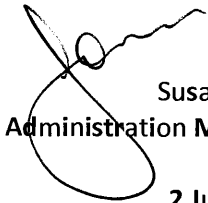


NOTICE IS HEREBY GIVEN THAT A MEETING OF THE MATAURA COMMUNITY BOARD WILL BE HELD IN THE MATAURA COMMUNITY CENTRE, MCQUEEN AVENUE, MATAURA, ON MONDAY 7 JULY 2014, AT 5.30pm



Susan Jones
Administration Manager
2 July 2014

A G E N D A

1. CONFIRMATION OF REPORT

Confirmation of the report of the ordinary meeting of the Mataura Community Board, held on Monday 26 May 2014.

2. DEVELOPMENT OF GLENDHU ROAD RECREATIONAL RESERVE (FORMER HOCKEY TURF SITE)

3. MATAURA RAILWAY STATION

4. DATE OF NEXT MEETING – Monday 18 August 2014, at 5.30 pm

REPORT OF A MEETING OF THE MATAURA COMMUNITY BOARD, HELD IN THE MATAURA COMMUNITY CENTRE, MCQUEEN AVENUE, MATAURA, ON MONDAY 26 MAY 2014, AT 5.35PM.

PRESENT A Taylor (Chairman), C Duffy, B Cunningham, G Colvin and Cr Dixon.

IN ATTENDANCE The Roding Manager (Mr Murray Hasler), Administration/HR Manager (Susan Jones) and Corporate Support Officer (Tracey Millan).

1. CONFIRMATION OF REPORT

RECOMMENDED on the motion of B Cunningham, seconded by G Colvin, THAT the report of the ordinary meeting of the Mataura Community Board, held on Monday 16 April 2014 as circulated, be accepted and signed by the Chairman as a true and complete record.

2. FORMER PICTURE THEATRE BUILDING, CORNER OF MAIN AND CARLYLE STREETS, MATAURA (SC0229/PF)

A memo had been received from the Administration Manager advising that the Council had ratified the Board's request to acquire the former picture theatre building on the corner of Carlyle and Main Streets Mataura. The property had been transferred into the Council's ownership in March 2014.

A Taylor advised the theatre building had been built in 1934. However an archaeological assessment was required to be undertaken by the New Zealand Historic Places Trust as other businesses had resided on the site prior to 1934 and what lay under the ground was also of significance.

In response to C Duffy, A Taylor advised the cost to have an archaeological assessment completed would be in the vicinity of \$2,000-\$2,500.

Discussion was held around the Board utilising funds from its discretionary fund to cover the cost of an assessment.

RECOMMENDED on the motion of Cr Dixon, seconded by C Duffy, THAT the information be received,

AND THAT the Board utilise its discretionary fund to cover the cost of having an archaeological assessment undertaken by the New Zealand Historic Places Trust.

3. MATAURA RAILWAY STATION – LEASE (43.6.89)

A memo had been received from the Parks and Recreation Manager advising a report would be submitted to the Council's Operations Committee meeting to be held on 3 June providing an update on a seismic assessment to the undertaken on the Mataura railway station building.

Cr Dixon said if the commercial classification of the building was removed the earthquake restrictions would no longer apply.

A Taylor said that sort of thing was for the Council to determine as the lessee. There was currently a tenant running a business in the building.

RECOMMENDED on the motion of C Duffy, seconded by G Colvin, THAT the information be received.

6. DATE OF NEXT MEETING- Monday 7 July at 5.30pm.

The meeting was closed at 5.48pm.

MATAURA COMMUNITY BOARD AGENDA

MONDAY 7 JULY 2014

2. DEVELOPMENT OF GLENDHU ROAD RECREATIONAL RESERVE (FORMER HOCKEY TURF SITE)

(Memo from Administration Manager – 30.06.14)

In November 2011 the Board considered a report from the Glendhu Road Recreational Reserve Working Party on its findings for future uses of the Glendhu Road recreational reserve (former hockey turf). The consultation process utilised by the working party was undertaken by the Mataura Community Development Coordinator, Jo Brand and resulted in the following prioritised options:

	OPTION	COST ESTIMATE (rough order of cost)	PUBLIC VOTE, NUMBER IN FAVOUR	PREFERED PUBLIC OPTIONS	WORKING PARTY - PRIORITY LIST
1	Move the grandstand to Tulloch Park	\$50,000	33	☐	2 (1-3 years)
2	Confidence course	\$90,000	12		5 (5-10 years)
3	Bicycle track/jump park	\$10,000	49	☐	1 (1-3 years)
4	Relocate flying-fox from Queens Park	\$8,000	3		4 (5-10 years)
5	Half pipe (for skate boarders)	\$10,000	28	☐	3 (3-5 years)

The working party also recommended that following adoption of the proposed change in use for the Glendhu Road recreational reserve, the Mataura Community Board take responsibility for implementation. At its meeting on 14 November 2011, the Board passed the following recommendation:

THAT the Board support in principle the future use of the old hockey turf site at the Glendhu Road Recreation Reserve in the following prioritised order:

- *moving the existing grandstand to Tulloch Park;*
- *construction of a bike track/jump park; and*
- *construction of a half-pipe - subject to funding.*

AND THAT subject to Council approval, Eastern Southland Hockey be released from its lease responsibilities for the site.

The recommendation was subsequently endorsed by the Council at its meeting on 3 April 2012.

At its meeting on 16 April 2012, the Community Board recommended that it would progress development of the Glendhu Road recreation reserve with the Maitaura Development Trust. In terms of progress for the aforementioned priorities, the relocation of the grandstand to Tulloch Park has been completed.

RECOMMENDATION

THAT the information be received.

