

06 November 2009

Our Ref No: LEX3834

Godfreys Law Barristers & Solicitors
PO Box 131
CHRISTCHURCH 8140

WITHOUT PREJUDICE

Attn: Brad McDonald

Dear Partners

TAYLORS MISTAKE BACHES

I refer to recent discussions.

I sought advice from Willie Palmer with regard to the matters raised in our "without prejudice" discussions and correspondence. Enclosed is a further draft of a proposed Deed of Licence for consideration by bach owners. Unless there is something seriously wrong with the document, I expect that it will represent the Council's final position on the matter.

Buddle Findlay's advice is quite clear. The Council does not have the power to grant a lease over legal road vested in it. Therefore a deed of licence is required.

The term of the licence has been extended to ten years, with a right of renewal for a further ten years.

The Council has a statutory obligation to apply the provisions of the Building Act 2004. Therefore clauses 18.1(c), 18.1(d) and 21.1(a) must remain.

Strictly on a "without prejudice" basis, it is suggested that the initial licence fee be set at \$3,000 per annum. This has yet to be confirmed by the Council but if it is acceptable to the bach owners we will be in a better position to get approval for it.

So far as the matter of nuisance is concerned, if the bach owners position is adopted, they would enjoy rights to annoy that are greater than other Christchurch residents. This is not acceptable and therefore clause 10.4 has not been changed.

IT:FP
TRIM: 00/392139

With regard to our "without prejudice" discussions about the land transfer, further investigation finds that the transfer is already included in the City Plan and that if the Council and the bach owners were to depart from this a variation of the plan would be required. Therefore, if the terms of the proposed Deed of Licence are acceptable it is expected that the transfer will occur at the same time as the creation of the Taylors Mistake Bach Zone and the removal/relocation of the unscheduled baches. This is also in line with the Environment Court decision.

Having noted that, I believe that the attached Deed of Licence represents an acceptable compromise between the interests of the licensor and licensees.

I look forward to hearing from you once you have obtained the instructions of your client.

Yours faithfully



Ian Thomson
Solicitor
Legal Services

Encl

Tel (03) 366 7469
Fax (03) 365 3456
admin@godfreys-law.co.nz
2 Armagh Court
78 Armagh Street
PO Box 131 or DX WP20504
Christchurch 8140
New Zealand



Godfreys
Barristers & Solicitors

20 November 2009

Ian Thomson
Christchurch City Council
Legal Services Unit

Via Email: ianthomson@ccc.govt.nz

Dear Ian

TAYLORS MISTAKE BACHES

Thank you for your correspondence of 6 November 2009.

The members of the Taylors Mistake Association met on Tuesday 17 November 2009 to discuss the Deed of Licence.

I have been instructed to report as follows:

1. The members of the Association prefer and require a Deed of Lease rather than a Deed of Licence as suggested by you. As previously stated in discussions, it is my understanding that Council is empowered to grant a lease by virtue of Section 45(1) of the Public Works Act 1981 and Section 12(2) of the Local Government Act 2002.
2. The general feeling amongst the members of the Association is that Council has chosen to ignore the comments of Commissioner Marquet and Judge Smith (Environment Court) that the baches do not materially interfere with the public's rights of access at Taylors Mistake. Both Commissioner Marquet and Judge Smith placed some emphasis on this. Accordingly it is the members' view that a lease is entirely appropriate in the circumstances.
3. The members have completed a review, discussion and consideration of the redrafted licence that you and Wille Palmer have worked on. The members believe that this document ignores the spirit of the Environment Court decision and the uniqueness of the Association's position, in relation to other occupiers of Council controlled land. This is a real disappointment to them. The members voted resoundingly to decline acceptance of the redraft you have supplied to us.



godfreyslaw.co.nz

Discussion then centered around the redraft that we had sent and provided to you earlier in the year. Some changes to this document were discussed and it was agreed to forward this document (with amendment) to Council. The Association members position, in not making more concessions/changes to bring the redraft into line with Councils, was influenced by their view that the Council version was drafted entirely in a manner to remove them.

Accordingly, I now enclose for your information and noting the amended Licence, that the Association wishes to present to Council for consideration. I have highlighted the amendments made to the same in yellow for ease of reference.

Initial Licence

The members discussed the initial licence fee. The licence fee you have proposed of \$3,000.00 per annum is not acceptable to the bach owners. For reasons already communicated to you the bach owners believe that a licence fee of \$800 per annum would be fair and reasonable.

Rates

Under the outgoings provision of the Licence rates (if any) are included. Could we please have an indication of what the likely level of rates would be for each bach per annum and the method for calculating the rating value.

Summary

To summarize the Association's position:

1. The redrafted Licence supplied by you is not acceptable;
2. A Lease is the preferred grant of tenure as opposed to the proposed Licence;
3. The enclosed Association redraft of the Licence reflects what would be acceptable to the members if contained in a Lease;
4. The initial licence fee you have proposed is not accepted as it is neither fair or reasonable;
5. We require an indication of rates (if any) payable for each bach;
6. We request speaking rights at the upcoming Council meeting; and
7. We require a copy of the Agenda and supporting papers on this matter for the upcoming Council meeting.

Yours faithfully

GODFREYS



Brad McDonald
Partner

Email: brad@godfreys-law.co.nz
H:\Brad\lrs\taylor's mistake12.doc