

SOUTH WAIRARAPA DISTRICT COUNCIL

27 JUNE 2018

AGENDA ITEM C2

FEATHERSTON TOWN CENTRE

Purpose of Report

To provide a summary of decisions and actions in relation to land between Daniel St and Birdwood St, Featherston.

Recommendations

Officers recommend that Council:

1. *Receive the information.*

1. Executive Summary

At the Council meeting of 16 May 2018, the following resolutions were passed:

COUNCIL RESOLVED (DC2018/40):

1. That a workshop will be convened at the earliest possible opportunity for council to receive all information regarding the land between Daniel Street and Birdwood Street, Featherston including any information on the Featherston Town Square development stage 1 and 2.
2. That following the workshop, the Risk and Audit Working Party will review recommendations from the workshop and receive and evaluate the material and prepare a report to be presented to the 27 June 2018 Council meeting.
3. The Audit and Risk Working Party will assess the need and make a recommendation to Council on whether there is a need for the report to be reviewed independently.

(Moved Cr Colenso/Seconded Cr Carter)

Carried

The Risk and Audit Working Party recommended an independent review.

At the Council meeting of 6 June 2018, the following terms of reference were agreed:

The scope of the investigation will be as follows:

- All land transactions undertaken by SWDC on Fitzherbert Street, Featherston from Birdwood Street to Daniell Street for the period from 2013 to date.

- All land transactions from 1991 for the same area of land prior to SWDC ownership to establish the original easements and changes thereafter.
- All Council and Featherston Community Board resolutions related to land transactions on Fitzherbert Street from Birdwood Street to Daniell Street for the period from 2010 to date.
- All relevant information provided to Council with regard to the land in question.

2. Land Transactions Undertaken By SWDC

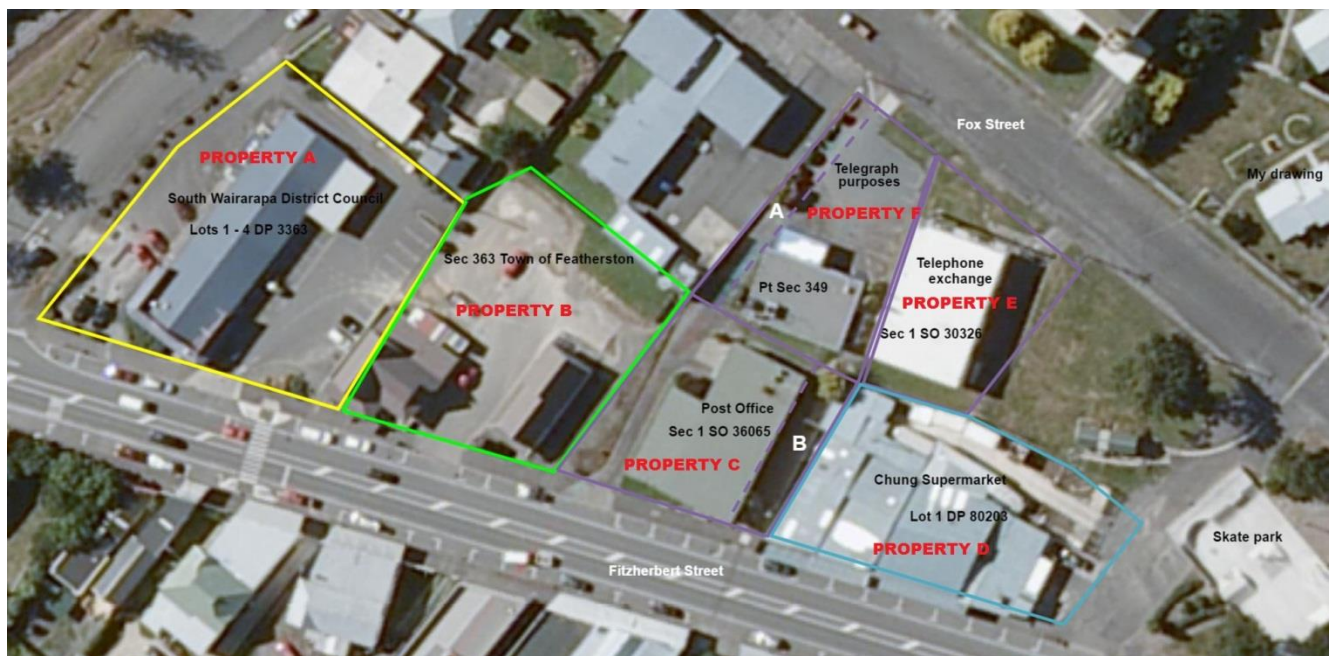
The terms of reference indicate information on:

- All land transactions undertaken by SWDC on Fitzherbert Street, Featherston from Birdwood Street to Daniell Street for the period from 2013 to date.

