is provided in **Attachment 1**, with staff recommendations for how the Hearing Panel should address each submission.

4.11 The operation of the Holiday Park in its current form has been largely unchanged for some considerable time. Recently, a new shed and signage was erected on site. Future planned developments (permitted under the current terms and conditions of the lease) include upgrades of existing infrastructure (ablution blocks, manager's accommodation upgrade and entrance changes). At this stage, there are no new developments planned.

4.12 Some of the issues raised by submitters relate to prior development of the campground.

4.13 The growing popularity of the campground is causing some traffic congestion issues, which the Council is addressing as budget permits.

5 Options

5.1 Option one – recommend to Council the replacement of the existing lease with a new lease with a term of 33 years, expiring on 30 June 2048. This will allow the financial transaction negotiated during 2015 to be concluded without additional cost to the Council. The impact on all parties of a new lease, given the continuation of most the existing terms, is minimal. The Council has, over many years, been comfortable with the operation of Fearon Bush as a campground and holiday park. This is the preferred option.

5.2 Option two – recommend to Council the replacement of the existing lease with a new lease with a term of 33 years, expiring on 30 June 2048, but negotiate some variations to the terms and conditions of the lease to address matters raised by the submitters. This option could result in Council facing additional costs to negotiate the variations to the satisfaction of the existing lessee. This option would be appropriate if the Hearing Panel considers that there are a few key matters raised by submitters that the existing lease terms and conditions do not adequately address.

5.3 Option three – recommend to Council that it does not replace the existing lease with a new lease. This action will result in no changes to the current lease provisions and provides the existing operating environment for the lessee until 30 June 2040. This decision will require an unwinding of commercial negotiations around the Holiday Park asset buy-back programme and result in renegotiations, which could have a significant overall financial cost to the Council. The agreed price of the assets was significantly discounted to recognise the financial gain for the lessee in having a longer lease term. It was a condition the lessee attached to all negotiations and therefore the related commercial transaction may have to be completely unwound.

6 Strategy and Risks

- 6.1 The campground asset buy-back proposal and subsequent lease renewal are designed to help achieve the Council's strategy of making its commercial assets provide a maximised financial return to the Council (via lower repurchase cost and improved lease returns) to contribute to reducing rates for the wider Tasman District community.
- 6.2 There are commercial reputational risks in not proceeding with the replacement lease proposal, which have been outlined in the previous sections of this report.

7 Policy / Legal Requirements / Plan

- 7.1 The granting of a lease over Recreation Reserve for a camping ground/holiday park is provided for under Section 54(1)(a) of the Reserves Act 1977. Section 54 (2) requires the intention to grant a lease to be publicly notified and for any objectors to be provided the opportunity to present their views at a hearing. The hearing was held on 18 November 2015. The Hearing Panel then deliberates on the submissions and make recommendations to Full Council on (a) the extent to which submissions should be accepted or not and (b) whether to grant a new lease. Full Council, as the administering body for the reserve, has delegated authority from the Minister of Conservation to make decisions on both matters.
- 7.2 In addition to the Reserves Act requirements, the Council has a Reserves General Policies Document which contains matters to be considered when granting leases on reserves. Clause 4.3.2.7 of the Policies states:
- “Where security of tenure is necessary, the Council will provide a lease or licence where the activity complies with the Reserves Act and/or other relevant legislation. All applications for leases for long-term exclusive use will be considered in relation to the:
- a) purpose of the reserve;
 - b) preservation of special features;
 - c) leasing powers of the Council;
 - d) retention of an adequate proportion of the reserve as open space or for public access (in general); and
 - e) the requirements of the Reserves Act, reserve management plans, this policy document and relevant statutes.
- 7.3 The Hearing Panel is required to give due consideration to these matters in making its recommendations to Council.
- 7.4 Legal issues and process have been challenged by parties, namely:
- a) Challenging Council's appointment of Hearing Panel members, with concerns/ claims of bias and a lack of independence;
 - b) Claims the Council has not followed its own legal advice regarding ability to issue a lease at Fearon's Bush;
 - No ability to issue when a Reserve Management Plan is not in place;
 - No delegated authority from the Minister of Conservation

- c) The ability for submitters to obtain information on the full existing and new leases, preventing submitters and the community from making informed decisions on the impacts of the lease to this site.

7.5 In response to these matters, I have researched these matters further and advise:

- a) Council staff do not believe there are any conflict of interest issues or reason for bias by the panel concerned. It is the role of Councillors to balance competing requirements and to make decisions which are in the overall best interest of the community having considered the relevant information. The impact of granting a new lease is a matter of low significance due to continuation of existing activities at current levels of service and the low public interest from the wider community as evidenced in this consultation process.
- b) We have reviewed this matter and taken legal advice. In 2013, the Minister of Conservation gave local authorities delegated authority to exercise many of the Minister's powers under the Reserves Act, including the ability to grant leases. Under the Reserves Act 1977, specifically section 54 (1) and (2), and these delegated powers the Council may grant a lease, subject to a public consultation process.
- c) Information was available on the aspects open for public submission and these were clearly set out in the lease notice proposal. Provision of full lease terms was withheld because of the confidential commercial nature between the Council and the lessee. Under LGOIMA 1987 section 7(2)(a) and (b) the privacy and commercial sensitivity are key elements the Council has a responsibility to protect. The commercial terms of any lease were not part of the matters open for public submission for confidentiality reasons. Council have previously taken external advice from industry experts (Registered Valuers industry review) and considered best practice to determine the appropriate commercial terms for inclusion in both the current and proposed lease.
- d) We do not believe limiting access to this commercially sensitive information has any bearing on the submitters concerns. Successive councils have made informed decisions on the nature of the Council's campground strategy that drive the commercial terms held.

8 Consideration of Financial or Budgetary Implications

- 8.1 The replacement of the lease has significant financial implications for the Council. The replacement of the lease has been a key part of the commercial negotiations around the asset buy-back process concluded last year. This matter has already been reviewed and included as part of the Long Term Plan (LTP) forecasts 2015-2025 for commercial activities. Should the Hearing Panel recommend approval of the lease extension, there will be no financial or budgetary implications, as they have already been considered and approved.
- 8.2 Should the Hearing Panel recommend that the lease extension is not granted, then renegotiation of the asset buy-back process will create a financial risk and impact to the Council. This will require additional a substantial additional capital funding level to unwind the transaction and repurchase assets negotiated in 2015, at full value, which will be subject to commercial renegotiation with the lessee and the normal commercial and reputational risks that exist.

9 Significance and Engagement

- 9.1 The recommendation to Council to grant a replacement lease is considered to have low significance on the basis that it continues the current prescribed activity on this site with little change. The low public interest in this lease proposal, as evidenced by only four submissions being received, would support the view that there is a wider community acceptance of the Holiday Park activity on this site - conducted since the 1970s and in its current format for the past 15-20 years.
- 9.2 There has been high profile reporting and community knowledge of the Council's campground strategy adopted in November 2014, and resultant asset buy-back programme and lease renegotiation. Public interest in the lease extension has been low, based on responses.
- 9.3 The current activity matches the proposed activity – the only material difference is a new lease term of 33 years, verse the remaining lease with 27 years to run. Therefore, the long term impact of this decision is relatively minor and only applies for a further six years and there are no impacts on the levels of service.
- 9.4 The Motueka Community Board has been briefed and has provided feedback and support for the commercial proposal for the Motueka Top10 Holiday Park. That proposal included the lease extension being considered in this report.
- 9.5 This is not a strategic asset for the Council as set out in Council's Significance and Engagement Policy. The proposal does not substantially affect debt or the Council's finances in the Long Term Plan 2015-2025.
- 9.6 The decisions being sought in this report have been subject to a public consultation process.

10 Conclusion

- 10.1 The four submissions received have raised a number of points, which relate to wider issues around the use of the site. These could be taken into account when a Reserve Management Plan for campgrounds is prepared, as planned in 2017.
- 10.2 The key matters raised in submissions of relevance for this decision on the lease extension relate to protecting the natural values (including managing the forest remnants and ecological values) on the site, public access issues, the term of the lease and meeting the requirements of the Reserves Act.
- 10.3 The issues of managing the podocarp forest and ecological values of the site and of public access are both addressed within the existing lease document, providing management and direction for both the lessee and the Council.

11 Next Steps / Timeline

- 11.1 The Panel's recommendations regarding acceptance or otherwise of submissions and whether or not to grant the new lease will be referred to the Full Council meeting on 30 June 2016 for a decision.

- 11.2 If the Council decides to grant the lease, documentation will be prepared and completed by the end of July 2016, closing off all matters relating to the Council campground strategy adopted in November 2014 for Motueka Top 10 Holiday Park.
- 11.3 If the Council decides that the new lease should not be granted, the matters relating to the asset buy-back programme will need to be revisited through commercial negotiations with the lessee. This would be estimated to take three months to conclude. A further report and funding request to the Council would then be made.

12 Attachments

1. Summary of submissions, staff comments and recommendations	13
2. Report to Submissions Hearing 18 November 2015 including submissions	19
3. Minutes of Submissions Hearing 18 November 2015	35
4. Proposed Lease	37

Attachment 1 – Summary of submissions, staff comments and recommendations

Submitter #: 1 = David and Ruth Cook, 2 = David Ogilvie, 3 = Elizabeth Bryant, 4 = Tony Bryant.

Submitter #	Issue	Summary of submission	Staff comment	Staff recommendation	Hearing Panel recommendation to Full Council
1	Traffic	Traffic congestion in neighbourhood during summer season.	<p>The reserve has been used as a holiday park for a number of years. This use can legally continue for the 27 years remaining under the current lease.</p> <p>Staff are working with the lessee on a new entrance and parking layout for the Holiday Park, which will help address some of the traffic and parking issues raised by the submitters. Council also plans to review traffic entry to the site through the capital works programme in coming years, as funding permits.</p>	That the submitter's objection about traffic congestion is not accepted because the granting of a new lease would not result in any change to the existing traffic levels.	<i>This column is to be filled out when the Hearing Panel meet on 9 June to deliberate.</i>
1, 2	Use of reserve and impact on natural environment	<p>Campgrounds are not an appropriate use of reserves.</p> <p>Overcrowding is destroying the natural environment of the reserve.</p>	<p>The number of sites and users are restricted by campground health regulations. This sets a limit on the numbers during the seasonal peak and there is no change to the intensity.</p> <p>Annualized activity and occupancy rates fall short of 50%. At peak summer season and some long weekends occupancy rates reach capacity and then reduce gradually.</p>	<p>That the submitter's objection relating to these points is not accepted for the following reasons:</p> <p>The Reserves Act provides for campgrounds to be established on Recreation Reserves.</p> <p>The provisions of the new lease (see Attachment 5 with all commercial terms removed) adequately protect trees, the natural environment and open space, therefore addressing the submitters concerns.</p>	

Submitter #	Issue	Summary of submission	Staff comment	Staff recommendation	Hearing Panel recommendation to Full Council
			<p>The existing lease provisions require the retention of protected trees that exist on the site. This provision was recently enforced during site development that took place during 2015. The new lease will contain the same provision re protected trees.</p>		
2, 3, 4	Manage of Forest remnants/ Significant Natural Habitat	<p>Submitter highlights the ecological factors and history of the site. The site contains two varieties of protected tree and a limited volume of native trees and shrubs. Discussion about having a replanting programme and closing off and fencing areas of the reserve for re-vegetation and native bush recovery.</p>	<p>Consents for the recent work at the campground required the protected trees to be worked around. Nelmac arborists have ensured the highest attention to tree health and impacts. The current configuration and remaining remnants discussed have been their current size and condition for 15-20 years. The</p> <p>Commercial Manager has had discussions with the Reserves and Facilities section about a replanting programme – there is no room at the holiday park under its current configuration.</p> <p>Commercial Manager believes the balance which has existed for some time, is correct. Any trees that reach the end of their lives are replaced through replanting, assessed once a year.</p>	<p>That the submitter's objection relating to management of the forest remnants is not accepted, for the following reasons:</p> <p>The provisions of the new lease (see Attachment 5 with all commercial terms removed) adequately protect trees, the natural environment and open space, therefore addressing the submitters concerns.</p>	

