

**PARTICULARS AND CONDITIONS OF SALE BY PUBLIC
TENDER**

OF

**ABANDONED PROPERTY UNDER THE LOCAL
GOVERNMENT (RATING) ACT 2002**

AT

ELLIS ROAD, BENNEYDALE

ON BEHALF OF THE

WAITOMO DISTRICT COUNCIL

**PARTICULARS AND CONDITIONS OF PROPERTY OFFERED FOR SALE
BY PUBLIC TENDER**

The property described below which has been declared abandoned, is offered for sale by public tender by the Vendor acting pursuant to Section 77 to 83 of the Local Government (Rating) Act 2002.

PARTICULARS

Vendor	Waitomo District Council 15 Queen Street Te Kuiti
Property	Ellis Road, Benneydale, 832 square metres more or less, Lot 2 DP 9071 Certificate of Title TNA1/747
Tender Closing Date/Time	4.00 pm on Monday, 2 December 2019
Tender Acceptance Date/Time	4.00 pm on Friday, 6 December 2019
Settlement/Possession Date	15 Working days from the Acceptance of the Tender
Agent for Vendor	Debt Management Central
Delivery Address	40 Bowen Street Feilding
Postal Address	PO Box 21007 Feilding 4740
Email Address	dmc@mw.org.nz

CONDITIONS

1. INTERPRETATION

In these tender conditions unless the context indicates otherwise:

1.1 Definitions:

“**Act**” means the Local Government (Rating) Act 2002.

“**Agent**” means the Licensed Real Estate Agent for Vendor.

“**Agreement**” means the attached Memorandum of Agreement.

“**Default Interest Rate**” is 15% per annum.

“**NZLS Guidelines**” means the New Zealand Law Society Property Transaction and Edealing Guidelines.

“Reserve” means the amount as required under Section 79(2) of the Local Government (Rating) Act 2002.

“Working Day” means any day of the week except Saturday, Sunday, any national holiday and a day in the period commencing 24 December in any year and ending 5 January the following year, both days inclusive. A Working Day commences at 9.00 am and ends at 5.00 pm.

- 1.2 The Property is sold on the basis of these Particulars and Conditions and the General Terms of Sale.

2. TENDER PROCESS

- 2.1 A tender must be submitted in this form in duplicate in a sealed envelope marked “Tender Form Ellis Road, Benneydale” and must be received at the Delivery Address by the Tender Closing Date/Time (time being of the essence).
- 2.2 A tender offer must state the purchase price as an exact dollar amount, without reference to any calculation or variation, or to the purchase price contained in any other tender.
- 2.3 A tender must be accompanied by the payment of the deposit, equivalent to 10% of the purchase price – either by Bank cheque or payment in cleared funds to BNZ account 02-0727-0104011-02 with reference “TD119189”.
- 2.4 A tender must be executed as follows:
- (i) Where it is signed by an agent, there must be attached an authority signed by the principal;
 - (ii) In the case of a partnership, it must be signed by all partners or, if all partners have not signed, by a duly authorised partner whose signature must follow the name of the partnership, followed by the word “Partner”;
 - (iii) In the case of a company, it must be signed by an officer of the company authorised to sign and there must be attached evidence of that authority; or
 - (iv) Where it is signed by an attorney, there must be attached a copy of the Power of Attorney, together with a Declaration of Certificate of Non-Revocation.
- 2.5 A tender will not be open before the Tender Closing Date/Time.
- 2.6 The offer contained in each tender cannot be withdrawn until after the Tender Acceptance Date.
- 2.7 The tender is deemed to be accepted on signing by the Vendor of the Acceptance of Tender. Acceptance will be communicated to the successful tenderer and/or the tenderer’s lawyer as soon as reasonably practicable.
- 2.8.1 The Vendor may:
- (i) Reject any tender even if it is the highest;
 - (ii) Negotiate with any tenderer to the exclusion of any others after the opening of tenders;
 - (iii) Re-advertise for tenders;

- (iv) Ignore any irregularities in the tender process; and
- (v) At any time before the Tender Closing Date/Time, extend the Tender Closing Date/Time by a maximum of twenty (20) working days, in which case the Tender Acceptance Date/Time and the Settlement/Possession Date shall be deemed to have been extended by an equivalent period.

2.8.2 If the Reserve is not met, the property will not be sold.

2.9 A deposit lodged by an unsuccessful tenderer, will be returned to the tenderer no later than five (5) days after the Tender Acceptance Date. No interest shall be payable on any deposit.

GENERAL TERMS OF SALE

3. SETTLEMENT

3.1 The parties will complete settlement by way of remote settlement.

3.2 On Settlement Date the Purchaser shall pay the balance of the purchase price, interest and other money (if any), in cleared funds to the Vendor's solicitors.

3.3 On such payment, the Purchaser is entitled to an executed transfer of the property to be executed by the Vendor, being released into the Purchaser's dealing workspace in accordance with NZLS Guidelines.

4. DEFAULT INTEREST

4.1 If for any reason other than the default of the Vendor, the purchase is not completed on the Settlement Date, the Purchaser must pay to the Vendor Default Interest on the unpaid portion of the purchase price from the due date for payment until actual payment. Any payment received on a day which is not a Working Day, or after 3.00 pm on a Working Day, is deemed to be made on the following Working Day.

5. POSSESSION

5.1 The Vendor does not guarantee vacant possession on settlement.

5.2 Once settlement is effected, it will be the responsibility of the Purchaser to arrange entry and access to the property.