2.1 Land Ownership Prior to swap

Attached as Appendix 1 is a diagram outlining the areas of swapped land, the area highlighted in yellow originally belonged to SWDC, the outlined area belonged to Trusthouse.

The following picture is another depiction of the land in question. Following acquisition, Trusthouse owned properties "B"; "C"; and "D". As shown SWDC owned property "A".



2.2 Land Swap Trusthouse/SWDC Council Considerations

The concept of a land swap was first discussed by Mayor Staples and Mr Allan Pollard (CE Trusthouse) during a meeting held in the week of 29 April 2013.

This meeting was summarised in an email from Mr Pollard to Mayor Staples dated 29 April 2013:

"Adrienne,

Firstly, thank you for meeting up with me this week. It was good to discuss the many issues that we have and i look forward to strengthening the relationship between Trust House and SWDC over the coming months ahead.

As we discussed i plan to inform you when i am close to completion with the community store complex and would be obliged if we could organise a meeting for me to present at the next available community board meeting. Furthermore, we also discussed a land swap arrangement whereby we would swap our land with the council owned land that we currently rent. The size of the land is 2061 sqm. You advised that (if approved) the land that would be used for the purpose of a new town square, i would be happy to consult with trustees re; the possibility of some form of grant to assist with the project.

Once again thank you for taking the time to meet with me.

Kind regards

Allan Pollard

Chief Executive

Trust House Limited"

On 1 May 2013, Mayor Staples emailed Mr Pollard:

"Hello Allan

The idea of a land swap and town square development was discussed with Featherston Community Board, (in confidence at this stage) with a very positive response.

Paul Crimp, our acting CE will put a paper to Council on 15 May regarding this. Once passed we can then get things underway formally if your board is agreeable also. The paper will be in Public Excluded to recognise that you haven't yet discussed it with your board therefore the last thing we need is it appearing in the TA. If I recall correctly, your Board Meeting is 22 May?"

Council resolved at the **public excluded** meeting of 15 May 2013 to proceed with the land swap:

G2. Featherston Land Swap

Mayor Staples advised that Trust House were to present revised Featherston development plans to their board on the 22 May 2013 and due to scope changes an opportunity had arisen that could be mutually beneficial.

Councillors agreed that the CEO commence negotiations with Trust House to swap land owned by Council under the current supermarket for land adjacent to Clifford Square owned by Trust House which could then be developed in to a town square.

COUNCIL RESOLVED (DC2013/84):

1. To receive the information.
2. To delegate to the Acting Chief Executive Officer the authority to negotiate a land swap on reasonable terms.

(Moved Cr Robertson/Seconded Cr Davies)

2.3 Land Swap Process

Following the Council resolution, Trust House Ltd legal advisors contacted our legal advisors in regards to a "proposed land swap" raising two matters:

- Trusthouse need to complete the subdivision
- Councils title is endorsed as "endowment"

With regards to the "endowment" our legal advisors wrote to us on 17 June 2013 advising the "endowment" would not be a barrier to proceeding with the land swap.

In a letter from Gawith's dated 24 June 2013, Gawith's highlight a "right of way through Lot 2, (marked B) which is the area taken over by Council. Please consider whether this raises any particular issues for Council in terms of any plans you may have for developing this site."

On the subdivision plan attached to the letter "B" was noted as "R.O.W. sewerage& stormwater drainage and cable ducts".

The Chief Executives response was:

The South Wairarapa District Council proposes to use the land it acquires in the land swap as an open space "square" that can be used for public events in Featherston. At present Featherston has no such space and for occasions like ANZAC day there is nowhere for the veterans and others participating in the parade to "form up". Not only would the area complement the other amenities immediately adjacent to the proposed site but Council believes the newly acquired land will enhance Featherston's main street.

Currently Council receives little rent for the land it proposes to swap. Council has also contemplated selling off part of the area so that the land we acquire in the swap is of a more regular shape and in line with the land we already own immediately adjacent to this proposed area. Trust House has offered to provide some funding to develop this area.

While the earlier discussion was simply for a "square" it is apparent from the response above there is mention of selling part of this area.

Title issued on the swapped area, 2080 sqm, on 19 March 2014.

Note, the description of easement "B" changed to "Subject to a right of way and rights to water and sewage drainage and electricity rights over part marked B on DP 471153 created by transfer B204864.1 18.11.1991 at 2.29pm".

2.4 Usage of Land

Following the swap, Council undertook a feedback process to ascertain views on the usage of the area. This feedback process was not undertaken (or required to be undertaken) under the Local Government Act. Of 1,200 feedback forms circulated to Featherston urban and rural residents, 150 were returned. In general terms, the feedback indicated support for the donated (Menz Shed) building to be located on the site indicated, for a hard surface landscaped area, and commercial development.