Submitter #	Issue	Summary of submission	Staff comment	Staff recommendation	Hearing Panel recommendation to Full Council
1	Visual impacts	Recent developments of a shed and signage are viewed as “unsightly” and “visual pollution”.	This is a matter that is covered by the Tasman Resource Management Plan. Resource and building consents were sought and approved during 2015. They ensure compliance with the necessary legislation.	That the submitter’s objection about visual impacts is not accepted because the resource and building consents have already been issued for the shed and signage (i.e. Tasman Regional Management Plan requirements relating to visual effects have been considered in these processes).	
1,2	Public access	Locals being excluded from the reserve.	<p>Clause 26 of the old lease and clause 25 of the new lease, specifically allow the public access for picnics, under set conditions with management approval.</p> <p>The issue of public access must also be balanced against the leasee’s rights of “quiet enjoyment”, security issues, health and safety matters and the rights of fee-paying campground users.</p>	That the submitter’s objection relating to restricted public access to the reserve by locals is partially accepted. The provisions of the new lease (clause 25) in attachment 5 will allow for public access to the reserve for picnics, under set conditions and with prior approval of the campground manager during non-peak period.	
1	Council’s commercial investment	Disagreement with Council’s investment of the campground assets.	The business case for this proposal has followed the correct process i.e. approval by the Commercial Subcommittee and then Full Council.	<p>That the submitter’s objection relating to the matter of Council’s investment in the campground assets is not accepted, for the following reasons:</p> <ol style="list-style-type: none"> 1. Commercial methodology that maximizes return to Council; 2. Avoids conflicts of interest where lessee’s own some improvements and Council owns other; 	

Submitter #	Issue	Summary of submission	Staff comment	Staff recommendation	Hearing Panel recommendation to Full Council
				<p>3. Industry best practice for Campground ownership;</p> <p>4. A strategy that has ownership and land and assets held by Council.</p> <p>All have followed correct process of considering options put before Council and following recommendations as contained in Councils Campground Strategy report of November 2014.</p>	
1	Hearing Panel bias and lack of independence	The submitter challenged Council's appointment of Hearing Panel members, raising concerns about bias and a lack of independence.	The Hearing Panel does not have any decision-making powers in this process.	That the submitter's objection relating to the matter of legal bias is not accepted, for the following reasons. The Hearing Panel has no decision-making powers under the Reserves Act 1977. The panel can only make recommendations to Full Council. As the reserve administering body, Council has delegated authority from the Minister of Conservation to decide whether to accept or not accept submissions and whether or not to grant a new lease.	
2, 4	No Reserve Management Plan (RMP)	Concerns about meeting section 54 of the Reserves Act and no RMP.	Section 54(1)(a) of the Reserves Act specifically allows the administering body of a recreation reserve to grant leases for a range of activities including camping grounds. Section 54(2) requires public notification and the calling of submissions on lease proposals (as outlined above).	That the submitter's objection relating to the absence of a Reserve Management Plan is not accepted, as s54 of the Reserves Act and a delegation from the Minister of Conservation enables Council to grant a lease for a campground on a recreation reserve when no management plan exists, providing the correct process (including public	

Submitter #	Issue	Summary of submission	Staff comment	Staff recommendation	Hearing Panel recommendation to Full Council
			Section 54(2A) states that public notification is not required if the proposal conforms with and is contemplated by an approved management plan for the reserve. Given those sections, there is no difficulty with Council granting a lease for a camping ground or holiday park on a reserve where there is no management plan, provided it goes through the public notification process outlined in section 54(2).	consultation on the intention to grant a lease) is followed. Council has followed the correct process.	
2	No consultation with neighbours	Consultation with neighbours was not undertaken for recent developments of a non-conforming shed, new cabins and signage.	The correct process was followed through the appropriate resource and building consents. The comment about “affected” parties refers more to interested parties. The Lessee has gained consent on some matters from affected parties where required by the TRMP.	That the submitter’s objection relating to consultation is not accepted as the correct process through the TRMP consents was followed by Council through its regulatory arm.	
2,3	Lease terms	Commercial terms and length of lease discussed by submitter.	These terms are not able to be submitted on under this process. We have rightly taken external expert advice on these matters in relation to all out campgrounds. Concern expressed about the length of the lease - the	That the submitter’s objection relating to Commercial term is not accepted. Council have used professional and skilled input from Registered valuers assessing the NZ market and providing input into commercial terms which have been the backbone of the negotiations	

Submitter #	Issue	Summary of submission	Staff comment	Staff recommendation	Hearing Panel recommendation to Full Council
			<p>proposed replacement lease is only six years longer than the current lease and the extended term was needed to achieve a better commercial outcome for Council under the asset buyback programme and follows Councils previous policy on commercial campgrounds and industry best practice.</p> <p>This decision was supported by independent external advice to Council.</p>	<p>that have been concluded. Full Council visibility and oversight was conducted.</p>	

3.1 MOTUEKA TOP 10 HOLIDAY PARK RESERVE SUBMISSIONS FOR LEASE**Decision Required**

Report To:	Submissions Hearing
Meeting Date:	18 November 2015
Report Author:	Gene Cooper, Commercial Manager
Report Number:	FN15-11-01

1 Summary

- 1.1 This report summarises and analyses key points and themes covered by submitters to the public consultation on a proposal by Council to grant a lease for the Motueka Top 10 Holiday Park. The process is required by the Reserves Act 1977. The report also provides advice and guidance to the Hearing Panel to assist with its decision.
- 1.2 Council received four submissions. All submitters want to be heard.
- 1.3 The issues that the submitters have raised are summarised as:
 - 1.3.1 Environmental issues/site protection – all four parties commented.
 - 1.3.2 Public access to reserve – two parties have commented.
 - 1.3.3 Traffic, visual – three comments from two parties.
 - 1.3.4 Commercial terms – three parties have commented but these are largely outside the matters that would normally be considered under section 54 of the Reserves Act 1977.
- 1.4 After considering the submissions, staff conclude the impact of the lease extension is minimal. Processes currently exist either through the Tasman Resource Management Plan (TRMP), various management processes or lease terms to address the matters raised, except the environmental issues.
- 1.5 On the environmental matters, the use of this site has continued to change since the 1970s and development of the holiday park has progressed, respecting the environment. The site is enjoyed by thousands of holiday makers to Motueka annually and provides the Motueka community and economy with a significant annual boost. Balance is the key, and protected and non protected trees and shrubs are worked around where possible, as this is important not only to the environment generally but also to the experience the holiday park offers.
- 1.6 There might be other matters raised at the hearing which the panel can consider at the end of the meeting. The panel should keep an open mind on the matters in this report given that it has been provided ahead of the hearing.

2 Draft Resolution

That the Submissions Hearing:

- 1. receives the Motueka Top 10 Holiday Park Reserve Submissions for Lease report (RFN15-11-01); and**
- 2. recommends to Full Council that a lease for 33 years (expiring 30 June 2048) be granted (Part Section 156 Block IV Motueka Survey District, 3.0351 hectares subject to leasehold Computer Interest Register 388487, and registered lease contained in Instrument 7592740.2) to Motueka Top 10 Holiday Park Ltd.**

3 Purpose of the Report

- 3.1 To report on the submissions received for the proposed extension to the lease at Motueka Top 10 Holiday Park, to provide advice to the Hearing Panel on the content of the submissions and to recommend that a lease is granted.

4 Background and Discussion

- 4.1 The current Lessee at the Motueka Top 10 Holiday Park has an existing lease for a term of 33 years from 1 July 2007, expiring 30 June 2040.
- 4.2 During negotiations to buy back assets (implementation of the Council's campground financial strategy), the period of the lease was a key issue and the proposal to extend it had a material impact on the lease price agreed. This is because the purchase price of the assets transferred to Council was discounted for the benefit to the lease of an extension to the lease term.
- 4.3 Agreement between the Council and the Lessee on the asset buy back proposal was reached, subject to a formal notification and approval of the lease extension from 27 to 33 years (expiring 30 June 2048).
- 4.4 The land occupied by the Motueka Top 10 Holiday Park at Fearon's Bush is a Recreation Reserve. The proposed lease renewal is effectively a replacement lease. The Council is required to publicly notify the intention to grant the lease under the Reserves Act 1977. Section 54 (2) of the Act states:
- "Before granting any lease or licence under subsection (1) ... the administering body shall give public notice in accordance with section 119 specifying the lease or licence proposed to be granted, and shall give full consideration in accordance with section 120 to all objections and submissions in relation to the proposal received pursuant to the said section 120.
- 4.5 The holiday park lease proposal was advertised in September 2015 and submissions closed on 12 October 2015. While the Reserves Act does not provide any constraint on what can be commented on by submitters, our public notice suggested that submitters may wish to comment on a range of matters including:
- the benefits and disadvantages of continuing to use the reserve for a commercial camping ground;
 - the length of the proposed lease; any positive or negative impacts on the reserve from the camping ground activity;
 - any positive or negative impacts on recreational and cultural values;
 - and public access.
- 4.6 Four submissions were received and copies are attached.
- 4.7 The submission of David and Ruth Cook was concerned with the issues listed below. Staff have assessed them, discussed impacts and provided a comment to support deliberations.

Issue	Perceived impact	Staff comment
Traffic	Traffic congestion in neighbourhood during summer season.	The site is already used for the holiday park and use can continue for the 27 years remaining under the current lease. The granting of a replacement lease will not in its self directly impact existing traffic levels.
Natural environment destroyed	Overcrowding is destroying the natural environment of the reserve.	The submitter believes campgrounds are not an appropriate use of reserves. The number of sites and users are restricted by campground health regulations. This sets a limit on the numbers during the seasonal peak. Activity and occupancy falls short of 50% on an annualised basis.
Visual	Recent developments of a shed and signage are viewed as “unsightly” and “visual pollution”.	This is a matter that is covered by resource and building consents. Not related to any replacement lease.
Public exclusion	Locals being excluded from the reserve as intended.	Clause 26 of the old lease and clause 25 of the new lease, specifically allow for picnicking access by the public.
Council’s commercial investment	Disagreement with Council’s investment of the campground assets.	The business case for this proposal has followed the correct process i.e. approval by the Commercial Subcommittee and then Full Council.

4.8 The submission of David Ogilvie was concerned with the following issues. Staff have discussed impacts and provided a comment to support deliberations.

Issue	Perceived impact	Staff comment
No Reserve Management Plan (RMP)	Concerns about meeting section 54 of the Reserves Act and no RMP.	Section 54(1)(a) of the Reserves Act specifically allows the administering body of a recreation reserve to grant leases for a range of activities including camping grounds. Section 54(2) requires public notification and the calling of submissions on lease proposals (as outlined above). Section 54(2A) states that public notification is not required if the

		proposal conforms with and is contemplated by an approved management plan for the reserve. Given those sections, there is no difficulty with Council granting a lease for a camping ground or holiday park on a reserve where there is no management plan, provided it goes through the public notification process outlined in section 54(2).
No consultation with neighbours	Consultation with neighbours was not undertaken for recent developments of a non conforming shed, new cabins and signage.	The correct process was followed through the appropriate resource and building consents. The comment about “affected” parties refers more to interested parties. The Lessee has gained consent on some matters from affected parties where required by the TRMP.
Public access	Locals being excluded from the reserve, the playground and swimming pool.	Clause 26 of the old lease and clause 25 of the new lease, specifically allow for picnicking access by the public. Use of facilities is not permitted. If the public approach the operators they would be able to negotiate a suitable cost for use of any of the facilities.
Manage of Forest remnants	Submitter highlights the ecological factors and history of the site. The site contains two varieties of protected tree and a limited volume of native trees and shrubs. Discussion about having a replanting programme and closing off and fencing areas of the reserve for re-vegetation and native bush recovery.	Consents for the recent work at the campground required the protected trees to be worked around. Nelmac arborists have ensured the highest attention to tree health and impacts. The current configuration and remaining remnants discussed have been their current size and condition for 15-20 years. The Commercial Manager has had discussions with the Reserves and Facilities section about a replanting programme – there is no room at the holiday park under its current configuration.
Lease terms	Commercial terms discussed by submitter.	These terms are not able to be submitted on under this process. We have rightly taken external

		expert advice on these matters in relation to all out campgrounds.
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- 4.9 The submission of Elizabeth Bryant was concerned with the following issues. Staff have discussed impacts and provided a comment to support deliberations.