5.3 The Purchaser is responsible for all local and regional Council rates from Settlement Date, but excluding any rates owing for the period prior to Settlement Date.

5.4 The Vendor is not required to pay any charges whatsoever in respect of the property, whether or not registered or registerable under the Statutory Land Charges Registration Act 1928 or any other Act or any regulation.

6. EXCLUSIONS

- 6.1 The area, dimension and description of the property is taken by the Purchaser as correct. No error or misdescription will annul the sale. No compensation will be paid by the Vendor for any such error or misdescription.
- 6.2 The Vendor is not required to point out the boundary of the property or any corner or boundary pegs. There is no obligation on the Vendor to have boundary pegs in place on the property.
- 6.3 The Vendor is selling the property pursuant to the provisions of the Act and the Purchaser may not make any objections or requisitions in respect of the property title. The property is sold subject to all existing encumbrances, registered or unregistered.
- 6.4 The Vendor is not liable for any building or erection on the property that encroaches on an adjoining property, any neighbouring building that encroaches on the property, or any fence that is not erected on its true boundary.
- 6.5 The Purchaser is deemed to have notice of the existence or interests noted on the title (if any) and purchases the property subject to such interests.
- 6.6 These Particulars and Conditions of Sale and the attached Memorandum of Agreement are the sole evidence of the Purchaser's contract. The Purchaser warrants that it has inspected the property and that it enters into the contract solely in reliance on the Purchaser's own judgement not on any statement made by the Vendor or any agent of the Vendor, or contained in any advertisement of sale.
- 6.7 No covenants or warranties are expressed or implied in these Particulars and Conditions of Sale, except to the extent that the Vendor has not knowingly encumbered the property.

7. VENDOR'S REMEDIES ON DEFAULT

- 7.1 If the Purchaser defaults in its performance or fulfilment of these Particulars and Conditions of Sale or in payment of any money under them (time being of the essence) then, the Vendor may, in addition and without prejudice to any other remedies available to the Vendor:
 - (i) affirm this agreement and sue the Purchaser for specific performance or for damages for breach of contract.
 - (ii) cancel the contract for sale by notice in writing and retain the deposit.
 - (iii) proceed to sell the Property to a third party on terms and conditions satisfactory to the Vendor in its sole discretion thinks fit with or without notice to the Purchaser.
- 7.2 Where the Vendor is entitled to cancel the Agreement the entry by the Vendor into a conditional or unconditional contract for the resale of the Property or any part of it ("Resale") by the Vendor will take effect as a cancellation of the Agreement by the Vendor if the Agreement has not previously been cancelled and the Resale will be deemed to have occurred after cancellation.

- 7.3 The damages claimable by the Vendor after cancellation by the Vendor will include all damages claimable at common law or in equity and will include (without limitation) any loss incurred by the Vendor on any bona fide Resale contracted within one year from the Settlement Date. The amount of that loss may include:
- (a) the difference between the Purchase Price and the price paid pursuant to the Resale.
 - (b) interest on the unpaid portion of the Purchase Price at the Default Interest Rate calculated from the Settlement Date to the settlement of the Resale.
 - (c) all costs and expenses reasonably incurred in any Resale or attempted Resale.
 - (d) all outgoings (other than interest) from the Settlement Date to the settlement of the Resale.
- 7.4 Any surplus money arising from the Resale may be retained by the Vendor.

8. GOODS AND SERVICES TAX

- 8.1 To the best of the Vendor's knowledge the registered proprietor is not registered for GST purposes.
- 8.2 If however, it is subsequently established that the registered proprietor is registered for GST purposes then this tender deemed to be exclusive of GST. The Purchaser is responsible for the payment of GST on the Purchase Price (if any). Where the Purchaser provides evidence that it is GST registered on the supply under the tender is a taxable supply, the purchase may be zero – rated pursuant to section 11(1)(mb) of the Goods and Services Tax Act 1985. However, if the Purchaser's GST position changes prior to the Settlement Date or an otherwise transpires that GST is payable, then the Purchaser is responsible for paying GST on the purchase price.
- 8.3 As between the Vendor and the Purchaser the Council is not to pay any GST or additional tax or to take any other steps to minimise the liability in respect of such tax or additional tax until the corresponding payment is received from the Purchaser.

9. NOTICES

- 9.1 All notices and documents to be given or served in accordance with the terms hereof may be given or served as provided in sections 352 to 361 of the Property Law Act 2007 and in any event shall be sufficiently given or served if actually received by the party or the party's solicitor.

MEMORANDUM OF AGREEMENT

OFFER BY TENDERER TO PURCHASE

Property Ellis Road, Benneydale,
832 square metres more or less, Lot 2 DP 9071
Certificate of Title TNA1/747

PURCHASER'S FULL NAME: _____ (“the Purchaser”)

offers by tender to purchase the property on the Particulars and Conditions of Sale and General Terms of Sale set out above for a purchase price of:

\$
[Purchase Price]

[The tender offer must state the purchase price as an exact dollar amount and without reference to any calculation or variation or to the purchase price stated in any other tender]

Signature of Purchaser(s): _____

Name of Purchaser(s): _____

ACCEPTANCE OF TENDER

The Vendor accepts the offer by tender of the Purchaser.

Signature of Vendor(s): _____

Date:

ADDITIONAL INFORMATION REQUIRED

PURCHASER

Postal Address: _____

Telephone: _____

Email: _____

Bank Account:

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 Required to refund deposit if unsuccessful

Name on Account _____

Bank / Branch _____

Name of Solicitor: _____

Person Acting: _____

Postal Address: _____

Telephone: _____

Email: _____

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