The following tables summarise the feedback received:

| To the question "do you support the suggested town square?" | Percent |
|---|---------|
| For | 58% |
| Against | 38% |
| Don't know | 3% |
| Other | 1% |

| To the question relating to the positioning of the donated building: | Percent |
|--|---------|
| On the proposed site | 39.2% |
| On Fox St | 17.3% |
| Community Centre | 8.5% |
| Other Location | 16% |
| Against Donated building | 16% |
| Can't establish | 3% |

The analysis of the feedback forms is that there is support for the town square development, and that the preferred site for the donated building is the town square development.

| Further analysis of the feedback highlighted a preference for: | Percent |
|--|---------|
| The original proposal | 40% |
| Commercial | 32% |
| Park/Town Square | 20% |
| No other option stated | 5% |

| | |
|----------------------------------|----|
| Sell | 2% |
| Community/Visitor Centre/Library | 1% |

The Featherston Community Board (meeting 13 May 2014) considered the feedback data and resolved:

| | |
|------------|---|
| FCB2014/39 | <p>FCB RESOLVED (FCB 2014/39) to recommend to Council that the next step for Council is to consult with the Featherston community before any decision is made regarding the Town Centre and Menz Shed location. (Moved Beattie/Seconded Carter) Carried</p> <p>Cr Robertson voted against this motion. Mr Thomas voted against this motion.</p> |
| FCB2014/40 | <p>FCB RESOLVED (FCB 2014/40) to recommend to Council that a partnership be formed with the Featherston Community Board and that the Community Board is consulted on all aspects of the Featherston Town Square. (Moved Carter/Seconded Beattie) Carried</p> <p>Cr Robertson voted against this motion.</p> |

At the time, there was a level of urgency in that Trusthouse needed the donated building moved, the following resolution was made at the 25 June 2014 Council meeting.

Featherston Town Centre/Menz Shed

COUNCIL RESOLVED (DC2014/112):

1. To receive the tabled information.
(Moved Mayor Staples/Seconded Cr Riddell) Carried
2. To alter its motion of 4 June 2014 to read 'That following receipt of a letter from the Menz Shed members confirming their support, Council approves the location of the bottle store building on the proposed site adjacent to Featherston Skate Park, subject to final alignment being confirmed by a landscape designer'.
3. That Featherston Community Board, in conjunction with Council, lead further discussion around the use and design of the remaining area.
(Moved Cr Montgomerie/Seconded Cr Napier) Carried

2.5 MENZ Shed

As indicated in the discussion above, there was some discussion in regards to the proposal by Trusthouse to donate a building for use as a "Menz Shed".

As the building was proposed to be located on the area covered by the Clifford Square Management Plan, internal planning advice was sought in regards to the efficacy of placing the building in the position where it is currently located.

This advice is included in para 2.5.1 below for completeness".

2.5.1. District Plan and Good Town Planning Protocols Analysis

All of the land shown in the picture has a commercial zoning under the District Plan.

An overlay exists on the land covered by the Clifford Square Management Plan identifying it as a public reserve. This identification has no statutory effects under the DP, it is simply identification. The commercial zoning allows the use of the land it covers for a wide range of activities, but it promotes commercial use and development as its primary purpose. The indicative shops (Numbered 1 to 7) shown on the plan would be fully consistent with that purpose.

Care needs to be taken though insofar as any shops have to meet the development standards set out in the DP for commercial activities, this including provision of parking and heritage design. Because the development is adjacent to a state highway, particular emphasis would be placed on the parking (location and number provided) and access to those spaces. NZTA would probably claim to be an affected party because of this. Some consultation with NZTA would be required even if they were not deemed an affected party.

With regard to the heritage provisions, I do not see a major issue as the land is bare at present. Suitable conceptual designs for a new building(s) can be readily achieved for consent purposes under the DP heritage provisions by a properly trained designer in liaison with planning staff. This could be a design that clearly reflects heritage designs or even approval to depart completely from a heritage design and provide something entirely new, innovative and highly appealing.

The placement of the Menz Shed further back from the frontage with the SH is a good compromise in terms of maintaining a retail look along the road frontage while enabling it to be close to other community facilities such as the skate park and new square. It would also facilitate the formation of the square in front of it through to the highway much as with the original concept. In fact the new Menz Shed location opens up the possibility of the shops and it enclosing the square and so giving it a definite form and sense of place. It would also enable a shop design whereby the square could be utilised e.g. for cafes with outdoor areas. The commercial building could potentially (through careful design) be used to manage the impact of wind on the area and make it a place to go to for social and commercial reasons. Featherston would benefit from the development of an overall commercial centre (heart) for the town. The revised proposal goes a long way on that front by promoting commercial development with a related public space (the square) aligned with it. This is supported by the DP as well (linked public and private use).

If Council was so inclined, the design of the new square could be used to link the streetscape together as well by carrying the pavement form out of the square and along both sides of Fitzherbert St in that block. These design elements could extend beyond the footpath pavement to landscaping and street lights to provide a more cohesive overall design. This would greatly reinforce a sense of place and the feel of a town centre.