Issue	Perceived impact	Staff comment
Significant Natural Habitat	Concerns about rare and valuable Podocarp Forest remnants and the lack of sustainable management adopted by Council.	Council has an active management process preventing any damage and ensuring good health of the trees on this site. It is a site respected for the co existence of both activities and the Commercial Manager believes the balance which has existed for some time, is correct. Any trees that reach the end of their lives are replaced through replanting, assessed once a year.
Lease terms	The length of the lease is raised as a concern. Full commercial details of the lease were requested, for reasons of commercial sensitivity, a copy of the lease was not provided.	While the submitter has expressed concern about the length of the lease, the proposed replacement lease is only six years longer than the current lease and the extended term was needed to achieve a better commercial outcome for Council under the asset buyback programme. The full commercial details contained in the lease were not provided due to commercial sensitivity. This decision was supported by independent external advice to Council.

- 4.10 The submission of Tony Bryant was concerned with the following issues. Staff have discussed impacts and provided a comment to support deliberations.

Issue	Perceived impact	Staff comment
No Reserve Management Plan (RMP)	Concerns about meeting section 54 of the Reserves Act and no RMP.	Section 54(1)(a) of the Reserves Act specifically allows the administering body of a recreation reserve to grant leases for a range of activities including camping grounds. Section 54(2) requires public notification and the calling of submissions on lease proposals (as outlined above). Section 54(2A) states that public notification is not required if the

		proposal conforms with and is contemplated by an approved management plan for the reserve. Given those sections, there is no difficulty with Council granting a lease for a camping ground or holiday park on a reserve where there is no management plan, provided it goes through the public notification process outlined in section 54(2).
Significant Natural Habitat	Concerns about rare and valuable Podocarp Forest remnants and the lack of sustainable management adopted by Council.	Council has an active management process preventing any damage and ensuring good health of the trees on this site. It is a site respected for the co existence of both activities and the Commercial Manager believes the balance which has existed for some time, is correct. Any trees that reach the end of their lives are replaced through replanting, assessed once a year.

4.11 The operation of the holiday park in its current state has been unchanged for some considerable time and the extension of a 27 year lease to a 33 year lease has minimal, if any, impact on site development not already contemplated or permitted under the current lease

5 Options

- 5.1 Option one - replace the existing lease with a new lease which will take the lease term from 27 to 33 years. This will allow the financial transaction negotiated to be concluded without additional cost to Council. The impact on all parties of any lease extension, given the continuation of many of the existing terms, is minimal. Council has, over many years, been comfortable with the operation of Fearon’s Bush as a holiday park.
- 5.2 Option two – do not replace the existing lease. This action will result in no changes to the current lease provisions and provide the same operating environment for the Lessee. The concerns raised by the submitters will remain. This decision will require an unwinding of commercial negotiations around the holiday park asset buy back programme and result in renegotiations which could have a significant financial cost to the Council. The agreed price of the assets was discounted to recognise the financial gain for the Lessee in having a longer lease term. It was a condition the Lessee attached to all negotiations and therefore the related commercial transaction may have to be completely unwound.

6 Strategy and Risks

- 6.1 This asset buy back proposal and the associated replacement lease are designed to help achieve Council's strategy of making its commercial assets provide a good financial return to the Council and so contribute to reduced rates costs for the Tasman community.
- 6.2 There are commercial risks to not proceeding with the replacement lease proposal, which have been outlined in the previous sections of this report.

7 Policy / Legal Requirements / Plan

- 7.1 The granting of a lease of a Recreation Reserve for a camping ground/holiday park is undertaken pursuant to Section 54(1)(a) of the Reserves Act 1977. Section 54 (2) requires the intention to grant a lease to be publicly notified and for any objectors to be provided the opportunity to present their views at a hearing.
- 7.2 While the Reserves Act does not provide any constraint on what can be commented on by submitters, our public notice suggested that submitters may wish to comment on a range of matters including:
- the benefits and disadvantages of continuing to use the reserve for a commercial camping ground;
 - the length of the proposed lease;
 - any positive or negative impacts on the reserve from the camping ground activity;
 - any positive or negative impacts on recreational and cultural values; and
 - public access.
- 7.3 The required public notification process has now been followed and will be concluded by this hearing, with a recommendation to Full Council on the decision to either replace or not replace the existing lease.
- 7.4 In addition to the Reserves Act requirements, Council has a Reserves General Policies Document which contains matters to be considered when granting leases on reserves. Clause 4.3.2.7 of the Policies states:
- “Where security of tenure is necessary, Council will provide a lease or licence where the activity complies with the Reserves Act and/or other relevant legislation. All applications for leases for long-term exclusive use will be considered in relation to the:
- a) purpose of the reserve;
 - b) preservation of special features;
 - c) leasing powers of the Council;
 - d) retention of an adequate proportion of the reserve as open space or for public access (in general); and
 - e) the requirements of the Reserves Act, reserve management plans, this policy document and relevant statutes.
- 7.5 Consideration of these matters has been undertaken in the preparation of this report.

8 Consideration of Financial or Budgetary Implications

- 8.1 The replacement of the lease has significant financial implications for Council. The replacement of the lease has been a key part of the commercial negotiations around the asset buy back process concluded earlier this year. The Hearing Panel's recommendations in respect of the lease will determine whether the Council needs to renegotiate the financial settlement agreed.

9 Significance and Engagement

- 9.1 The decision to grant a replacement lease is considered to have low significance on the basis it continues the current prescribed activity on this site with little change. The low public interest in this lease proposal, as evidenced by only four submissions being received, would support the view that there is a wider community acceptance of the holiday park activity on this site - conducted since the 1970s and in its current format for the past 15-20 years.
- 9.2 There has been high profile reporting and community knowledge of the Council's campground strategy adopted in November 2014, and resultant asset buy back programme and lease renegotiation. Public interest in the lease extension has been low, based on responses, yet matters of asset disposal (old cabins) has been high – confirming high community knowledge of Motueka holiday park issues.
- 9.3 The current activity matches the proposed activity – the only difference is an extension of lease from 27 to 33 years. Therefore, the long term impact of this decision is relatively minor and only applies for a further six years.
- 9.4 The Motueka Community Board has been briefed and has provided feedback and support for the commercial proposal for the Motueka Top10 Holiday Park. That proposal included the lease extension being considered in this report.
- 9.5 This is not a strategic asset.

10 Conclusion

- 10.1 The four submissions received have raised a number of points not associated with the consulting process as required under section 54 of the Reserves Act 1977. A number of the wider issues raised around the use of the site, could be taken into account when a Reserves Management Plan for campgrounds is prepared. The key matters raised in submissions of relevance for the decision to be made on the lease relate to protecting the natural values (including managing the forest remnants and ecological values) on the site, public access issues, the term of the lease and meeting the requirements of the Reserves Act.
- 10.2 The issues of managing the Podocarp forest and ecological values of the site and of public access are both addressed within the lease providing management and direction for both the Lessee and Council.
- 10.3 The panel must consider the submissions, the corresponding issues raised and subsequently recommend to Full Council to either; replace the existing the lease with a new 33 lease or continue with the status quo lease which has 27 years to run.

11 Next Steps / Timeline

11.1 The recommendation from the Hearing Panel is to be put before Council on 3 December 2015.

12 Attachments

1. David Ogilvie
2. David and Ruth Cook
3. Elizabeth Bryant
4. Tony Bryant

Holiday Park Lease at Fearon's Bush Recreation Reserve

Submission

1. It needs to be noted that neither the existing lease nor a draft of the proposed new lease has been made available to submitters.

This has made comments on some aspects of the lease quite difficult.

2. There is doubt that Section 54 of the 1977 Reserves Act is being complied with, principally because there is no Management Plan for the Fearon's Bush Recreation Reserve in place. Refer also to Section 41 of the Act.

Further, paragraph 16 of the letter from Fletcher Vautier Moore (Lawyers) appears to confirm this. (Letter, 19 September, 2014).

3. In November 2014, the District Council issued a non-notified Resource Consent for a non-conforming Implement Shed, eight information signs, and ten new bedroom units. Near neighbours, as affected persons, were not consulted.

This development is contrary also, to the principles applicable to recreation reserves required by Section 17 of the Reserves Act.

4. A Reserve Management Plan for Fearon's Bush Recreation Reserve publicly notified in accordance with the Reserves Act is an urgent requirement prior to any Lease is granted or any development works occurring.
5. Fearon's Bush Recreation Reserve constitutes one of only three remnants of Te Maatu (Big Bush) which covered the Waimea and Motueka areas pre-European. The other two remnants are Faulkner's Bush in Wakefield and Thorp's Bush in Motueka.

Management of the values of Fearon's Bush as a significant area for indigenous trees is important for the District Council. It is practicable to provide protection for the existing indigenous shrubs and trees, put aside areas within the Reserve for an on-going re-vegetation programme, and allow other parts of the Reserve for a commercial camping ground. (Refer: Motueka Ecological District Report, April 2014).

6. Fencing an area, separate from camping, to manage the native forest habitat and re-vegetation area, would be practical. TDC helped fund the Brooke-Waimarama Sanctuary Fence; a similar fence would be appropriate.
7. Public access to any Recreation Reserve is permitted under the Act. Given the commercial camping ground status it is not unduly restrictive to require public to report to the Camp office. This would pertain particularly for children accessing the playground and swimming pool.

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8. Terms of a proposed new lease:-

- (a) The commercial benefit, enabling the Council to earn greater returns, of a 33 year lease compared with a 27 year lease is not significant.
- (b) Terms of the lease to be reviewed every 5 years.
- (c) The net return to the Council, after all costs, including rates, should be not less than 7.5% of Capital Value.
- (d) Should this net yield be unlikely, TDC could consider leasing the land only and requiring a 6% return, after all costs, on Land Value.

This, simpler lease arrangement has considerable advantages:

- Minimal administration.
- Minimal (possibly no) requirements for the maintenance, upgrade, renewal of improvements.
- No need for debt funding for improvements.
- Not in competition with other tourist accommodation providers; lower risk from competing camps, cabins, motels.
- An assured annual income.

- (e) The level of debt to Capital Value should be no greater than 20%.

9. Summary:

Motueka's natural environment is a major asset. The estuaries, coastline, parks, reserves, the river, trees and garden areas make our town a wonderful place to live.

At times, development choices and human activity put pressure on the ecological health of a region. Alternatively, there are opportunities for improvement in other decisions we make. Recognising the benefits and value of our natural assets is one of those choices.

The future for the Recreation Reserve at Fearon's Bush is a significant choice about to be determined. In commenting on the Lease for a camping ground / tourist accommodation it is timely to ask that this natural habitat of indigenous trees be protected and that adjacent areas be re-vegetated. The natural environment urges protection.

Fearon's Bush Recreation Reserve is a significant ecological area within the Tasman District.

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This submission requests the Council to acknowledge this SEA and to provide a balance within the Lease which will protect the trees, and allow the natural habitat to flourish, as it has for years past.

Name: David Ogilvie
Address: P O Box 184, Motueka 7143
Phone: (03) 528 9883
Email: d.ogilvies@xtra.co.nz

I would like to speak to this submission at a Hearing Panel meeting held for this purpose.

This submission is written as an individual.

We wish to submit the following comments re Fearons Bush Recreation Reserve – Motor Camp Lease.

- With regard to the Reserves Act 1977, Section 17 (1)

It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as recreation reserves, for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

We feel that the construction of accommodation buildings, the construction of a large shed right on the boundary and the felling of two large trees contravenes the Act. The crowding of developments in the reserve is destroying the natural environment of the reserve. The felling of the trees has noticeably diminished the natural beauty of the reserve. The other protected trees are also under threat from intensifying development as currently \$30,000.00 has had to be spent in an attempt to avoid damage to them from the erection of the new buildings.

