

**Discussion Paper for CCC on proposed Leases/Licences - March 2010**

**Notes for Community Board Meeting**

1. Good afternoon.

I'm still Jim Turpin, President of the Taylor's Mistake Association and with me today is Brent Gilpin, Secretary/Treasure of the Association.

2. I would like to start by referring you to the pictorial brochure that we have prepared and I gave to you yesterday. As I said then, we hope this will add another dimension to your considerations. This document reminds you of the history of the baches, the mistake made by previous councils in destroying many of the cave baches, and on page 19, the connection to the Taylor's Mistake Surf Life Saving Club, a particular passion for me.

Don't ever underestimate the vital importance of bachholders to this valuable, voluntary Community Service.

Our Life Saving Club is not immune to the difficulties many Clubs now face in these changing socio/economic times and our bach community has and should remain as a positive factor for the Club's efficient delivery of its Life Guarding service.

3. The baches in question were first licensed almost a 100 years, and if you turn to page 6 you will see examples of building permits, and CCC Rate Demands issued to bachholders all of which give some substance to our claim that we have had very good reason over many years to believe we have had sanctioned occupation and have some rights.
4. Now if you go to page 11 you will see the offer to gift a large chunk of our land, roughly 70ha, was made in 1991, at which point all baches were to be removed and instead we were to receive at least 48 freehold sites.

From the timing of this then it can be seen that the idea of the gift was not made with the aim or as a ploy, for want of a better word, to "buy", secure leasehold sites on public ground because at that time we were all going to relocate and have freehold sites.

5. Next turn the page to see about the mediated solution and who was involved. An impressive cross section of the community. The Historic Places Trust also had input.

At this time the number of freehold sites has dropped to 27, with some of the baches staying where they are.

6. Now turn to the next page, Page 15, the 2010 Council Report, and while it doesn't say it in Option (d), you will know from the Legal Services papers that the number of freehold sites has now dropped to 14.
7. On the basis that we are going to end up with less than 30% of the freehold sites we thought we would get when we offered to gift the surplus land, I don't think it's unreasonable for us to expect a lease that contains a reasonable element of security of tenure.

It's not as if we withdrew the offer of the land to the City.

8. The Report you are considering today, gives you two main options  
Option (b) grant licences to all scheduled and non-scheduled baches;  
Option (d) give effect to the provisions of the City Plan.

**The Taylors Mistake Associations preferred option has always been, option (b), for all baches stay where they are.**

If the Board thinks it is a viable option, we are prepared to take the preliminary steps to test opinion from potential objectors.

Whether options (b) or (d) are adopted, we need an acceptable license or lease for the scheduled baches

9. We have had only a short time to study the Council Legal Services report, and Buddle Finlay letter, but we have put together a list of the major issues and differences, particularly with the proposed license. I will leave with you this list, but in the brief time I have to talk to you, I will focus on just a few key points.
10. I suppose at the basic level the differences hinge on our contention that the Leases offered to us are designed to get us out, something I note that Buddle Finlay and Council Legal Services reject. But in our eyes the word of the proposed license speak very differently.
11. There are at least 14 actual clauses that give the Council the opportunity to at its sole, absolute and uncontestable discretion to terminate the leases.

*For example: 4.1(c), 4.1(d), 4.1(e), 4.3, 10.7, 16.4, 18.1(c & d) (to the extent that having heritage commitments, baches may not be able to comply with current or future legislation), 18.1(f), 18.2(a), 18.2(b), 18.2(c), 18.2(d), and 18.3*

Terminate it, not only at the end of the term, but theoretically, any day after the day we sign them.

12. And having terminated the lease the Council can at clause 18.6 then at it absolute discretion demand that the now unoccupied bach be handed over to the Council for its own use!
13. To add support to our contention our best starter is to refer you to the Councils City's Legal Services own valuer who describes the Council version as "draconian".

This description was made in a letter from Simes Limited to CCC Legal Services dated 5/3/2009, which I have attached at the back of these notes the relevant portions.

See for yourselves.

14. The 4 other issues I will cover today are the Term of the Lease, Annual fees, Penguin colony and ability for transferable rights.
15. Clause 3, Buddle Findlay note 15. Term.

While we have put 10 years in our draft, we would really like this to be longer. A longer term

reduces administrative costs, and as we start to approach 10 years since the Environment Court Decision this really does seem a very short time period.

We note that newspaper reports on the proposed CHCH CC/University of Canterbury lease for the central city National Conservatorium of Music at the Arts Centre is for an initial 50 years with a right of renewal for a further two 50 year terms. We see also that CHCH CC/Ngai Tahu lease for Civic Building seems to be an initial 24 years with 3 rights of renewal for the same term.