Lastly on the commercial side of things, the other end of the shops could also offer an opportunity to "get rid of the wooden fence" that has been erected as the new supermarket is built. Again, if Council could reach agreement with the

Trust the shops could be designed on that side to “open out” onto that carpark to create some connectivity between the two sites. This would mean all the new shops (as depicted on the plan) could be designed on a three frontage basis, a highly desirable outcome for a commercial site.

With respect to the Clifford Square Reserve Management Plan, this is a separate statutory document which sets out the aims of Council and the community for the future development of the reserve. It also sets out various policies and methods to achieve those aims. The proposed new placement of the Menz Shed means it is partially on Councils freehold commercial land and partially on the reserve (the land is all still zoned commercial in the DP though). This might mean a small adjustment to the Clifford Square RMP is required although looking at the concept plan, the intrusion is minor and does not require any special provision.

2.6 Sale of balance of land

Resolution DC2015/90 gave approval for the sale or lease of the balance of the land:

Sale of Land (or Lease) Featherston Town Centre

COUNCIL RESOLVED (DC2015/90):

1. To receive the information.
 2. To agree that the land is not a strategic asset.
 3. To approve the sale or lease of part of Lot 2 DP 471153.
- (Moved Cr Napier/Seconded Cr Riddell) Carried

This sale had to be “subject to final survey” as the final configuration and footprint of the developed square would not be ascertained for some time.

The land was marketed via a real estate agent for about one year, however this proved unsuccessful.

We received an unsolicited approach, and offer for purchase from Marcus Darley.

A purchase and sale agreement was signed. The purchase and sale agreement included clauses around land area, SWDC extinguishing the easements, and issuance of title. There was also a due diligence period included Resource Consent for Building

On 12 September 2017, Marcus Darley lodged a resource consent for the construction of a project entitled “Featherston Central”. As the land was owned by SWDC, the application was processed by an external contractor, Ms Kennerley.

As part of normal consent processing, under section 92 of the Resource Management Act, Ms Kennerley wrote to the applicant on 27 September 2017 with a series of questions in relation to the application. At this point the processing time period stops to allow the applicant to respond.

The outstanding matters included:

- Provision of a professional assessment of any actual and potential traffic, parking, and loading effects.
- Agreement from NZTA on traffic effects.
- Onsite stormwater disposal.
- Information in regards to financial contributions.

Some of this information was forthcoming, however the application remained on hold and while a couple of extensions were requested and granted, the application never came off hold.

In terms of the consent application timeline:

| Consent Application Timeline | Date |
|---|-------------|
| Resource consent lodged | 12/09/2017 |
| Resource consent S92 request (on hold) | 27/09/2017 |
| - Applicant has 15 Days to respond | |
| - Request for extension of time by applicant to 10 Nov 2017 | 12/10/2017 |
| Additional request for extension to end November - (Note – this application was never taken off hold, the clock never restarted) | 08/11/2017 |

On Tuesday 23 March, Mr Murray Buchanan wrote to Mr McGee indicating there were a number of matters still outstanding the your (Mr McGee's) client is presuming are resolved. Mr Buchanan goes on to say "however in discussing them here that does not seem to be the case".

Mr Buchanan outlines the matters outstanding as being the development occupying Council land without council agreement, unresolved easements, and level of parking.

Mr Buchanan indicated that the CE wishes to meet to discuss these matters.

On Thursday 5 April Mayor Napier, CE Paul Crimp, Planning Contractor Toni Kennerley, Planning Manager Russell Hooper, Mr Darley, and Neil McLaughlin met to discuss the application.

It was council's intention to get all the issues on the table and find a path forward.

The issues outstanding were:

- Title
- Provision of parking or payment in lieu

- Provision of Loading bay/zone
- NZTA approval
- SWDC land occupancy

Mr Darley agreed these were the outstanding matters

At this point Mr Darley indicated he intended to withdraw from the process.

SWDC and Mr Darley agreed a joint press release in regards to the cessation of the project.

3. Easements (and Rights) from 1991

The terms of reference indicate information on:

All land transactions from 1991 for the same area of land prior to SWDC ownership to establish the original easements and changes thereafter.

Attached as Appendix 2 is a timeline of the easements in relation to the land under review. Attached as Appendix 3 is narrative around the easements.

There are two matters that SWDC became aware of quite late in this process.

Firstly, when the subdivision was carried out for the land swap during late 2013/early 2014, some easements were attached to adjacent land we were not aware of. We were notified of this information late October 2017 when the subdivision of SWDC owned land for sale was being undertaken.

Secondly, and more importantly, the Chorus "Right" exercised under the Telecommunications Act. This right does not overtly appear in title documentation. We were advised of this during February 2018.