- The large shed right on the boundary with no set back is an unsightly addition to a residential area with a large blank wall facing houses and road. The normal set back of 1.5m would have allowed screening and softening of the large wall.
- Traffic congestion in Fearon St, Harry Rankin St and The Fearon St – High St corner is already a significant problem to residents in the summer season. Parking congestion on Fearon St is also an issue when conferences are held at the camp. Such a large and growing commercial operation is not compatible with our residential area.
- As things stand locals are excluded from using a local recreational reserve preserved by Edward Fearon and bought by the council for that purpose.
- We note that the Council is proposing to spend around \$1.5 million on buying back improvements. This is a gamble with ratepayers' money that we do not support.
- The visual pollution from the very bright Holiday Park sign affects a number of houses in Fearon St.

In Summary the crowded camp environment is impacting negatively on the reserve, the camping experience and the quiet enjoyment of a residential neighbourhood.

We oppose any extension of the lease term as it will only make the current problems worse.

David and Ruth Cook Monday, 12 October 2015

Motueka Top 10 Holiday Park Leaseinfo@tasman.govt.nz

Mx Elizabeth A. Bryant

49 Motueka Quay, Motueka 7120

03 5285212

tonyandbeth@ihug.co.nz

I wish to speak to my submission

Individual submission

- the benefits and disadvantages of continuing to use the reserve for a commercial camping ground;

Fearons Bush is a Significant Natural Habitat (site no.MO1).

It has a site assessment report- made by Michael North on 10 Dec 2008.

This significant Lowland Podocarp Forest rated in the report as 'rare' and 'representative' in the report.

Sustainable management has not been put in place.Continuing with this campground is too destructive as this type of **podocarp forest** is rare in the district and needs **sustainable** protection.

- the length of the proposed lease; any positive or negative impacts on the reserve from the camping ground activity;

It is impossible to comment on the lease length as in spit of my trying to obtain copies of present and any future lease agreements from council, I have been unable to do so. 'commercial sensitivity' is quoted at me instead!

Fearons Bush is a Significant Natural Landscape.

Recently 'Natural' as well as 'Landscape' values of Fearons have been severely compromised by the destruction of trees and the erection of unsightly buildings. This is not acceptable.

- any positive or negative impacts on recreational and cultural values;and public access.

•

1. Local people should have access to this *Significant Natural Habitat*.
2. Local people should be able to view this *Significant Natural Landscape*. ☹☹
3. Local people should be able to comment on any Resource Consents. Resource consents should be publicly advertised so that locals are able to 'have their say' about their reserve.
4. Local people should be able to Care for this 'rare' and 'representative' *Significant Natural Habitat* and *Significant Natural Landscape* as recommended in *Native Habitats Tasman Report MOI*

At present, none of the above is possible as the Natural and Landscape values of Fearons Bush are being taken away from local people and at the same time are being sorely devalued.

Thankyou for taking the time to read my submission.

Beth Bryant.

Submission on Motueka Top Ten Lease 2015

From Tony Bryant
49 Motueka Quay, Motueka
O3 5285212
ttonyandbeth@ihug.co.nz

Yes I would like to speak to my submission at a Hearing Panel meeting held at Richmond for this purpose.

I am writing this on my behalf but have been approached by a number of concerned Motueka residents

Comments

The Motueka Top 10 Holiday Camp occupies the whole of Fearon Bush Recreation Reserve.

There appears to be no **Management Plan** for this reserve and the reserve does not exist in TDC reserves lists

A Native Habits Tasman Site Report (Site No MO 1) was prepared in 2008 by Michael North, for the TDC.

Current building activities at Fearon Bush, Resource Consent RM141101, break many important parts of TDC's Reserves Policies, the Reserves Act 1977 and the Resource Management Act etc

It is very difficult to make comments on the existing or proposed leases because the only information I been able to get access to about the leases is that given in the Public Notices of the TDC. Fearon Bush Reserve should be managed in a sustainable manner. For example, the **Significant Natural Areas** parts of the reserve should be fenced off so that regeneration can occur and the roots of the white pine trees protected. Eco sourced planting could help this process (see Michael North's MO 1 Report). In RM 141101 building plus road access has been allowed in a Significant **Natural Area**. This is a real **No No**. From various TDC Committee Minutes it seems that the TDC intends to purchase the buildings and drive its own heavy vehicles over the roots of a white pine tree on the new implement sheds. The TDC in its Reserves is supposed to be setting an example to the Community as far as sustainability etc.

The public should have access to their reserve and the public need to no what their rights are in connection with Fearon Bush Reserve.

Because Fearon Bush contains such an important remnant of low land forest it would be best if the Holiday was moved to another area so Fearon Bush could be managed in a manner that was appropriate to the twenty first century.



MINUTES
of the
SUBMISSIONS HEARING MEETING
held
2.00 pm, Wednesday, 18 November 2015
at
Tasman Council Chamber, 189 Queen Street, Richmond

Present: Councillors T B King (Chair, B F Dowler, P L Canton.

In Attendance: Commercial Officer (G Cooper), Administration Officer – Commercial (R Marshall)

1 OPENING, WELCOME

2 HEARING OF SUBMISSIONS

2.1 David and Ruth Cook

Mr & Mrs Cook do not agree with the Council running a commercial operation on the reserve. They do not want the buyback to go ahead. Mrs Cook does not believe the way the camp is being run complies with the Reserves Act and asked if advice had been sought on that matter.

Cr King replied that it had been.

In answer to a question from the Panel, Mr Cook replied that it is no longer a campground, but a conference centre on a reserve and in a residential area. He doesn't feel welcome as a visitor or picnicker.

It was explained to Mr Cook that the existing lease still has 27 years to run and he was asked if the new lease was declined would he be happy with the 27 year lease. Mr Cook replied he was not happy with it. He referred to the buyback and considered it was more commercial than it should be. He didn't believe a conference centre should be in the campground. He referred to section 17 of the Reserves Act regarding open spaces. Mrs Cook was horrified by the shed on the boundary.

2.2 Tony Bryant

Mr Bryant believes a reserves management plan should be in place for every reserve. He is concerned about the trees in the area which are not sustainably managed. He considered the public notice for the Motueka Top 10 lease should have been Fearon's Bush lease as Council does not own the Top 10 franchise.

In answer to a question Mr Bryant should a reserve management plan should have come before the lease and the trees should be looked after.

Mr Bryant said that he had been asked by the manager to leave the campground some weeks ago.

2.3 David Ogilvie

Mr Ogilvie expected independent commissioners rather than Councillors to be on this panel as this is Council decided on Council-owned land. He said no lease details were made available to the submitters and considered that Council should take legal advice before continuing the hearing. He asked for Council to make the leases available to the public.

Cr King advised he was happy to continue with the hearing as the submitters have spoken and undertook to confirm the legalities.

Mr Ogilvie advised that Council had received a letter from Fletcher Vautier Moore which said Feaeron's Bush needed a reserve management plan prior to a lease being entered into. He said the letter went to full Council last year and feels the advice was ignored.

Mr Ogilvie said that no neighbours were consulted on the campground extension and it was a non-notified consent. He referred to the Motueka Ecological Report of April 2014 and asked the Panel to read it before making a decision.

In answer to a question Mr Ogilvie considered the lease extension is not a concern compared to other issues. He said members of the public should have access to a local public pool, with just a notification to the campground. He said there should not be a sign saying "no public access".

2.4 Tony Bryant (on behalf of Beth Bryant)

Mr Bryant read Beth's submission. Mrs Bryant is concerned that traffic passes too close to the trees which causes vibration and compaction which is not good for the trees.

Cr King thanked the submitters for attending the hearing and advised that the panel would look into the legal issues, deliberate and report to a Full Council meeting.

The meeting concluded at 3.45 pm.

Date Confirmed:

Chair:

DEED OF LEASE

TASMAN DISTRICT COUNCIL

("Lessor")

and

SJE HOLDINGS LIMITED

("Lessee")

(MOTUEKA TOP 10 HOLIDAY PARK)

ANNEXURE SCHEDULE

The Lessor and Lessee covenant as follows:

1. Interpretation

1.1. In this Lease the following terms will have the following meanings:

'Annual Maintenance Plan' means the plan provided by the Lessee to the Lessor pursuant to clause 7.2 of this Lease on or before 1 July in each year during the term, such plan to itemise each individual Building and Improvement item (including the pool and spa), to identify when it was last maintained and the scheduled future maintenance work (including anticipated cost), such plan to be approved in writing by the Lessor.

'Buildings and Improvements' means all buildings and improvements on the Land and includes buildings and improvements constructed during the term of this Lease.

'Commencement Date' means the date provided in the First Schedule as the Commencement Date.

'Exterior of the buildings on the Land' includes the roof of buildings on the Land.

'Expiry Date' means the date provided in the First Schedule as the Expiry Date.

'Goods and Services Tax' means all that tax from time to time payable under the Goods and Services Tax Act 1985 and its amendments or any legislation enacted in substitution thereof.

'Gross Revenue' means the entire gross receipts from accommodation revenue on the Land including, but without limitation, revenue from camp-sites, caravan sites, caravan storage, standard cabins, tourist cabins, tourist flats and motel units and the entire gross receipts from revenue from the conference centre exclusive of Goods and Services Tax. Gross Revenue shall not include payments received by the Lessee by way of commission and receipts from coin-operated chattels and otherwise derived by the Lessee's operation of its business conducted on the Land.

'Land' means the land described in the First Schedule and includes the Lessor's improvements fittings and fixtures on and under the Land (including underground services).

'Lease' means this Lease and includes any schedules to this Lease and any variations of this Lease agreed by the parties in writing.

'Lease Quarter' means each three month period ending on 30 September, 31 December, 31 March and 30 June in each Lease Year.

'Lease Year' means the period 1 July in one year to 30 June the following year.

'Lessee' means SJE Holdings Limited and includes the Lessee's executors, administrators, successors and permitted assigns.

'Lessor' means the Tasman District Council and includes the Lessor's successors and assigns.

'Minister' means the Minister of the Crown for the time being responsible for the administration of the Reserves Act 1977, and includes any person to whom the Minister has delegated his or her powers under the Reserves Act 1977.

'Parties' means the Lessor and the Lessee and 'Party' shall mean either of them.

'Payment Due Dates' means 20 November, 20 February, 20 May and 20 August in each Lease Year.

'Permitted Use' means the Permitted Use described in the First Schedule.

'Person' includes a natural person and a partnership, body or person, firm, company or organisation whether corporate or not.

'Persons under the control of the Lessee' includes all employees, agents, contractors, customers and other invitees of the Lessee.

'Working Day' means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's Anniversary Day and Nelson Anniversary Day; and
- (b) A day in the period commencing with the 24th day of December in any year and ending with the 5th day of January in the following year.

1.2. In this Lease:

- (a) where words appear in this Lease and also in the First Schedule then the words shall mean and include the details provided after those words in the First Schedule;
- (b) words importing the singular shall include the plural and vice versa, and words importing the masculine, feminine or neuter shall include all three;
- (c) any schedules to this Lease shall have the same effect as if set out in the body of this Lease;
- (d) clause headings are inserted for reference only and shall not affect the interpretation of this Lease; (e) to 'perform' a covenant includes to keep, observe and fulfil that covenant;
- (e) words and expressions defined are indicated by capital letters for convenience. The absence of a capital letter shall not alone imply that the word or expression is used with a different meaning from that given by its definition;
- (f) references in this Lease to 'month' or 'monthly' shall mean calendar month and calendar monthly respectively;
- (g) references to statutes, ordinances, regulations, rules, codes, orders in council, bylaws of central or local government, or provisions thereof, includes that legislation or provisions as from time to time amended or re-enacted and any legislation or provisions in substitution thereof.

2. Conditions and Covenant to Lease

2.1 This Lease is subject to and conditional upon:

- The signing of an Agreement for Sale and Purchase of Assets between the Lessor as Purchaser and the Lessee as Vendor for the buildings and improvements on the Land as annexed hereto and marked "A"; and
- The signing of a Surrender of Lease 7592740.2 between the Lessor and Lessee for the Land herein.

2.2 Upon satisfaction of the conditions in clauses 2.1(a) and (b) of this Lease, the Lessor leases to the Lessee and the Lessee takes on lease the Land upon the terms and conditions of this Lease.

2.3 The Lessee, in carrying on its business on the Land, shall enable the public to obtain the benefit and enjoyment of the Land as public reserve and recreation ground.