3. MATAURA RAILWAY STATION – SEISMIC ASSESSMENT

(Memo from Administration Manager – 30.06.14)

Further to the report provided to the Board at its last meeting about the Mataura Railway Station lease, the Council's Operations Committee deferred making a decision at its meeting held on 3 June until the Chief Executive provided a report detailing the issues that needed to be considered. The report was subsequently provided to and considered by the Council at its meeting held on 24 June.

The information provided was as follows:

- ✦ *Enclosed please find succinct advice received from Anderson Lloyd that suggests the Council has adequately protected itself from any legal liability by alerting the sub-lessee to the building seismic assessment and allowing that person to make an informed choice. Further, as it is lawful under the Building Act to occupy an earthquake prone building, provided it has not been the subject of being fenced off and a notice warning the public not to approach.*

In these circumstances it is appropriate for the following recommendation to be submitted.

THAT the Council endorse the continued sub-leasing of the Mataura Railway Station in recognition that the sub-lessee has acknowledged and accepted the earthquake prone status of the building.

The Council adopted the recommendation at its meeting on 24 June.

RECOMMENDATION

THAT the information be received.

17 June 2014

For: Steve Parry

Chief Executive Officer
Gore District Council
PO Box 8
GORE 9740

By email - sparry@goredc.govt.nz

Dear Steve

Mataura Railway Station

1. We refer to your email dated 9 June 2014. Gore District Council ("Council") has questioned:
 - a. Whether there is any potential liability should the Council continue to sublease the Mataura Railway Station ("Station") after it has received information from the building owner that says the Station is less than the minimum standard for earthquake resistance specified in the Building Act 2004; and
 - b. Whether there are any obligations under the Health and Safety in Employment Act 1992.

Advice

2. Continuing to sublease the Station will not create any new potential liability under the Building Act because:
 - a. It is not unlawful to occupy an earthquake-prone building unless Council in its regulatory capacity does any of the following:
 - i. Puts up a hoarding or fence;
 - ii. Attaches a notice warning people not to approach the building;
 - iii. Issues a notice restricting entry to the building.
3. Council is not the employer that is in control of the café in the Station and is not responsible for that workplace.
4. In the future if Council does allow and control staff, contractors or the public access to the building (outside the café), Council should assess any risks and whether it is practicable in the circumstances to remove that risk, including whether it is practicable to strengthen or remove the chimneys.
5. To avoid other liabilities, such as breach of contract and negligence, Council has informed the tenant of the Station's status as earthquake-prone to allow the tenant to make its own decision on whether to stay or not. The tenant has chosen to stay. We recommend Council continue this practice for other buildings it owns or sub-leases where such information becomes known.

WDJ-788514-66-3-V4



Reasoning***Building Act***

6. As a result of an initial evaluation procedure ("IEP") undertaken by KiwiRail the Station is earthquake-prone because of the chimneys (less than 33% as strong as the earthquake shaking that would be used to design a new building at that site). Simply because the Station is earthquake-prone does not make it unlawful to occupy the Station under the Building Act. It only becomes unlawful to occupy a building if the Council in its regulatory capacity:
 - a. Puts up a hording or fence;
 - b. Attaches a notice warning people not to approach the building; and / or
 - c. Issues a notice restricting entry to the building.¹
7. Council as lessee needs to monitor the status of this building and note any timeframes imposed for strengthening by Council in its regulatory capacity under its policy for earthquake-prone buildings.

Health and Safety in Employment Act

8. The primary principle of this Act is that a person in control of a place of work must take all practicable steps to ensure that no hazard arises in that workplace. This duty is owed to employees, contractors, and to the general public.
9. Council leases the Station from KiwiRail. Council in turn subleases the Station to a tenant. The tenant has exclusive control of the café in the Station and runs a business. We understand that the tenant has sole control of the café workplace. Accordingly, Council, would not be liable for hazards which arise in the café (unless they relate to parts of the actual building for which Council is responsible).
10. If in the future Council has any staff, contractors or the public using the building under Council's control, Council does need to be satisfied it has taken all practicable steps to ensure the safety of those people in that workplace. If there is such a use of the building by Council, Council should assess the risk posed to any such people and also the practicality of removing any risk including the practicality of strengthening or removing the chimneys that seem to be the cause of the current status of the building. Whether or not removal or strengthening the chimneys is a "practicable step" for the purposes of assessing risk under the Health and Safety in Employment Act will require an assessment of likely cost, and likely harm if the chimneys are not repaired. We would usually advise owners of earthquake prone buildings to consider a remediation programme, but the urgency of the work will depend on the actual perceived risk, and the likely costs.
11. That said, as head lessor, it would seem to be the responsibility of KiwiRail to ensure that the building is structurally safe. Council should ensure that any concerns it has about the safety of its employees, or the employees of its tenant, or the safety of the general public, are conveyed to KiwiRail, and that a satisfactory response is obtained.
12. As you may be aware, Parliament is in the process of passing legislation which will replace the Health and Safety in Employment Act, which may come into force in early 2015. We recommend you seek further advice once the wording of the new Act is finalised, to ensure that no additional duties in this area arise.

¹ Building Act 2004, section 128

Other liability

13. The only other potentially liability for Council could be for breach of contract or negligence, if Council incorrectly advised the tenant that the Station is not earthquake-prone when in fact it is. This is not the case here and we note the tenant has in fact been informed of the result of the IEP. The tenant has verbally agreed, after taking a couple of days to consider the implications, that it was content with the risk posed and has confirmed this in writing.
14. This is good practice and we recommend Council continue this practice in relation to other buildings it owns or sub-leases as any earthquake-assessments become available.

Yours faithfully
Anderson Lloyd



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