During our dealings on this land, SWDC and Trusthouse have sought appropriate legal advice, and this Right did not come to light through this process, nor did the fact that additional properties have the benefit of easements A and B.

We have confirmation from the CE of Trusthouse that they were not aware of the Chorus Right during their ownership of the land, and therefore it was not raised as an issue during the land swap process.

Our legal advisors did not notify SWDC of anything other than is shown on the title.

In summary, Council acquired the land in early 2014, and decided to offer up the balance of the land unused for the square in June 2015.

Work commenced on extinguishing the easements July 2015.

The subdivision for sale process created additional easements, these were not notified to Council until October 2017.

4. Council and Featherston Community Board Resolutions

The terms of reference indicate information on:

All Council and Featherston Community Board resolutions related to land transactions on Fitzherbert Street from Birdwood Street to Daniell Street for the period from 2010 to date.

Attached as Appendix 4 are all resolutions in regards to the transactions for the areas in question.

5. Subsequent Events

SWDC continues to work to resolve the easements and rights.

6. Appendices

Appendix 1 – Areas of swapped land

Appendix 2 - Timeline of the easements in relation to the land under review

Appendix 3 - Narrative around the easements

Appendix 4 - All resolutions

Contact Officer: Paul Crimp, Chief Executive

Appendix 1 – Areas of swapped land



Appendix 2 – Easements Timeline

**FEATHERSTON LAND SALE
EASEMENTS TIMELINE**

| D A T E | E V E N T |
|----------------|--|
| 1991 | NZ Post (property C) and Telecom (properties E and F) executed easements granting property C a right-of-way across property F (easement A), and granting property F a right-of-way and the rights to run drainage pipes and electricity cables across property C (easement B) |
| 1999 | Sale of old Post Office (property C) to Campbell Moon – no change to easements |
| 2006 | Telecom changes the boundaries of properties E and F by subdivision, and sells property F to D&J Collins Ltd. Easement B becomes attached to both properties E and F, but this is not recorded on the title of property C. |
| 2008 – 2009 | Trust House Ltd acquires property C from Campbell Moon, property D from Chungs, and property B (café/post office and bottle store site) |
| 2010 | Trust House demolishes Chungs building and old post office, having announced a major development for the site which did not take place |
| 2013 - 2014 | Trust House/SWDC land swap – Trust House swaps property D and part of property C for the SWDC supermarket land it has been leasing (property A). Property C is divided into two parts, and easement A is attached to both of them. With subdivision and retitling, Trust House land holdings become property G, and SWDC land holdings become property H on 24 April 2014 |
| 8 July 2015 | SWDC proposed to D&J Collins limited, the owners of property F, that council would relinquish easement A if the Collins would relinquish easement B. SWDC undertook to re-route any services from property F which were using easement B. Council began work with their solicitors to subdivide property H into two portions, one for the Town Square and one to be sold. |
| December 2015 | SWDC instructed surveyor to survey and prepare for subdivision of property H |
| March 2016 | Perkinson Construction started work on Town Square. SWDC was finally able to confirm the location of the boundary between the Town Square and the sale land to the surveyor. SWDC'S surveyor submitted resource consent application for subdivision |
| May 2016 | SWDC confirmed the only service using easement B was a sewer pipe and began work to design re-routing of pipe back to Fox St |
| 10 August 2016 | Resource consent granted for subdivision of property H, with requirement to confirm re-routing of any services in easement B back to Fox St |
| 24 August 2016 | SWDC advised that a sewer lateral from property E connected to the lateral on property F. Attempts made to contact Chorus to advise that this lateral was to be cut off |

| D A T E | E V E N T |
|------------------|--|
| 15 November 2016 | Chorus finally advised sewer lateral was not required and could be capped |
| 14 June 2017 | Code Compliance Certificate issued for sewer re-routing and forwarded to all parties |
| 24 October 2017 | SWDC's solicitors advise that they have discovered additional properties having the benefit of easements A and B. The supermarket property (G) had the benefit of easement A across the Collins' land (F), and the Chorus property (E) had the benefit of easement B across the council property H. The solicitor began work to get the approval of the additional parties to the extinguishment of the easements. |
| 1 November 2017 | SWDC advised Mr Darley of the additional parties to the easements and the work being done to progress removing them. |
| 27 February 2018 | Chorus advised SWDC of the presence of a number of telecommunications cables underneath property H |

Appendix 3 - Easements Narrative

Featherston land – easement information

South Wairarapa District Council owned Property D, the site of the former Featherston Town Hall. The Hall was demolished in the 1970s and the site was leased to Sheung Chung Ng and known as Chung's Supermarket. In 1999, SWDC sold Property D to Sheung Chung Ng.