2.4 This lease is issued pursuant to section 54 of the Reserves Act 1977.

3. Term

3.1 The term of this Lease shall commence on the Commencement Date described in the First Schedule and, subject to earlier termination in accordance with this Lease, shall be for the term described in the First Schedule.

3.2 If the Lessee, with the written consent of the Lessor, continues to occupy the Land beyond the expiry of this Lease the Lessee shall do so as a monthly tenant determinable by one month's notice in writing given at any time by either party to the other and otherwise on the same terms and conditions as are contained in this Lease.

4. Rent

- 4.1 Subject to the ratchet clause contained in clause 4.6, the Lessee shall pay annual rental to the Lessor on the Payment Due Dates at the rate and in the manner provided in the First Schedule.
- 4.2 The Lessee shall also pay the outgoings described in the First Schedule. If any such outgoings are not separately assessed or levied in respect of the Land then the Lessee shall pay such fair proportion thereof as shall be agreed upon or failing agreement, determined by arbitration.
- 4.3 Rental and other monies payable by the Lessee under this Lease shall be paid without deduction or set off.
- 4.4 The Lessee shall pay to the Lessor, or as the Lessor shall direct, the Goods and Services Tax payable by the Lessor in respect of the rental and other money payable by the Lessee hereunder. The tax in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 4.5 If the Lessee shall default in payment of rental or other monies payable hereunder and the Lessor becomes liable to pay additional Goods and Services Tax, penalty, or other sum as a result of the default, then the Lessee shall on demand pay to the Lessor the additional amount.



5. Permitted Use
 - 5.1 The Lessee shall use the Land solely for the purposes of the Permitted Use provided in the First Schedule.
 - 5.2 If at any time the Lessor is of the opinion that the Land is not being used or is not being sufficiently used for the purposes of the Permitted Use the Lessor, after making such enquiries as the Lessor thinks fit and giving the Lessee an opportunity of explaining the usage of the Land and remedying the breach of this subclause, may terminate this Lease by notice in writing and, if required by law, on such terms (if any) as the Minister may require, without prejudice to the rights and remedies of the Lessor for any antecedent breach by the Lessee of the provisions of this Lease.
 - 5.3 The Lessee shall keep the Land open, used and occupied as a camping ground at all times during the term of this Lease.
6. Assignment
 - 6.1 The Lessee shall not assign, mortgage, grant a licence to occupy, charge or part with possession of the Land or any part of the Land or this Lease or any estate or interest of this Lease to any Person for the period of five years after the Commencement Date.
 - 6.2 The Lessee shall not assign, mortgage, grant a licence to occupy, charge or part with possession of the Land or any part of the Land or this Lease or any estate or interest of this Lease to any Person at any time after 1 July 2020 without the prior written consent of the Lessor which shall not be unreasonably

withheld to an assignment to a respectable responsible solvent and suitable assignee ('the Transferee'). Before giving consent and

as a condition precedent the Lessor may require performance and satisfaction of the following conditions:

- The Lessee shall demonstrate to the satisfaction of the Lessor that the proposed Transferee is responsible, of sound financial standing and intends to use the Land for the Permitted Use;
 - The Lessee shall procure the proposed Transferee to submit to the Lessor the names of two referees and details of the proposed Transferee's resources and previous work experience including experience in operating a camping ground, and the proposed Transferee's plans and intentions for Motueka Top 10 Holiday Park;
 - All rental and other moneys payable by the Lessee under this Lease, up to the date of the proposed assignment, have been paid;
 - There is not any existing unremedied breach of any of the terms of this Lease;
 - In the case of an assignment, the execution by the Transferee of a covenant with the Lessor, in a form acceptable to the Lessor, that the Transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease;
- (f) All costs incurred by the Lessor (whether or not the proposed assignment proceeds to completion) have been paid by the Lessee;
- (g) In the case of an assignment where the proposed Transferee is a company, the Lessor may require the directors and the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease, such guarantee to be in a form acceptable to the Lessor and the costs incurred by the Lessor in the preparation, negotiation, execution and perusal of such guarantee shall be paid by the Lessee;
- (h) The consent of the Minister, if the Lessor at its sole discretion considers the Minister's consent is required.

6.3.

- (a) For the purposes of clause 6.2, if the Lessee is a company, any change in the shareholding of the Lessee or any alteration of its constitution altering the effective management or control of the Lessee, shall be an assignment of this Lease requiring the consent of the Lessor.
- (b) For the purposes of clause 6.2, if the Lessee is an incorporated society, any change of the membership of the society or of the rules of the society having the effect of altering the effective management or control of the Lessee shall be an assignment of this Lease requiring the consent of the Lessor PROVIDED THAT nothing in this subclause shall apply to a change of officers of the Lessee where such change is the result of an election held in accordance with the rules of the Lessee.

6.4. Any assignment or underletting of the interest of the Lessee within the meaning of section 227(1)(b) of the Property Law Act 2007 shall be a breach of the provisions of clause 6.2.

6.5. The Lessee shall not sublet all or any part of the Land without the prior written consent of the Lessor. Consent may be given at the discretion of the Lessor and on such conditions as it thinks fit to a sublease of part of the Land for the Permitted Use. However, the Lessor is under no obligation to give its consent under this clause and may refuse consent without giving reasons.

6.6. The obligations of the Assignor following an assignment of this Lease completed in accordance with clause 6.2 shall continue to remain in force for a period of 2 years from the Assignor's assignment of its obligations under this Lease provided that such assignment is carried out in accordance with the terms and provisions of clause 6.2.

7. Lessees' Obligations

- 7.1 The Lessee shall throughout the term of this Lease and at the Lessee's expense, keep and maintain the interior and Exterior of the Buildings and Improvements on the Land in clean and good order, repair and condition and at the expiry or termination of this Lease shall yield up the Lessor's fixtures and fittings in clean and good order, repair and condition.
- 7.2 The Lessee shall submit an Annual Maintenance Plan to the Lessor on or before 1 July in each year of the term. Without limiting the Lessee's obligations under this Lease, express or implied, the Lessee shall punctually, at the Lessee's expense:
- Ensure that waste is placed in suitable receptacles, all rubbish receptacles are emptied at least once every 24 hours, and all rubbish and waste is removed from the Land;
 - Make good any damage to any part of the Buildings and Improvements on the Land;
 - Replace all broken glass in Buildings and Improvements on the Land;
 - Replace all damaged or non-operative light bulbs, tubes and fittings within Buildings and Improvements on the Land;
 - Take any steps necessary to control any pest infestation occurring in or emanating from within the Land and shall keep the Land free from rabbits
 - Repair or, where the Lessor considers it appropriate, replace heating, lighting, electrical, or plumbing fittings installed in Buildings and Improvements on the Land which become broken or damaged;
- (g) Keep unobstructed and in good order, repair and condition all storm water drains serving all Buildings and Improvements for the time being erected upon the Land and any connections from such drains to public drains;
- (h) Wash the paintwork on the Exterior of the Buildings and Improvements on the Land at least annually, paint the interior of all Buildings and Improvements on the Land every five years during the term, paint the Exterior of the Buildings and Improvements on the Land every seven years during the term and keep and maintain all paintwork in good, clean order and condition;
- (i) Comply with any notices or orders which may be given by any competent authority in respect of the Land or its use by the Lessee and shall keep the Lessor indemnified in respect of all such matters;
- (j) Prevent the growth or spread of gorse, broom, sweetbriar and other noxious weeds or plants upon the Land;
- (k) Keep all Buildings and Improvements on the Land secure;
- (l) Faithfully observe all fire restrictions imposed by competent authorities in the area surrounding the Land and not burn on the Land without the Lessor's consent in writing being first obtained;
- (m) Keep any grass on the Land regularly mowed and the grounds in a tidy condition in accordance with the Second Schedule;
- (n) Keep unobstructed all creeks, drains, ditches, and watercourses upon the Land;
- (o) Keep all sewer drains and toilets servicing Buildings and Improvements on the Land clear and unblocked and in good working order and condition having regard to their condition at the commencement of this Lease;
- (p) Clean all Buildings and Improvements spouting when the same is reasonably required and in any event at least once every six months;
- (q) Ensure the toilets are well stocked with supplies of toilet rolls soap and rubbish receptacles;
- (r) Keep gates, driveways, car parks and paving in good condition;
- (s) Ensure that any graffiti is promptly removed from the Land, Buildings and Improvements;

- (t) Carry out the day to day monitoring of the hot water boiler system, and the water supply and treatment system and ensure that such machinery is maintained to full operational capacity and that adequate supplies are available for servicing needs; (u) Keep all fences in good condition and repair;
- (v) Subject to the Second Schedule to this Lease, keep all gardens, plant beds, nurseries and shrubberies on the Land properly cultivated, planted, stocked, manured, and in a neat and tidy condition;
- (w) Excluding protected trees contained in the Tasman Resource Management Plan Section 16.13 (Historic Heritage), keep well pruned and trained all plants, trees, bushes, vines and shrubs on the Land, and in respect of such plants and trees of which notice in writing is given by the Lessor to the Lessee, pruning and training shall only be performed by a qualified arborist approved by the Lessor;
- (x) Keep any of the Lessor's plant or machinery, located on and exclusively servicing the Land, maintained, serviced and in good repair and condition and shall at the Lessee's expense effect and maintain maintenance, service and repair contracts reasonably required by the Lessor for that purpose with contractors approved by the Lessor;
- (y) Keep all floor coverings in Buildings and Improvements on the Land clean and replace all worn or damaged floor coverings with floor coverings of a similar quality;
- (z) Keep the roof and external walls of all Buildings and Improvements on the Land, including external doors and windows, in a waterproof condition;
- (aa) Keep and maintain in a clean and tidy condition all plant, materials, machinery, and other chattels owned or used by the Lessee and situated on the Land;
- (bb) Carry out daily checks to ensure the safety of all playground equipment on the Land; and
- (cc) Complete all necessary pool and spa maintenance to maintain a safe and sanitary pool and spa, including but not limited to, carrying out daily cleaning of the pool and spa, cleaning filters between 3 and 5 times per day, daily hosing of pool and spa paths and shower, checking and recording chlorinator and chemicals for the pool and spa three times each day, checking fences, gates and slide daily, checking water heaters daily, inspecting hydrazzo, tiles and pavers weekly, draining the pool and water blasting yearly (checking all hydrazzo, silicones, drains and valves) and replacing sand in filters every two years.

7.3 The Lessee shall:

- Not plant any tree or shrub on the Land without the prior written consent of the Lessor; such consent not to be unreasonably withheld; and
- Not cut down, damage, remove or in any way interfere with any protected tree or trees on the Land contained in the Tasman Resource Management Plan Section 16.13 (Historic Heritage), any such protected tree activity being the responsibility of the Lessor at its cost.

7.4 The Lessee shall:

- Be responsible for the removal of all waste from the Land; and
- Ensure that rubbish receptacles do not exceed their capacity at any time and ensure that areas adjacent to rubbish receptacles are not contaminated with rubbish; and
- Ensure that rubbish, litter or hazardous waste is not allowed to become unsightly, offensive or a health hazard and that any rubbish awaiting collection is stored in containers; and
- Keep all rubbish receptacles washed, cleaned and disinfected; and

- Report illegal dumping of rubbish on the Land by any person to the Council's litter control officer; and
- (f) Remove offensive and/or dangerous waste from the Land within 24 hours and remove all other waste from the Land within 10 days.

7.5.

- (a) The Lessee shall not use or install in Buildings and Improvements on the Land internal partitions other than of a standard, type, quality and size approved by the Lessor in writing.
- (b) The Lessee will not bring upon the land any plant, machinery or other equipment which:
 - (i) is not reasonably necessary or proper for the conduct of the Lessees' use of the Land; or
 - (ii) is of a weight, nature or size as to cause or be likely to cause any structural or other damage to or to exceed the designed loadings of the floors, walls or any other parts of Buildings or Improvements on the Land.

The Lessee shall not erect any building or make any alterations or additions to the Buildings or Improvements on the Land. The Lessee shall not remove all or any part of the Buildings or Improvements on the Land nor install or alter any partitioning or install, alter or interfere with any equipment, fitting or fixture, including the heating, ventilating or other system servicing or relating to Buildings or Improvements on the Land.

