

NOTICE OF MEETING

**Notice is hereby given of an
Extraordinary Meeting of the
Performance, Policy and Partnerships Committee
to be held in the Council Chamber, First Floor
Civic Administration Building,
101 Esk Street, Invercargill
On Tuesday 4 August 2020 at the Conclusion of the
Infrastructural Services Committee Meeting**

Cr D J Ludlow (Chair)
Cr R R Amundsen (Deputy Chair)
Sir T R Shadbolt, KNZM JP
Cr R L Abbott
Cr A J Arnold
Cr T M Biddle
Cr W S Clark
Cr A H Crackett
Cr P W Kett
Cr G D Lewis
Cr I R Pottinger
Cr N D Skelt
Cr L F Soper

CLARE HADLEY
CHIEF EXECUTIVE

A G E N D A

2. **APOLOGIES**

Cr A H Crackett.

3. **INTEREST REGISTER**

A2279220

4. **NON-DISCLOSURE AGREEMENT**

This report will be circulated separately.

5. **UPDATE ON JUDICIAL REVIEW PROCEEDINGS BY GAIRE THOMPSON**

5.1 Appendix 1

6. **VERBAL REPORT ON LIBRARY HOURS**

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

A2279220

ELECTED MEMBERS			
NAME	ENTITY	INTERESTS	PROPERTY
RONALD LINDSAY ABBOTT	Invercargill City Council Kiwi-Pie Radio 88FM Invercargill	Councillor Director / Broadcaster	
REBECCA RAE AMUNDSEN	Invercargill City Council Arch Draught Ltd BP Orr Ltd Task Ltd Arts Murihiku Dan Davin Literary Foundation Heritage South Glengarry Community Action Group SMAG Board	Councillor Director Director Director Trustee Trustee/Chair Contractor Events Co-ordinator (Volunteer) Council Representative	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

A2279220

ALLAN JAMES ARNOLD	Invercargill City Council Ziff's Café Bar Ltd Buster Crabb Ltd Ziff's HR Ltd Ziff's Trust Southland Aero Club Invercargill Club Invercargill East Rotary	Councillor Executive Director Executive Director Executive Director Trustee Administrator Member Member Member	
TONI MARIE BIDDLE	Invercargill City Council Southland Museum and Art Gallery Trust Board McIntyre and Dick	Councillor Trustee Husband (Kris MacLellan) – Chief Executive Officer	
WILLIAM STUART CLARK	Invercargill City Council Invercargill Ratepayers Advocacy Group	Councillor Member	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
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A2279220

ALEX HOLLY CRACKETT	Invercargill City Council Ride Southland Southland Youth Futures Advisory Board Sport Southland McIntyre Dick	Councillor Chair Chair Trustee Marketing Manager	High Street Invercargill
PETER WARREN KETT	Invercargill City Council Age Concern Southland Kite Investments Limited Invercargill Harness Racing Club Board Member Ascot Consortium	Councillor Board Member Director Vice President and Life Member Member	
GRAHAM DAVID LEWIS	Invercargill City Council Bluff 2024 Rejuvenation Hospice Southland City Centre Heritage Steering Group Southland Regional Heritage Trust	Councillor Officer Trustee Member Member	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
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A2279220

DARREN JAMES LUDLOW	Invercargill City Council Radio Southland Healthy Families Invercargill Murihiku Maori Wardens Southland Community Law Centre Thrive Community Trust Environment Southland	Councillor Manager Board Member Board Member Board Member Trustee Lyndal Ludlow (wife) – Councillor	770 Queens Drive Invercargill
IAN REAY POTTINGER	Invercargill City Council Southland Electronics Limited Santa Parade Organiser	Councillor Director Alice Pottinger (Wife)	171 Terrace Street Invercargill 9810
TIMOTHY RICHARD SHADBOLT	Invercargill City Council Kiwi Speakers Limited SIT Ambassador	Mayor Director Member	
NIGEL DEAN SKELT	Invercargill City Council Badminton New Zealand Badminton Oceania Badminton World Federation ILT Stadium Southland	Councillor Board Member Vice President Council Member (Chair of Communications and Media) General Manager	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