Post Office land



(Note that aerial photograph dates from 2010 – nothing earlier available).
In 1990 Properties C, E and F were in Crown ownership:

- Property C for post office purposes
- Property F for telegraph purposes
- Property E for automatic telephone exchange

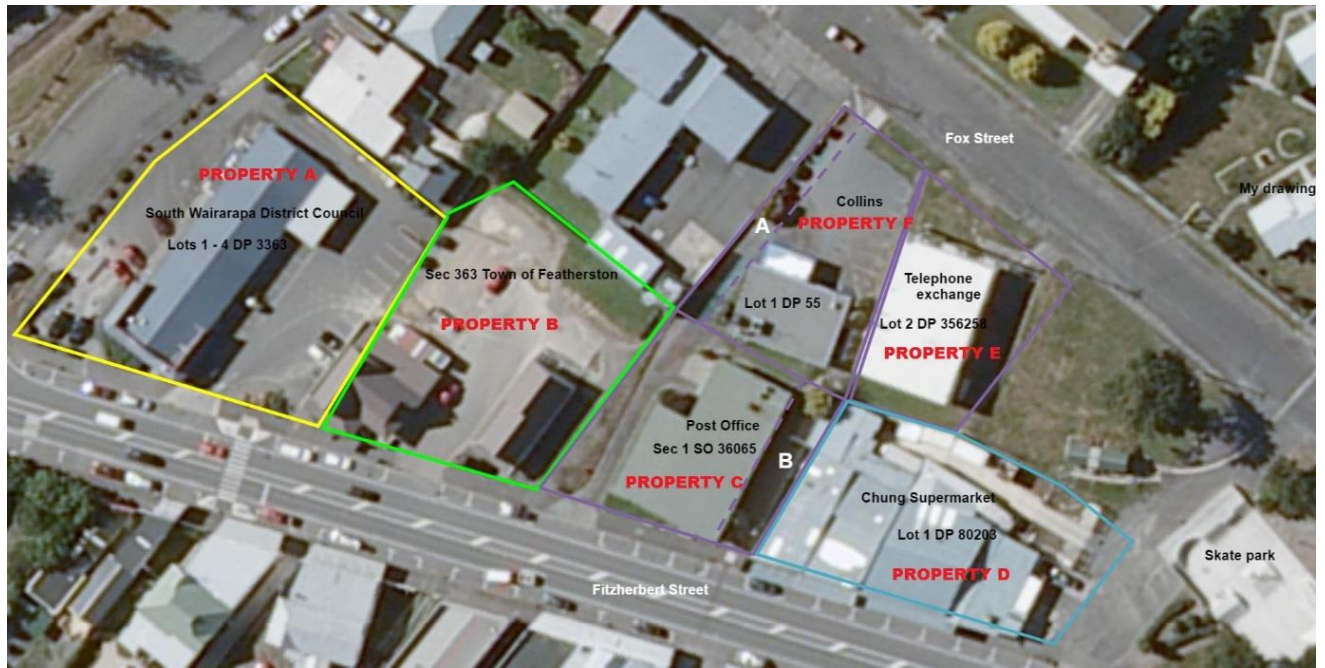
With the creation of state-owned enterprises, Property C was transferred to the ownership of New Zealand Post Ltd, and Properties E and F were transferred to the ownership of Telecom Central Ltd. In September 1991, NZ Post and Telecom granted easements to each other over Property C and Property F. Easement A granted NZ Post a pedestrian and vehicular right-of-way across Property F. Easement B granted Telecom a right-of-way across Property C, along with the rights of drainage (stormwater and sewer) and the right to “transmit and distribute electricity through transformers, cables, fibre optic cables and wires and their conduits installed on or under the easement area”. The intention was that both easements would endure permanently.

In 1999, Property C, site of the former Post Office, was purchased by Campbell Moon and partners and operated as Marsden Antiques.



Subdivision and sale of Telecom Ltd land

In 2006, Chorus, previously a division of Telecom and now the owner of Properties E and F, sold Property F to D&J Collins Enterprises Ltd. Prior to the sale, Chorus made a minor adjustment to the boundaries, so that the two properties were effectively sub-divided and thus subsequently re-titled. During this process easement B over Property C was attached to both of the new titles for Properties E and F. No change to the title of Property C was made to reflect the fact that now both Fox St properties had the benefit of easement B.



Supermarket land

Property A was Council land, vested in the former Featherston Town Board in 1914 as an endowment. From 1978 the land was leased to Becketts for a supermarket. In 1997, Becketts surrendered the lease of part of Property A (Lot 3) and it was leased to Trust House Ltd.



Trust House Ltd also acquired the adjoining Properties B and C in 2008, and Property D in 2009.



SWDC / Trust House land swap

By 2013, the ownership of the land fronting Fitzherbert Street between Daniell and Birdwood streets was split between Trust House Ltd and SWDC. The Council owned Property A, and Trust House owned Properties B, C and D.