7.6. The Lessee shall redecorate Buildings and Improvements on the Land once every five years from the Commencement Date. For the purposes of this clause 'redecorate' shall include:

- (a) the cleaning down of the whole of the interior and exterior of the Buildings and Improvements on the Land; and
- (b) the treatment of all internal and external surfaces by painting, papering, staining and polishing; and
- (c) the renewal, replacement or repair of the whole or any part of the floor coverings and window dressings;

or otherwise as reasonably required by the Lessor having regard to the condition the Buildings and Improvements on the Land were in at the Commencement Date.

7.7. Nothing in this Lease shall be deemed to amount to a consent, approval or permission by the Lessor in its capacity as a consent authority or other similar capacity under the Resource Management Act 1991, Building Act 2004, Sale and Supply of Alcohol Act 2012 or any other Act, Regulation or by-law which relates to the Land or the use of the Land, or a representation or warranty that any consent, approval or permission shall issue. It is the sole responsibility of the Lessee to satisfy itself as to the requirements of the local authority's Resource Management Plan and to obtain any necessary consents, approvals and permits in respect of the Lessee's use of the Land.

7.8. The Lessee shall immediately give notice to the Lessor of:

- (a) Any injury to persons or damage to property on the Land, or as a result of the Lessee's activities on the Land; and
- (b) Any circumstances occurring within the Land likely to cause injury to persons or damage to property.

7.9. The Lessee shall not during the currency of this Lease call upon the Lessor to erect or repair or contribute towards the cost of erection or repair of any dividing fence or boundary wall between the Land and any adjoining land for the time being vested in the Lessor.

7.10. If the Lessor is obliged, as a result of any legislative change at any time during the term of the Lease, to expend any moneys on any improvement, alteration or addition to the Land the Lessee shall reimburse the Lessor the costs incurred by the Lessor in complying with such legislative change.

7.1.1 The Lessee shall, each year during the term, spend 1% of the Lessee's annual Gross Revenue on advertising and promotion of the Motueka Top 10 Holiday Park. The Lessee shall, if required by the Lessor, produce such documentation as the Lessor may reasonably require to evidence compliance with the Lessee's obligations under this clause 7.11.

7.1.2. The Lessee shall keep and maintain all records that are required to be kept under the Camping Ground Regulations 1985.

7.1.3. The Lessee shall at all times during the term of this Lease hold a current certificate of registration in respect of the Land under the Health (Registration of Premises) Regulations 1966.

8. Insurance and indemnity

8.1 The Lessor shall insure and keep insured the Lessor's buildings, improvements, fixtures and fittings under a full replacement and reinstatement policy against loss, damage or destruction by fire and such other risks as the Lessor may reasonably determine and such cover may extend to:

- a 12 month indemnity in respect of the consequential loss of rent and outgoings;
- loss, damage or destruction of windows and other glass, and of the Lessor's buildings, improvements, fixtures, fittings and chattels; and
- adequate public risk cover.

The Lessee shall, as part of the outgoings payable under this Lease, reimburse the Lessor for the cost of premiums paid by the Lessor to effect insurance under this clause. The Lessee shall submit to the Lessor the name of the Lessee's insurer with a view to the Lessor making an election as to whether or not to insure the Lessor's buildings, improvements, fixtures, fittings or chattels with the insurer proposed by the Lessee.

8.2 The Lessee shall not, and covenants that Persons under the control of the Lessee shall not, do anything upon the Land whereby any insurance effected by the Lessor may be rendered void or voidable or (except with the Lessor's prior written approval) whereby the premium payable in respect of insurance effected by the Lessor shall be liable to increase. The Lessee shall upon demand pay all extra premiums payable as a result of any breach of this clause.

8.3 The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the full extent permitted by law the Lessor, its employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident,

damage or injury occurring to any person or property on or about the Land.

8.4 To the extent permitted by law, the Lessee shall indemnify and keep the Lessor indemnified against all liability, claims, actions, losses, damages, fines, penalties, costs (including legal costs on a solicitor/client basis) and expenses of any nature which the Lessor may suffer or incur or for which the Lessor may become liable directly or indirectly as a result of:

- Any act or omission of the Lessee, or Persons under the control of the Lessee;
- Loss of, or damage to, property or injury to any person arising from any occurrence on or near the Land wholly or in part by reason of any act or omission by the Lessee, or Persons under the control of the Lessee;
- Loss of, or damage to, property or injury to any person from any cause whatsoever caused by the use of the Land by the Lessee, or Persons under the control of the Lessee;
- Loss of, or damage to, property, or injury to any person caused by the condition of the Land such as may be attributable to the Lessee;
- Any injury to any person as a result of the failure by the Lessee to comply with its obligations under clause 18.2 of this Lease.

The Lessee shall be liable to indemnify pursuant to this clause 8.4 only to the extent that the Lessor is not fully indemnified under any policy of insurance.

- 8.5 The Lessee, at the Lessee's expense, shall effect and keep current in respect of the Land and the Lessee's use of the Land a policy of public liability insurance for an amount not less than that provided in the First Schedule, or such other amount from time to time reasonably required by the Lessor, for any one event, or series of events, with a substantial reputable insurance office or company first approved in writing by the Lessor (such approval not to be unreasonably or arbitrarily withheld).
- 8.6 Subject to clause 8.7, in the event of the Lessor's Buildings and Improvements upon the Land or any part thereof being damaged or partially destroyed by fire, tempest, earthquake, act of God or by any other cause but not so that the same may be repaired or reinstated without having to wholly rebuild, and if the policy or policies of insurance effected by the Lessor on the said Buildings and Improvements shall not have been vitiated or payment of the policy monies refused in consequence of some act, omission or default of the Lessee or Persons under the control of the Lessee, the Lessor shall repair and reinstate the said Buildings and Improvements (but so that the Lessor shall not be bound to expend on the said repair and reinstatement a greater sum than the insurance monies received by the Lessor under any policy or policies in respect of such loss or damage) and PROVIDED THAT if the Lessee shall not have committed any breach of the provisions of this Lease, a fair and just proportion of the rent, according to the damage sustained to the said Buildings and Improvements and the extent to which the said Buildings and Improvements may be rendered unfit for use by the Lessee shall, as from the date of such damage or destruction, be suspended until the said Buildings and Improvements shall have been repaired and reinstated and if any question shall arise as to whether by reason of any destruction or damage the said term shall be deemed to have ceased and determined or what proportion of rent ought to be suspended or for how long on account of such destruction or damage then such dispute shall be referred to arbitration.
- 8.7 If the Lessor's Buildings and Improvements during the term of this Lease are totally destroyed by fire, storm, earthquake, act of God or by any other cause or are so damaged thereby as to be rendered totally untenable or unfit for use and the insurance monies (if any) received under any policy or policies of insurance shall not be sufficient to meet the costs of such repairs and reinstatement, or if by law the same cannot be repaired or reinstated then, and in either one of such cases, the term hereby created shall forthwith cease and determine without compensation by the Lessor but without releasing the Lessee from liability for rent then due or in respect of the breach or non-observance or non-performance of any covenant, condition or agreement herein contained or implied.
- 8.8 If there is an emergency and the Lessee is unable to gain access to the Land to carry on the Permitted Use from the Land because of a prohibited or restricted access cordon applying to the Land, or a prohibition or restriction on using the Land imposed by any competent authority, then a fair proportion of rent and outgoings shall cease to be payable commencing on the date the Lessee becomes unable to access the Land to carry on the Permitted Use until the date the Lessee is able to access the Land to carry on the Permitted Use. If this clause 8.8 applies and the Lessee is unable to gain access to the Land to carry on the Permitted Use for a period of 9 months then either party may terminate this Lease by notice in writing to the other without prejudice to the rights and remedies of either party against the other for any prior breach of this Lease.

9. Use of Property

9.1 The Lessee shall not:

- Store or use any flammable, dangerous or hazardous substances upon the Land except such substances (if any) that are reasonably required to carry out the Permitted Use;
- Do or permit to be done on the Land anything which in the opinion of the Lessor may become a nuisance, disturbance or obstruction or cause damage whether to the Lessor or to users of the Land, or the Land, or to neighbouring owners or occupiers, nor do or suffer, permit or allow to be done any act, matter or thing which shall annoy or disturb or in any way interfere with the quiet enjoyment of the Lessor or the occupiers of any lands adjoining the Land;

- Place, or permit to be placed, on any part of the Land any television or radio antenna, dish aerial, sign, advertisement, name or notice, without the prior written consent of the Lessor;
- Carry on or permit or suffer or allow to be carried on upon the Land any noisy, noxious or offensive activity, trade or business.

9.2 On the expiry or prior termination of this Lease the Lessee shall, at its own cost, remove all advertising and notices that the Lessor requires the Lessee to remove.

10. Entry by Lessor

10.1 The Lessor and its employees, contractors, agents and invitees may enter upon the Land with any tools, implements, machinery, vehicles or equipment of whatsoever nature necessary for the purpose, at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) To view the state of the Land and the condition thereof and of the Buildings and Improvements thereon;
- (b) To carry out repairs or other works on the Land;
- (c) To lay, construct, inspect, clean, repair, maintain and renew public works including, but without limitation, stormwater, sewage and other drainage systems, and systems supplying water, telephone and electricity;
- (d) For the purpose of complying with any legislation;
- (e) To check the Lessee's compliance with the terms and conditions of this Lease.

10.2. The Lessor may elect at any time without notice to remedy any default by the Lessee under this Lease and whenever the Lessor so elects all costs and expenses incurred by the Lessor (including legal costs and expenses) in remedying such default shall be paid by the Lessee to the Lessor immediately on demand.

10.3. The Lessor shall permit the Lessor to come on to the Land at all reasonable times within the period of six months preceding the expiry of this Lease for the purpose of showing the Land to prospective lessees.

11. Default by Lessee

11.1 If at any time:

- (a) The rental or any part of the rental payable by the Lessee pursuant to this Lease shall be in arrears and unpaid for the space of 14 days after any of the days appointed for payment of the rental (whether it has been demanded or not); or
- (b) The Lessor gives notice to the Lessee in writing specifying any breach of one or more of the covenants in this Lease which breach remains unremedied 7 days after giving the notice; or
- (c) Repairs required by any notice given by the Lessor under this Lease are not duly commenced within 14 days of such notice having been given or if having been commenced are not diligently prosecuted and completed; or
- (d) The Lessee (if an individual) shall be declared bankrupt or insolvent according to law; or
- (e) Any assignment shall be made of the Lessee's property for the benefit of the Lessee's creditors or if the Lessee shall compound with the Lessee's creditors; or
- (f) The interests of the Lessee in or under this Lease or in the Land shall be attached or taken in execution or under any legal process; or
- (g) The Lessee (if it is a company or incorporated society) shall have a resolution passed or an order made by a court, for the liquidation of the Lessee (except for the purposes of a reconstruction

of the Lessee approved by the Lessor) or if the Lessee is placed in receivership or under official or statutory management; the Lessor may:

- (h) Immediately or at any time subsequently and without any notice or demand re-enter (forcibly if necessary) the Land or any part of the Land; and
- (i) By such action determine the Lessee's estate and interest in the Land; and
- (j) Expel and remove the Lessee and the effects of the Lessee and those claiming under the Lessee without being guilty of any manner of trespass or conversion; and

Upon such event this Lease shall cease and determine but without releasing the Lessee from liability in respect of any breach of any express or implied covenant.

11.2.

- (a) Any breach of the following covenants by the Lessee shall be a breach of an essential term of this Lease:
 - (i) the covenant to pay rental and other moneys due to the Lessor throughout the term;
 - (ii) the covenants dealing with assignments, subletting and parting with possession (6.1-6.6);
 - (iii) the covenants dealing with Lessee's obligations (7.1-7.13);
 - (iv) the covenants dealing with the use of the Land (5.1-5.3 and 9.1-9.2).
- (b) The Lessee shall compensate the Lessor for any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including the right to terminate this Lease).
- (c) In respect of the obligation referred to in clause 1 1.2(a)(i) acceptance by the Lessor of arrears or of any late payment of rental shall not be a waiver of the essentiality of the Lessee's obligation to pay rental in respect of those arrears or late payment or the Lessee's continuing obligation to pay rental throughout the term of this Lease.

11.3.