We also understand that the Resource Management Act Clause 218 permits 35 years leases before sub-division considerations arise, although my interpretation is that it may be longer as long a survey plan exists whether or not it has been allowed.

We see these as encouraging as a precedent for a more than 10 year term in our licence.

We must also address our differences regarding the right of renewal.

On the other hand, with security of tenure, these things become less important.

#### 16. Clause 6, Buddle Findlay notes 23-25. Review of Annual Licence Fee.

We dispute the assessment of the Annual Licence Fee on the basis of a land value as Legal Services have provided with the Simes Valuation.

Clause 6.4 says it “must represent the Councils fair and reasonable assessment of the annual cost of the administration of the licences for all the baches at Taylors Mistake, divided by the number of baches so licensed at the beginning of each annual period”.

Simes themselves point out the definitions do not specify the fee is to be market related (although they then go on to provide what they were asked by Legal Services to do).

We agree with Simes that the definitions do not specify the fee is to be market related.

This sharing of administrative costs is also more in line with Commissioner Marquets recommendations which Judge Smith agrees with. I can provide further detail on this if required.

Even so we have prepared preliminary data seriously challenging Simes land valuation assessment (including economic “opportunity cost” and “added value” analysis that they may not have been aware of and which results in a fee not too different to what we propose) but do not feel it is necessary to go down this path as it is clear it is not the correct one.

Our solution is to settle on a fair “administration” fee that recognises the further costs we have to make to comply with the conditions of the lease and also recognises that the Council will be making other recoveries through the Outgoings.

We see the initial Annual Licence Fee being \$800 (plus GST) per bach, per annum (inflation adjusted in succeeding years) which on say 28 licences would give the Council \$22,400 per annum (inflation adjusted) to administer the licences. This should be more than enough, especially as it should only be “administering” on renewals, say every 10 years at least.

Legal Services proposal is 28 x \$3,000 or \$84,000 pa to administer. Grossly excessive. And portions of rates bills are proposed on top of that.

17. Other less enlightened Councils have used inflated license and rates fees as a ploy to get rid of baches. We want these baches to remain accessible to the average Cantabrian, not just the very rich.

18. Clause 10.7(f). Buddle Findlay note 34(f). Penguins at Boulder Bay.

We are against any forced removal of any baches at Boulder Bay for a Penguin Parade.

Conservation of the species is commendable and desirable and my Association and I have publicly and genuinely applauded Dr Challies excellent efforts in this respect at Harris Bay and Motunau.

But conservation can and should be achieved without resort to establishing a colony at Boulder Bay.

Dr Challies has confirmed at Hagley-Ferrymead Community Board, Christchurch City Council and Environment Canterbury meetings that I have been present at, that maintenance of the existing colonies at Motunau Island off the North Canterbury coast, at Flea Bay on Banks Peninsular and at Harris Bay just around the corner from Boulder Bay, would ensure preservation of the species.

Boulder Bay is only required if viewing of a parade is required, and no where else in the world is there a successful penguin parade in such an inaccessible location.

The Boulder Bay proposal is a commercial venture for which no business plan, capital or operating, has been presented for scrutiny.

It's doubtful that it would survive without continuing City Council funding.

Plans for a parade at Flea Bay as part of a wider attraction should cater for the cultural and education needs of those requiring it. It won't need competition from what I said I believe would end up being a ratepayer subsidised Boulder Bay parade.

19. Assignment and Subletting.

Taking into account the gift of the land, the investment to comply, our request for transferrable rights is not unreasonable and is fair. It will ensure continued maintenance of baches, and for them to be enjoyed by more people

With reference to the history, the findings and with common sense we would like to think we can still arrive at a mutually agreeable and fair lease.

20. The fact of the matter is that the Association land will not be gifted unless a satisfactory lease with some security of tenure is arranged.

For that reason it's impractical for us to agree to go to the considerable expense of the Staff

Recommendation (a) before this is resolved.

And while Recommendation (b) contains the words “substantially on the terms and conditions set out in the draft form of Licence, marked 2” we cannot agree with that either.

We ask that the Board decline these recommendations.

We then ask that the Community Board and then the Council recognise our uniqueness and grab the opportunity to resolve this long standing issue by instructing City Legal Services to recognise this as well and to negotiate with us a reasonable and fair lease.

If it means making it more difficult for future councils to remove the baches, then so be it.

It will be win - win for all.