Trust House had been unable to reach an agreement with the owners Property F for the removal of easement B. SWDC offered the land swap

proposal, and property C was subdivided and split between SWDC and Trust House, resulting in the creation of two new titles, Lots 1 and 2 DP 471153. Easement A was attached to both titles. Easement B remained on the title for the land going to SWDC. The subdivision plan, prepared by Tomlinson and Carruthers Surveyors Ltd, included a schedule of existing easements as shown below.



On 1 July 2013, Mr Crimp confirmed to Mr Kershaw that the right-of-way on the subdivision plan (Easement B) had been noted and "would not pose any particular issues for Council in terms of plans we have for developing the site

On 24 April 2014, Mr Kershaw wrote to Mr Crimp advising the completion of the land swap, and enclosing a copy of the new Certificate of Title. He again drew attention to easement B, noting that any redevelopment should be done with this in mind. At this point the Certificate of Title showed both easements A and B.

Subject to a right of way and rights to water and sewage drainage and electricity rights over part marked B on DP 471153 created by Transfer B204864.1 - 18.11.1991 at 2:29 pm

Appurtenant to part formerly Section 1 SO 36065 is a right of way created by Transfer B204864.2 - 18.11.1991 at 2:29 pm

The land swap between Trust House Ltd and South Wairarapa District Council was formally completed by 24 April 2014, with Trust House owning Property G, and Council taking ownership of Property H.



Property H needed to be subdivided to separate the Town Square portion from that to be sold, and officers determined that the land might be easier to sell without encumbrances, especially since the latest boundary changes meant that easement A was not physically connected to Property H, and therefore was of no particular value. The owners of Property F had fenced across the end of the driveway where it abutted the Trust House car park to prevent it from being used by the general public. Easements A and B are shown on the aerial photograph above.

A mutual extinguishment of easements was proposed to the owners of Property F on 8 July 2015, with Council offering to relocate the services using easement B. Infrastructure records showed that only a sewer pipe from Property F passed through Property H, and a subsequent site investigation by Council contractors confirmed that this pipe was both present and in use. The owners of Property F confirmed that electricity, water and telephone were supplied to their property from Fox St. Council offered to pay for re-routing the sewer back across Property F to Fox Street as part of the agreement to extinguish the easements.

The owners of Property F agreed to the mutual extinguishment of the easements and re-routing of the sewer pipe in July 2015.

During the early investigation of requirements for re-routing the sewer, officers found that a sewer pipe from the Chorus building on Property E was connected to the sewer outlet from the building at Property F, and from there to the pipe running across easement B. Council officers attempted to identify the appropriate person at Chorus to find out if they were aware of this, including the fact that the routing of the pipe appeared to be without benefit of an easement. Officers also wanted to notify the pending re-routing of the sewer on Property F, and that if the sewer pipe from Property E was still in use, Chorus would need to re-route it to Fox St. The initial approach was made to the Chorus Network Property Manager, with whom there had been contact on another matter a few weeks earlier. However, he had moved on in the interim, and Chorus eventually referred officers to

someone at Broad Spectrum, the Chorus property managers. A first email was sent on 24 August 2016 explaining easements A and B, and the action being taken to remove them, including the re-routing of the sewer lateral on Property F. When no response was received, a follow-up email was sent in early November 2016. This resulted in contact from Broad Spectrum on 15 November 2016 when a staff member undertook to investigate, and eventually advised that the Chorus sewer pipe was not in use and so could be capped at the boundary of Property E.

In late October 2017, Council's solicitor advised officers that they had discovered that two other properties had the benefit of easements A and B, and in order for them to be removed, the owners of both these properties would also have to sign off on the removal. The additional parties were Property G, which had the benefit of easement A, and Property E, owned by Chorus, which had the benefit of easement B. Property G, the former Trust House supermarket property had been sold to MSC Commercial Properties Ltd, the owner of the Super Value supermarket, in March 2017. As previously noted, Council's title for Property H made no reference to Property E having the benefit of easement B. Council's solicitor undertook to contact both Chorus and MSC Commercial Properties to arrange for them to agree to the removal of the easements.

On 1 November 2017 Mr Darley emailed officers for an update on the progress of the subdivision and new title. He was advised that although both SWDC and the owner of Property F had signed off on removing the easements, the lawyers had identified two other parties who would also have to sign off.

On 23 February 2018, Council's solicitor advised that they had made contact with Tama Tawhai, Stakeholder Operations Manager at Chorus, regarding easement B, but that he wanted to know more about what was planned in the development on the land. Officers made direct contact with Mr Tawhai, and explained the development, and the nature of easements, including confirming that the Chorus building was not making use of the easement for the sewer. A street-view photograph of the site alerted Mr Tawhai to the presence of a Telecom manhole, and on 27 February 2018, he advised the presence of underground telecommunications cables within the land covered by the easement. These were under the provisions of the Telecommunications Act 2001 and he noted that they did not actually require the benefit of the easement to be there.