A2279220

LESLEY FRANCES SOPER	Invercargill City Council Breathing Space Southland Trust (Emergency Housing) Omaui Tracks Trust National Council of Women (NCW) Citizens Advice Bureau Southland ACC Advocacy Trust Southern District Health Board Southland Warm Homes Trust Southland Food Rescue Trust	Councillor Chair Director Secretary / Treasurer Member Board Member Employee Member Member Member	137 Morton Street Strathern Invercargill 24 Margaret Street Glengarry Invercargill
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INVERCARGILL CITY COUNCIL ELECTED MEMBERS INTEREST REGISTER
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EXECUTIVE STAFF			
NAME	ENTITY	INTERESTS	PROPERTY
CLARE HADLEY	Invercargill City Council Hadley Family Trust	Chief Executive Trustee	
CAMERON MCINTOSH	Invercargill City Council	Group Manager - Works and Services	
DAVID FOSTER	Invercargill City Council	Acting Group Manager - Finance and Corporate Services Executive Director Foster and Associates Ltd	
DARREN EDWARDS	Invercargill City Council	Group Manager - Environmental and Planning Services	
JANE PARFITT	Invercargill City Council Dementia Canterbury Charitable Trust	Interim Group Manager – Infrastructure Board Member	

TO: PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE
FROM: CLARE HADLEY, CHIEF EXECUTIVE
MEETING DATE: TUESDAY 11 AUGUST 2020

UPDATE ON JUDICIAL REVIEW PROCEEDINGS BY GAIRE THOMPSON

SUMMARY

This report advises Council of the settlement agreed to by parties in the matter Gaire Thompson and HWCP and Council.

RECOMMENDATIONS

That the report *Update on Judicial Review Proceedings by Gaire Thompson* be received; and

That Council confirm the settlement terms agreed by the Chief Executive.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> N/A
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> No
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> None
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> N/A

FINANCIAL IMPLICATIONS

The total costs of defending the litigation are \$27,466 exc GST.

LEGAL PROCEEDINGS

Council considered a possible settlement with Mr Thompson earlier this year. At that time, it was identified that any settlement would require the agreement of HWCP.

That agreement with HWCP has now been achieved. The joint memorandum presented to the Court is attached as Appendix 1 (A3101159).

There was some urgency to the negotiations, in that the case was to proceed to a hearing on 29 and 30 July. The Chief Executive took advantage of the presence of councillors at a workshop on Tuesday, 21 July, to outline the proposal and to seek guidance on whether this would be acceptable to Council. She undertook to report on the total cost to Council to date, which is \$27,466.

There really are no options in this matter. Council was always going to be left with the costs of defence, even in the event of being successful in litigation.

APPENDIX 1

- Joint Memorandum

In the High Court of New Zealand
Invercargill Registry
I te Kōti Matua o Aotearoa
Waihōpai Rohe

CIV-2019-425-144

Under the Judicial Review Procedure Act
2016

In the matter of an application for judicial review
of a decision not to notify and to
grant a variation to resource
consent conditions under ss 95-
95E and 127 Resource
Management Act 1991.

Between Lewis Gaire Herdman Thompson
Applicant

And Invercargill City Council
First Respondent

And HWCP Management Limited
Second Respondent

Joint Memorandum in relation to Court's leave for Applicant to discontinue
proceeding

Dated 24 July 2020


Hamish Fletcher Lawyers
Solicitor acting: Fran McDonald
PO Box 1673
Nelson
Email: fran@hflaw.co.nz
Tel: 03 539 0210

Counsel: Sally Gepp
Barrister
12 Harley Street
Nelson 7010
Email: sally@sallygepp.co.nz
Tel: 021 558 241

MAY IT PLEASE THE COURT

Introduction

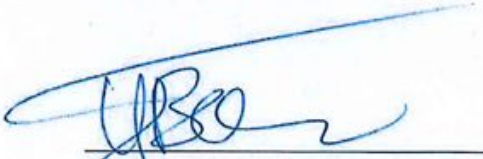
1. Lewis Thompson applied for judicial review of decisions by Invercargill City Council ("Council") not to notify, and to grant, an application by HWCP Management Ltd ("HWCP") to vary the consent conditions of resource consents for the demolition, alteration and redevelopment of land and buildings in a block in the central business district of Invercargill (the City Block development). Mr Thompson also sought interim orders.
2. By letter dated 30 December 2019, in support of the application for interim orders, Mr Thompson gave an undertaking as to damages up to a maximum figure of \$64,262 including GST if any. The undertaking is recorded in the judgment of His Honour Mander J dated 31 December 2019 (at [38]-[42]).
3. Mr Thompson has agreed to pay HWCP \$64,262 including GST if any pursuant to the undertaking.
4. In accordance with Rule 15.20 High Court Rules, Mr Thompson seeks the Court's leave to discontinue the proceeding. Leave is sought on the grounds that the parties agree that the undertaking has been satisfied. A Notice of Discontinuance has been prepared and will be filed as soon as leave is granted.
5. Mr Thompson has paid costs to HWCP on terms agreed directly between the parties. There is otherwise no issue as to costs.