- Our interest is not in seeing these baches here for the next 10, or 20 years, but seeing them part of Christchurch in a 100 years time. If the baches were only to last the remainder of my lifetime, I would have failed in my duty to those who first built the baches, and those who have fought for their survival over so many years.
- We want a lease or a licence that will ensure these baches will be here in a 100 years time.
- If a current owner of baches didn't abide by the rules or dies, we don't want that bach demolished or transferred to the Council, we want the ability to transfer ownership to someone who will care for the bach, who will ensure they are maintained and used in a culturally and historically appropriate way.
- You have an opportunity to place some certainty on the future of the baches. An opportunity for all of us to redirect our energies from these legal battles, to actually working for the improvement of the baches and the wider environment where they are.

Attached you will find the additional notes that address some of the other issues brought up by Legal Services. We are happy to go through them now if you wish otherwise please read them at your convenience to gain a better appreciation of our position.

Brent and I are obviously happy to take any questions now or to be contacted for clarification of anything later on.

Thank you.

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## **Additional notes Taylors Mistake Association**

21. We have acted in Good Faith and asked for a Good Faith clause to be included. Legal Services for reasons best known to them refused although I now see Buddle Findlay are suggesting at their point 77 that this might be a possibility. I suggest this become more than a possibility and become a reality.

22. Clause 7, Buddle Findlay notes 26-27. Review of Annual Outgoings.

We see no problem in agreeing to an initial rates fee (earlier we outlined a possible formula to Legal Services to ascertain this) and then linking it to the average residential rate rise in the area rather than the CPI as we now have in our version.

23. Clause 9, Buddle Findlay note 31-33. Review of Costs.

We feel quite confident our proposal of bearing our own costs is fair and equitable especially when Council will be receiving the significant Annual Licence Fee mentioned in note 16 above.

24. Clause 10, Buddle Findlay notes 34-36. Use of Site.

I feel sure by use of further definition we can address most of these differences.

Taking into account the investment to comply with the lease etc, we feel at least a restricted right to let is appropriate.

25. Clause 14, Buddle Findlay note 43. Compliance with Statutes and Regulations.

We have deleted this clause mainly on the basis that as our leases contain restraints on what we can and can't do so that we retain our historical and heritage values, it may not be possible to comply with some Statutes and Regulations. Non compliance can mean termination of the lease. We have to be very careful with all this. It may be that occasional judicious use of the words something like "taking into account the historic and heritage restraints" in places may be useful in reaching agreement.

This comment applies to a number of other clauses in the lease.

26. Clause 17, Buddle Findlay notes 52-54. Indemnity and Liability.

You will also have noticed that at this clause, the Council absolves itself of any responsibilities to support bacholders should for any reason some third party attack the validity of the leases they have issued to us.

We can appreciate the reasons behind this Clause and could possibly live with it if we had some security of tenure. But in Legal Services documents, we don't!

27. Clause 18, Buddle Findlay notes 55-62 . Expiry, Cancellation, Termination.

Much as outlined in note 25 above we have to be very careful that some minor occurrence doesn't trigger termination of the lease.

With a bit of give and take and with a Good Faith clause I think we should be able to arrive at a fair and reasonable compromise. It may be that occasional judicious use of

the word “reasonable” in places may be useful in reaching agreement.

These comment also apply to a number of other clauses in the lease.

28. Buddle Findlay notes 67-72. Expiry, Dispute Resolution.

I'll have to consult my membership but it's possible that with compromise to a fair, reasonable and equitable solution to other parts and the introduction of the Good Faith clause this may not be necessary.

29. Buddle Findlay note 83. Linking gift to leases.

We have already discussed this earlier in our note on reasons for security of tenure.

30. Buddle Findlay note 82. Revisit Environment Court decisions.

Presumably this means the gift of land issue. If so, I don't think this is a real issue, conditional gifting in terms of the Reserve Act was discussed at the Environment Court.

If there is something else I would I'd like to know.

31. Buddle Findlay note 87. Recommendations.

As Buddle Findlay say, many of the decisions are not legally based.

If the Community Board considers these in addition to the Legal Services own recommendations, we suggest you reject them as well

and that you ask the CCC to instruct Legal Services as per note 20 above.

32. Further notes on why we deserve Security of Tenure.

We deserve it because of the uniqueness of our position.

Don't just take my word for it, Buddle Findlay say as much at 7e and Simes also mention it on page 4 of their valuation. Unfortunately though both then carry on without fully reflecting what they both recognise.

And why are we unique?

Well who else has offered to gift a substantial block of desirable land to the City.

Both Commissioner Marquet and Judge Smith state the gift did not influence their findings that the baches should be retained. A true gift then.

Because of this we can't really be compared with other leases and lessees who haven't made similar offers. We may have to break new ground.

33. Both Buddle Findlay and the Council Legal Services say the gift has nothing to do with the lease, it's all tied up with the creation of the zone for the relocating baches.