- (a) In the event the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease, or of the Lessee's obligations under this Lease, or constitutes a breach of this Lease, the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.
- (b) The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the term of this Lease.
- (c) The Lessor's entitlement to recover damages shall not be affected or limited by any of the following:
 - (i) the Lessee abandons or vacates the Land; or
 - (ii) the Lessor elects to re-enter or to terminate the Lease;
 - (iii) the Lessor accepts the Lessee's repudiation;
 - (iv) the parties' conduct constitutes a surrender by operation of law.
- (d) The Lessor shall be entitled to recover damages against the Lessee in respect of the entire term including the periods before and after the Lessee has vacated the Land.

11.4. Removal of Lessee's chattels

Upon the expiration or earlier determination of this Lease, the Lessor may remove from the Land any chattels in the possession of the Lessee or any Person under the control of the Lessee and place them outside the Land without being responsible or liable for any resultant loss or damage.

11.5 Default Interest

Upon default by the Lessee in payment of rent, or other monies payable under this Lease, the Lessor may charge default interest, as described in the First Schedule, on such money due and owing from the due date for payment to the date of full repayment.

12. Quiet Enjoyment

12.1 The Lessee paying the rent hereby reserved and observing and performing the Lessee's obligations under this Lease shall peaceably possess and enjoy the Land without any undue interruption or disturbance from the Lessor.

13. Lessee to pay Lessor's Costs

13.1 In addition to the rental and other monies reserved by this Lease the Lessee shall pay:

- (a) the Lessor's legal costs and disbursements of and incidental to any variation of this Lease and the Lessor's costs in obtaining any consents or approvals associated with this Lease; and
- (b) all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee of this Lease.

14. Notices

14.1 Any notice or other document required to be given or served under this Lease may (in addition to any other method permitted by law):

- (i) in the case of the Lessee be given or served by registered post or by delivery to the Lessee at the address of the Lessee stated in the First Schedule or by delivery to the Land; and
 - (ii) in the case of the Lessor be given or served by registered post or by delivery to the Lessor's principal place of business at 189 Queen Street, Richmond or such address as may be notified in writing to the Lessee from time to time.
- (a) Any notice or other document shall be deemed to have been served on the other party one Working Day after the date of posting or delivery.
 - (b) In the case of any notice or document required to be served or given by the Lessor the same may be signed on behalf of the Lessor by the Chief Executive of the Lessor, any authorised officer of the Lessor, or by the Lessor's solicitors.

15. No Warranty

15.1 No representation or warranty express or implied has been given by the Lessor that the Land is or will remain suitable or adequate for any of the purposes of the Lessee. To the extent permitted by law all implied warranties as to suitability are expressly excluded.

16. Arbitration

16.1

- (a) Any dispute or difference that shall arise between the parties as to:
 - (i) the meaning or application of any part of this Lease; or
 - (ii) the performance or exercise by either party of any obligations or rights under this Lease; or
 - (iii) any other matter in connection with or which may have an effect on this Lease;
 shall be referred at the request of either party to a meeting of authorised representatives of the Lessor and the Lessee. If such authorised representatives are unable to reach agreement within 10 Working Days of the date one party receives notice in writing from the other requiring a referral to authorised representatives as aforesaid or such longer period as is agreed in writing by both parties, then the dispute or difference ('the Issue') shall be referred at the request of either party for determination by a single arbitrator to be agreed upon between the Lessor and the Lessee.

- (b) The party wishing to have an Issue arbitrated ('Notifying Party') shall notify the other party ('Receiving Party') of the name of the arbitrator nominated by the Notifying Party. If the Receiving Party fails to nominate its arbitrator within 15 Working Days of receiving notice from the Notifying Party then the Notifying Party may by notice in writing to the Receiving Party have the Issue determined solely by the Notifying Party's arbitrator.
- (c) Subject to clause 16.1(b), if the parties are unable to agree on the arbitrator then the arbitrator shall be appointed, at the request of a party by the President for the time being of the Nelson Branch of the New Zealand Law Society.
- (d) If any arbitrator appointed pursuant to clause 16.1 (a) or (b) or (c) refuses or fails to act in pursuance of the arbitration within a reasonable time of their appointment then either the Lessor or the Lessee may (provide the defaulting arbitrator has first been given in writing a reasonable time in which to act) request the President of the Nelson Branch of the New Zealand Law Society to appoint a replacement arbitrator.
- (e) Time shall be of the essence under this clause 16.1
- (f) The parties agree to be bound by any decision or award completed pursuant to this clause 16.1 but either party may appeal to the High court on any question of law arising out of the award.
- (g) This clause 16.1 shall survive the expiration or earlier determination of this Lease.
- (h) Any referral to arbitration under this clause 16.1 shall be a submission to arbitration in New Zealand under the Arbitration Act 1996 which Act shall, to the extent not inconsistent with anything in this clause 16.1 apply to any such submission.

17. No Compensation

- 17.1 On the expiry or termination of this Lease for whatever reason under the provisions of this Lease, the Land together with any Lessee's improvements on the Land, except for such improvements as the Lessor may require the Lessee to remove, shall revert to the Lessor. No compensation shall be payable by the Lessor to the Lessee as a result of the reversion of improvements, except that the Lessor may pay to the Lessee the value of such of the Lessee's improvements as the Lessor does not require the Lessee to remove from the Land, the value to be determined by the Minister if the Lessor considers determination by the Minister is required by law; or, if the Lessor elects, at its sole discretion, to enter into a new lease of the Land, an incoming Lessee shall pay to the outgoing Lessee the value of such the Lessees' improvements as the Lessor does not require the Lessee to remove from the Land, the value to be determined by the Minister if the Lessor considers determination by the Minister is required by law.
- 17.2 Where the Lessee removes improvements under clause 17.1, the Lessee shall, at its own cost, make good damage to the Land caused by such removal. If the Lessee fails or refuses to effect such removal and making good then the Lessor may remove the Lessee's improvements that are not removed by the Lessee and the Lessee will, upon demand, pay to the Lessor all costs and expenses incurred by the Lessor in doing so and in making good damage caused to the Land by the removal.

18. Compliance with Laws

- 18.1 The Lessee shall comply with all statutes, ordinances, regulations, rules, codes of practice, by-laws, and the provisions thereof (as amended, substituted or re-enacted), requisitions and notices affecting or relating to the Land and any improvements thereon and to the use thereof including but without limitation, the Health Act 1956, the Camping

Ground Regulations 1985, **Fencing of Swimming Pools Act 1987**, the Lessor's Resource Management Plan and all requirements which may be made or notices or orders which may be given by any competent authority in respect of the Land, any improvements thereon or the use thereof. To the extent permitted by law, the Lessee shall indemnify and keep indemnified the Lessor from and against all liability, actions, suits, claims, demands, fines, penalties and payments suffered or incurred by the

Lessor arising directly or indirectly out of or relating to non-compliance by the Lessee or Persons under the control of the Lessee.

18.2 Without limiting anything in this Lease the Lessee shall at all times during the term of this Lease comply with the provisions of the Health and Safety in Employment Act 1992 and regulations, rules, guidelines, restrictions and codes of practice made thereunder as amended, substituted or re-enacted. The Lessee shall take all practicable steps to:

- (a) Provide and maintain a safe working environment; and
- (b) Ensure that persons on, or on land in the vicinity of, the Land are not exposed to hazards (as defined in the Health and Safety and Employment Act 1992) that are under the control of the Lessee; and
- (c) Develop procedures for dealing with emergencies that may arise; and
- (d) Ensure there are in place effective methods for identifying existing hazards and new hazards and inform the Lessor in writing of hazards identified by the Lessee; and
- (e) Immediately give notice **in writing** to the Lessor of any accident that harms any person at the Land.

18.3. The Lessee shall immediately give notice to the Lessor of:

- (a) Any damage to property as a result of the Lessee's activities on the Land; and
- (b) Any circumstances occurring within the Land likely to cause injury or damage to persons or property.

18.4 If the Lessee shall default in carrying out its obligations under clauses 18.1 to 18.3 and if the Lessor shall choose to carry out any necessary work to remedy the default then the Lessee shall forthwith upon demand reimburse to the Lessor all money so expended or incurred by the Lessor.

19. No Caveat

19.1. The Lessee shall not register a caveat against the Land.

19.2 The Lessor does not warrant that this Lease is in registerable form and if the Lessee requires this Lease to be registered then the Lessee shall pay to the Lessor the Lessor's reasonable costs of registering this Lease including, but without limitation, all survey and legal fees and disbursements.

19.3 The Lessee shall have no right of acquiring the fee simple of the Land.

20. Building Safety

20.1 Without limiting anything in clause 18.1 the Lessee and its contractors shall at all times during the term of this Lease, at the Lessee's cost, comply with the Building Act 2004, the Fire Service Act 1975, and any regulations made thereunder including, but not by way of limitation, the Fire Safety and Evacuation of Buildings Regulations 2006.

21. No Mortgage or Charge

21.1 The Lessee shall not mortgage, charge, create a lien over, or otherwise grant as security, any of the Lessee's fixtures and fittings, plant or equipment situated on the Land without the prior written approval of the Lessor.

21.2. Clause 21.1 shall not apply to a request by the Lessor that the Lessee grant in favour of the Lessor any mortgage, charge or security over the Lessee's fixtures and fittings, plant or equipment on the Land.

22. Entire Understanding

22.1. This Lease embodies the entire understanding and agreement between the parties hereto and any previous representations and arrangements whether express or implied in respect of the subject matter of this Lease are merged herein.

22.2. The Lessor and the Lessee shall not be bound by this Lease until the Lessor and the Lessee have signed this Lease.

23. Accounts

23.1. The Lessee shall keep up to date and accurate books of account and records relevant to and describing the business carried on by the Lessee on the Land, and the financial position of the Lessee including, but without limitation, information from which the Gross Revenue in each Lease Year, each Lease Quarter and every part thereof, can be ascertained and determined.

23.2. The Lessee shall keep on the Land for at least two years after the end of each Lease Year all receipt books, sales slips, dockets, bank deposit records and other evidence of Gross Revenue for that Lease Year and every part thereof.

23.3. The Lessee shall, when requested by the Lessor, provide the Lessor and its agents with access to the accounts and records described in clauses 23.1 and 23.2 for the purposes of inspection and audit. The Lessee shall permit the Lessor and its agents to take copies of such records and the Lessee shall provide such further information as may be requested by the Lessor to verify financial statements for the Lessee's business, Gross Revenue and the Lessee's compliance with the terms and conditions of this Lease.

23.4. Within 45 days of the expiration of each Lease Year, the Lessee shall supply the Lessor, free of charge, with a statement by a Chartered Accountant certifying the Lessee's Gross Revenue for that Lease Year.

23.5. In the event of:

- (a) the Lessor carrying out an audit of the Lessee's Gross Revenue for one or more Lease Years; and
- (b) the Gross Revenue for such Lease Year or Years, during such periods as are shown by any statement supplied pursuant to clause 23.4, is found to be under or over stated by more than 1%;

then the Lessee shall immediately pay to the Lessor the cost of any audit carried out by the Lessor.

23.6. If it is established by the Lessor's audit that any statement pursuant to clause 23.4 is inaccurate, any necessary adjustment for underpayment of rental by the Lessee shall immediately be made.

23.7. The Lessee shall on the 15th day of November, February, May and August (the 'Reporting Due Dates') in each Lease Year, deliver to the Lessor a copy of the quarterly accounts for the Lessee's business and Gross Revenue for the immediately prior Lease Quarter, comprising an income and expenditure account. The Lessor shall keep confidential the information delivered to the Lessor by the Lessee under this clause unless disclosure of the information is required by law or an Ombudsman recommends that the Lessor discloses the information. The Lessor shall notify the Lessee in writing prior to disclosure of information pursuant to this clause.

23.8. The Lessee permits the Lessor to provide details of the Lessee's Gross Revenue and all other relevant accounts and records to any prospective Lessee on expiry or prior to termination of this Lease.

23.9. Upon termination of this Lease, or six months prior to the expiry of this Lease, whichever is the earlier date, the Lessee shall provide the Lessor free of charge with financial statements describing the operating costs of the business carried out by the Lessee on the Land for the immediately preceding three years.