F McDonald / S Gepp
Counsel for Mr Thompson



R Donnelly
Counsel for Invercargill City Council



J Ormsby / T Brown
Counsel for HWCP Management Ltd

TO: EXTRAORDINARY PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE

FROM: MICHELE FREY – INTERIM PARKS MANAGER

MEETING DATE: TUESDAY 4 AUGUST 2020

NON DISCLOSURE AGREEMENT

RECOMMENDATION:

That the report ‘Non Disclosure Agreement’ be received; and

That all members of the Rugby Park and Surrey Park Sports Hub Governance Group sign a non-disclosure agreement before participation in the Group; and

Any member who chooses not to sign a non-disclosure agreement be replaced on the Group.

BACKGROUND

Council has been working through a strategic planning process (informally referred to as the Bramley work) both for the Long Term Plan 2021-31 and for development of Invercargill.

As part of establishing a more outward looking focus, and stronger relationships with external stakeholders, governance groups have been established for some activities/projects. Some councillors have been appointed to these.

ISSUE

Two project groups have been formed to review the future provision of sporting facilities at Rugby Park, Turnbull Thompson Park and Surrey Park/ILT Stadium, with a governance group established for each. These two projects are part-funded by Sport NZ, and will include representatives from Sport NZ, council, and local sports organisations.

All parties to the discussions (including the professional services representatives) have been asked to sign a non-disclosure (confidentiality) agreement (NDA). Non-disclosure agreements, as the name suggests, are designed to protect all parties from the disclosure of information that is confidential in nature and from being disclosed by either party. This goes no further than the requirements on councillors imposed by the *Local Government Act 2002*.

The *Local Government Act 2002* requires Invercargill City Council and its councillors to have and comply with the terms of its code of conduct. Section 15 of Schedule 7 of that Act requires the code of conduct to deal with the disclosure of information by councillors.

The Invercargill City Council Code of Conduct relevantly provides:

6.2 media comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticize, or compromise the impartiality or integrity of staff;

And –

7.1 In the course of their duties members will occasionally receive information that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

The *Local Government Official Information and Meetings Act 1987* is the applicable piece of legislation when considering whether official information held by Invercargill City Council, and its councillors and/or staff should be made available to the public. Invercargill City Council abides by the principle of availability that underpins the whole of this Act. That principle states that any official information is to be made available unless there is good reason for withholding it.

While the starting point is that information should be available to the public, the Act acknowledges that there may be conclusive or other reasons for withholding information.

Under the Act, once council receives information, it is considered council's information. Therefore, the Act applies. In the event that a request is received for information, Invercargill City Council will consider that request, and to the extent that it is possible - consistent with the principle of availability - information will be released to the public.

The Act recognises the need to withhold information is a balancing of public interest to know what council is doing, with the public knowing that Invercargill City Council, or the parties it is dealing with, are not commercially disadvantaged by disclosure.

In effect, no elected member participating will be any more disadvantaged by the signing of this non-disclosure agreement than they should recognise themselves to already be.

Critically, knowing that all members have signed such a non-disclosure agreement gives confidence that any information provided will be respected and treated sensitively. Without that confidence, information will not be freely shared and this has the effect of undermining stronger relationships with external stakeholders. It is also important that where a project is being part funded by other parties, that clear understandings are in place at the beginning. An NDA is part of that.

Often in this sort of strategic planning, consultants seek information from organisations running similar facilities/assets in other locations. Their willingness to supply information can be affected by assurances around confidentiality.

The governance groups' process, and the inclusion of a non-disclosure agreement, does not replace Council's processes relating to public information, nor will it hinder the ability for Council to have public debate on any proposals formulated for these publicly owned assets.

It is regrettable that the need to seek the signing of a non-disclosure agreement was not shared with Council at the time of its establishment, and an apology is offered for this. All prospective governance group members were called prior to sending out the NDA so they understood their role and the material they would receive, including the NDA.