Well that view ignores the history of land and I trust I have covered that to your

satisfaction in notes 3 to 7.

You cannot expect those people who contributed to the land in expectation of a freehold site to trade that for the draconian leasehold site as now offered by Council Legal Services.

Put yourselves in our shoes and ask if its unreasonable to expect a lease that contains a reasonable amount of security of tenure.

34. Bachholders future Costs. On top of the considerable past costs of acquiring and holding the land and the cost of the associated hearings, bachholders will also have considerable future costs in procuring complying services. We'd be silly to commit to that on what's offered.

35. The Spirit of the Environment Court Decision

We strongly believe (and Legal Services disagree), that Legal Services have missed the spirit of Commissioner Marquet and Judge Smiths findings.

Well I was at both and I'm very sure the spirit and intent for continued occupation by bachholders is clearly outlined in their reports.

As Legal Services report at their point 41, Judge Smiths Court concluded "...that it could not assume the baches not scheduled will be removed. It was not the Courts role to assess the existing rights use that may attach to the baches. If it was assumed that non scheduled baches were to be removed then that would have occurred prior to the hearing as the matters referred to the Court had been outstanding for several years. The Court found that the difference now was the certainty of the undertaking provided".

As I mentioned previously and as shown on page 6 of our brochure it is possible to make a strong case for existing rights for all bachholders.

36. The Associations inclusion of Background Notes and Clauses relating to the Gift.

If we don't owe it to ourselves (which we do) to include these, we at least owe it to future generations and future Councils to record some history in the Background Notes so they don't have to go searching for ancient archives if the need ever arises.

If I read Buddle Findlays note 74 correctly I can see some room to move on the security of tenure thing outside of the lease. Having said this though it could be in conflict with their note 83. We would need to check this out with Buddle Findlay.

If I am correct though, it may be a way although it would still not be proper not to have some reference to it in the lease itself.

There can't be anything wrong with that?

I trust the Board are fully aware of the meaning of our Associations section on the "Gift of the Land" and Buddle Findlays note 74?

37. I see at Legal Services note 82 reference is also made to the gift of the land and that certain aspects of our requests weren't talked about at the Environment Court. While I

accept the position of “the 50 years” was not discussed (clause 21.3 in the Association version of the lease) the other return of land bit was discussed (clause 21.2 in the Association lease),.

At the Environment Court we did not think there would be any dispute about security of tenure so there was no need to bring it up the 21.3 bit up.

When we saw what Legal Services were offering and prior to inserting Clause 21.3 we proposed to Legal Services 3 options to address security of tenure thing and asked them to pick one. We said if none was acceptable to them, would they please come back with an alternative and fair solution for us to consider. Legal Services ignored the lot so we chose to insert this one.

Extract from Valuers, Symes Limited, to CCC Legal Services, 5/3/2009.

If for the time being we proceed as if the licence fee was to be the current market rental, or words to that effect, the following clauses are likely to have a significant bearing on the fee that the occupier may be prepared to offer:

- The term of licence is 5 years, with a further right of renewal. In real estate terms this is a relatively short term of occupation for a site only, and the occupier has a relatively short period of time gain utility from any structures on the land. In a new ground leasing situation for this type of term, one would likely invest modestly in improvements, and therefore restrict the economic gain from the site, knowing that those improvements will be written off within 10 years, that no compensation is payable for improvements at the end of the term, and that there is an expense to be incurred in removal of the improvements on licence expiry.
- Further, the Council has the right to terminate the licence at any time it requires the land (in its sole and absolute discretion) for redevelopment or public use of the road is unreasonably restricted as a consequence of the continued existence of the bach. These are elements beyond the control of the licensee and again contribute to a fairly weak form of tenure.
- The licensee is responsible for rates and other costs, as we understand these have not been charged in the past, the amount of ongoing expense of this type will influence the amount of licence fee that an occupier is prepared to pay.
- Similarly costs associated with the review of the annual licence fee are payable by the licensee.
- The use of the site is severely restricted, in comparison to a more conventional leasing of a site for residential purposes. This site may be accessed on foot only, it cannot be used for permanent residential accommodation, or for reward, and there is a requirement to keep the bach in good repair and condition. It is difficult to see how the latter can be enforced in a practical sense, particularly where the licence is nearing the end of its term when the licensee is likely to defer any maintenance or expenditure knowing that there is an obligation to remove the bach on termination of the licence.
- The licence cannot be assigned to another party.

Taking these provisions as a whole, the licence could be seen to be fairly draconian, put within the context of a more conventional ground lease.

A more typical situation in the residential environment would be a much longer term of lease, possibly perpetually renewable, where the lessee has full rights to occupy and use the land as they see fit, including construction of a house and other improvements.