24. Charges

24.1 Subject to clause 25.1 the Lessee shall be entitled to charge for use of the Land but such charges must be approved by the Lessor and, if required by law, the Minister.

25. Access for Picnickers

25.1 . The Lessee shall permit the public freedom of entry to and access to and across the Land between sunrise and sunset for picnics during the period from 16 February to 14 December in each year, subject to such conditions and restrictions as the Lessor and the Lessee may from time to time consider necessary for the protection and wellbeing of the Land, for the protection and control of the public using the Land and for the protection and wellbeing of the Lessee's customers. Picnickers are permitted to use the toilets in Ablution Block 3 but are not permitted to use any other improvements on the Land.

26. Alcohol
- 26.1 . The Lessee shall not, during the term of this Lease, supply or sell, or permit to be supplied or sold, alcohol on the Land and shall not apply for a licence to supply or sell alcohol on the Land without the prior written consent of the Lessor. The brewing or manufacture of alcohol on the Land is prohibited. In this clause 'Alcohol' shall have the meaning given to that word by section 5 of the Sale and Supply of Alcohol Act 2012 as amended or any provision enacted in substitution thereof.
27. Chattels
- 27.1 The Lessee covenants with the Lessor that the Lessee owns the chattels listed in the Third Schedule of this Lease.
- 27.2 Subject to clause 27.11 and in consideration of the sum of \$1.00 paid to the Lessee by the Lessor (the receipt of which is acknowledged by the Lessee), the Lessee hereby grants the Lessor the option of purchasing upon the expiry or termination of this Lease:
- (a) such chattels listed in the Third Schedule of this Lease that remain in good working order, are used by the Lessee, and in the opinion of the Lessor are necessary for the operation of Motueka Top 10 Holiday Park; and
 - (b) chattels purchased by the Lessee during term of this Lease in substitution for chattels listed in the Third Schedule of this Lease that are in good working order, are used by the Lessee, and in the opinion of the Lessor are necessary for the operation of the Motueka Top 10 Holiday Park. (collectively called 'the Lessee's chattels')
- 27.3 The option in clause 27.2 shall be exercisable by the Lessor giving written notice to the Lessee no later than 14 days after the expiry or termination of this Lease. Upon delivery of the notice of exercise of the option under clause 27.2, the Lessor and the Lessee shall become bound as Vendor and Purchaser respectively under a contract for the sale of the Lessee's chattels on the terms and conditions contained in this clause 27. The purchase price for the Lessee's chattels shall be calculated as at the date of expiry or termination of this Lease and shall be the current market value as determined by two assessors, one appointed by each party. Before proceeding with their determination the assessor shall be directed to agree upon and appoint an umpire and obtain the umpire's acceptance in writing of that appointment.
- 27.4 If the assessors are unable to agree within two weeks of the date of the appointment of their umpire upon the current market value of the Lessee's chattels then at any time subsequently either party may require the current market value for the Lessee's chattels to be determined by the umpire.
- 27.5 In determining current market value for the Lessee's chattels the assessors shall act as experts and not as arbitrators. Each party shall bear the costs of their own assessor. The cost and expenses of the umpire shall be borne by the parties in equal shares.
- 27.6 Settlement of the sale and purchase of the Lessee's chattels shall take place on the 10 day following the date of expiry or termination of this Lease, or the day after the determination of the market value of the Lessee's chattels, whichever is the later date.
- 27.7. Upon settlement of the sale and purchase of the Lessee's chattels:
- (a) the Lessor shall pay the purchase price for the Lessee's chattels to the Lessee; and
 - (b) property in the Lessee's chattels shall pass to the Lessor upon payment of the purchase price; and
 - (c) the Lessee warrants with the Lessor that at the time of passing of property in the Lessee's chattels:
 - (i) the Lessee has the right to sell the Lessee's chattels; and
 - (ii) the Lessee's chattels are free from any charge or encumbrance.

- 27.8. The Lessee's chattels remain at the sole risk of the Lessee until property in the Lessee's chattels is transferred to the Lessor.
- 27.9. The Lessee agrees that the Lessee's chattels are to be used by the Lessor and/or an incoming lessee following the expiration or termination of this Lease and accordingly possession of the Lessee's chattels shall be given by the Lessee to the Lessor and/or an incoming lessee nominated by the Lessor immediately upon expiration or termination of this Lease to ensure continuity of trading of the Motueka Top 10 Holiday Park with a minimum of inconvenience and disruption, and any competing claim or interest in the Lessee's chattels shall be deemed to be subject to this possession right.
- 27.10. The obligations and warranties of the parties under this clause 27 shall not merge with the transfer of ownership of the Lessee's chattels.
- 27.11. Upon the expiry or termination of this Lease, at the option of the Lessor, the Lessor may direct the Lessee to sell the Lessee's chattels directly to an incoming lessee of the Land and clauses 27.2 to 27.10 shall not apply.
- 27.12. This clause 27 shall survive the expiry or termination of this Lease (irrespective of the reason for termination) and may be enforced by either party as this Lease was still in force.
- 27.13. The Lessee shall no later than six months prior to the expiry of this Lease provide the Lessor with a schedule of chattels used by the Lessee in connection with the business carried on by the Lessee on the Land.
28. Guarantee and Indemnity
- 28.1 The Guarantor covenants with the Lessor as follows:
- (a) In consideration of the Lessor, at the request of the Guarantor, entering into this Lease with the Lessee:
 - (i) the Guarantor guarantees to the Lessor the due and punctual payment of all monies to be paid by the Lessee under this Lease and the due performance and observance by the Lessee of all covenants, terms and conditions of this Lease;
 - (ii) the Guarantor hereby indemnifies the Lessor and agrees to keep the Lessor indemnified from and against all losses, expenses and liabilities which the Lessor might suffer in consequence of any breach or non-observance of the covenants, terms and conditions of this Lease and against any loss the Lessor might suffer should the Lease be lawfully disclaimed by a liquidator, receiver or other person.
 - (b) The Guarantor shall not be released nor shall the liability of the Guarantor be altered, waived or affected by the granting of time or other indulgence by the Lessor to the Lessee or the Guarantor, or any of them, the waiver or abandonment of any of the rights of the Lessor against the Lessee or the Guarantor or any of them or by the forbearing to sue or the neglect or omission to enforce any rights of the Lessor against the Lessee or Guarantor or any of them.
 - (c) The obligations of the Guarantor under this guarantee and indemnity shall continue to remain in force and shall not be reduced or affected by any variation, assignment, forfeiture or termination of this Lease.
 - (d) Where there is more than one guarantor the obligations and liabilities of each and every person named as guarantor shall be joint and several.



Item 3.1

EXECUTED as a deed.

The Common Seal of TASMAN DISTRICT COUNCIL as Lessor was affixed in the presence of:

Mayor / Councillor

Councillor

Signed by SJE HOLDINGS LIMITED as Lessee by its two directors:

Director

Director

Signed by JEANETTE RHONDA EDWARDS as Guarantor in the presence of:

Jeanette Rhonda Edwards

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signed by STEPHEN GREGORY EDWARDS as Guarantor in the presence of:

Stephen Gregory Edwards

Witness Signature

Witness Name

Witness Occupation

Witness Address

Attachment 4

FIRST SCHEDULE

Name and Address of Lessor:	Tasman District Council 189 Queen Street Richmond
Name and Address of Lessee:	SJE Holdings Limited 10 Fearon Street Motueka
Name and Address of Guarantors:	Jeanette Rhonda Edwards and Stephen Gregory Edwards 7 Morning Star Terrace RDI Queenstown 9371
Commencement Date:	1 July 2015
Term of Lease:	33 years
Expiry Date:	30 June 2048
Land:	All the land containing 3.0351 ha more or less being part Section 156 Block IV Motueka Survey District and Defined on Deposited Plan 514 and being comprised and described in Certificate of Title NL38/277 (Nelson Land Registration District), known as "Motueka Top 10 Holiday Park".
Annual Rent (subject to the ratchet clause contained in clause 4.6 herein):	[REDACTED]

Frequency and Amount of Rental Payment
(subject to the ratchet clause contained in
clause 4.6 herein):

[Redacted]		
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

<p>Outgoings:</p>	<p>All land tax and other taxes levied or incurred in respect of the Land and any Buildings and Improvements thereon; and</p> <p>All power, telephone, water, sewerage, storm water, refuse disposal and collection charges and all other utility and service charges incurred in respect of the Land from time to time; and</p> <p>(b) All rates incurred in respect of the Land and levied by any local or territorial authority; and</p> <p>(c) Insurance premiums paid by the Lessor to effect insurance under clause 8.1</p> <p>(d) New Zealand Fire Service Charges and the maintenance charges in respect of all fire detection and firefighting equipment.</p> <p>Cleaning maintenance and repair charges.</p> <p>The cost of ground maintenance.</p> <p>(g) The cost incurred by the Lessor in supplying to the Territorial Authority a building warrant of fitness and obtaining reports as required by Section 45 of the Building Act 2004 or any law in substitution thereof.</p> <p>(h) Charges payable to the Local Authority pursuant to the Camping Grounds Regulations 1985, including but without limitation, the cost of obtaining and keeping current any certificate of registration in respect of the Land issued in accordance with the Health (Registration of Premises) Regulations 1 966, and any renewal of such certificate.</p> <p>(j) All pool and spa chemicals and energy costs, including water.</p>
<p>Permitted Use:</p>	<p>Camping ground and holiday park and provision of visitor accommodation; residential quarters for Manager and staff engaged in provision of visitor accommodation; and recreational activities that are associated with, or are an integral part of, the provision of visitor accommodation and that are necessary to enable the public to obtain the benefit and</p>

	<p>enjoyment of the Land or for the convenience of persons using the Land.</p>
<p>Public Liability Insurance Amount:</p>	<p>\$2,000,000.00</p>
<p>Default Interest Rate:</p>	<p>A rate per annum equal to 11% per annum above the BkBM 90 day bank bill rate</p>
	<p>published by Reuter fixed on a monthly basis on the 1st day of each calendar month and where such rate is not published, on the next day when such rate is published, or such equivalent rate should the BkBM 90 day bank bill rate not exist.</p>

SECOND SCHEDULE

GROUNDS MAINTENANCE

<p>Mowing:</p>	<ol style="list-style-type: none">1. Grass is to be kept to no higher than 50mm cut height where possible.2. Grass shall be cut at least once every three weeks between 1 May and 31 August throughout the term of this Lease, except that occupied sites may be cut at the Lessee's discretion, while still maintaining the maximum acceptable cut height of 50mm.3. Grass shall be cut at least once every two weeks between 1 September and 30 April throughout the term of this Lease, except that occupied sites may be cut at the Lessee's discretion, while still maintaining the maximum acceptable cut height of 50mm.4. Machine mowing shall be carried out between 7.30am and 5.00pm during weekdays. Hand mowing may be carried out on individual sites on Saturdays when requested by campsite occupiers.
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<p>Weed and Pest Control:</p>	<ol style="list-style-type: none"> 5. The Lessee shall keep an up to date logbook, indicating areas sprayed, dates of spray and weather conditions during spray. The logbook shall be available for inspection by the Lessor and its agents at all times. 6. Weed eat: <ol style="list-style-type: none"> (a) under all 'barrier rail' type fences to entire width of no more than 200mm (b) around all buildings, structures, paths and play equipment to a width of 100mm (c) all steep batters that present a hazard for motor mowers. 7. Spray: <ol style="list-style-type: none"> (a) against all other boundary fence lines to a width of 100mm (b) gardens and shrubberies where applicable (c) the sides of drain channels. If erosion is likely, use weed eater. 8. Weed eating to be done: <ol style="list-style-type: none"> (a) at least fortnightly between 1 September and 30 April throughout the term of this Lease (b) at least monthly between 1 May and 31 August throughout the term of this Lease. 9. <p>Excluding protected trees contained in the Tasman Resource Management Plan Section 16.13 (Historic Heritage) which are the responsibility of the Lessor, the Lessee shall maintain the trees on the Land in accordance with sound arborcultural standards.</p>
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	Lessor's arborists shall be consulted in the event that the Lessee has concerns about appropriate maintenance of trees on the Land.
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THIRD SCHEDULE

CHATELS LIST