Appendix 4 – Resolutions

COUNCIL RESOLVED (DC2013/84PE):

1. To receive the information.
2. To delegate to the Acting Chief Executive Officer the authority to negotiate a land swap on reasonable terms.
(*Moved Cr Robertson/Seconded Cr Davies*) Carried

| | | | | | | | |
|------------|-----|-----------|------------|------|------------|---|----------|
| 273 | FCB | 13-May-14 | Resolution | Paul | FCB2014/40 | FCB RESOLVED (FCB 2014/40) to recommend to Council that a partnership be formed with the Featherston Community Board and that the Community Board is consulted on all aspects of the Featherston Town Square. (Moved Carter/Seconded Beattie) Carried Cr Robertson voted against this motion. | Actioned |
| 270 | FCB | 13-May-14 | Resolution | | FCB2014/37 | FCB RESOLVED (FCB 2014/37) to receive the tabled Community Board findings of the Town Centre submissions. (Moved Carter/Seconded Cr Robertson) Carried | Actioned |
| 271 | FCB | 13-May-14 | Resolution | Paul | FCB2014/38 | FCB RESOLVED (FCB 2014/38) to recommend to Council that a final version of the FCB findings be made publically available. (Moved Carter/Seconded Beattie) Carried | Actioned |

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| 272 | FCB | 13-May-14 | Resolution | Paul | FCB2014/39 | <p>FCB RESOLVED (FCB 2014/39) to recommend to Council that the next step for Council is to consult with the Featherston community before any decision is made regarding the Town Centre and Menz Shed location. (Moved Beattie/Seconded Carter) Carried</p> <p>Cr Robertson voted against this motion. Mr Thomas voted against this motion.</p> | Actioned |
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| 273 | FCB | 13-May-14 | Resolution | Paul | FCB2014/40 | <p>FCB RESOLVED (FCB 2014/40) to recommend to Council that a partnership be formed with the Featherston Community Board and that the Community Board is consulted on all aspects of the Featherston Town Square. (Moved Carter/Seconded Beattie) Carried</p> <p>Cr Robertson voted against this motion.</p> | Actioned |
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| 311 | Council | 4-Jun-14 | Resolution | Paul | DC2014/90 | <p>COUNCIL RESOLVED (DC2014/90):</p> <ol style="list-style-type: none"> 1. To receive the information. (Moved Mayor Staples/Seconded Cr Craig) Carried 2. That this Council contact Trust House and advise them that Council does not have a location for the Menz Shed at the moment due to concerns from the community with regards to location. Featherston Community Board are to lead further public consultation for the use of that area (known as the Featherston Town Centre residing between Fitzherbert and Fox Streets). (Moved Mayor Staples/Seconded Cr Robertson) Carried | Actioned |
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| 487 | Council | 27-Aug-14 | Resolution | Paul | DC2014/141 | <p>Featherston Community Board Recommendation</p> <p>Councillors tasked the working group (establishment as per below) with finalising development decisions relating to Featherston town square, including the use of commercial land, by 30 November 2014.</p> <p>COUNCIL RESOLVED (DC2014/141):</p> <p>1. To establish a small working group consisting of the Featherston Community Board, Featherston ward councillors and Council officers to progress development of Featherston town square.</p> <p>(Moved Cr Riddell/Seconded Cr Stevens) Carried</p> | Actioned |
| 530 | FCB | 16-Sep-14 | Resolution | Paul | FCB2014/75 | <p>Report back from Council on Board recommendation to form working party</p> <p>FCB RESOLVED (FCB 2014/75):</p> <p>1. To receive the information.</p> <p>(Moved Carter/Seconded Thomas) Carried</p> <p>2. To appoint Gary Thomas and Lee Carter to the Featherston Town Centre Working Party.</p> <p>(Moved Cr Robertson/Seconded Cr Davies) Carried</p> | Actioned |
| 344 | Council | 3-Jun-15 | Resolution | Paul | DC2015/90 | <p>Sale of Land (or Lease) Featherston Town Centre</p> <p>COUNCIL RESOLVED (DC2015/90):</p> <p>1. To receive the information.</p> <p>2. To agree that the land is not a strategic asset.</p> <p>3. To approve the sale or lease of part of Lot 2 DP 471153.</p> <p>(Moved Cr Napier/Seconded Cr Riddell) Carried</p> | Actioned |

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| 343 | Council | 3-Jun-15 | Resolution | Paul | DC2015/89 | <p>Featherston Town Square COUNCIL RESOLVED (DC2015/89):</p> <ol style="list-style-type: none"> 1. To receive the information. 2. To proceed with the Town Square development subject to final design and costings. 3. To delegate to the Town Square Working Party the ability to sign off any changes recommended as a result of the feedback. <p>(Moved Mayor Staples/Seconded Cr Olds) Carried</p> | Actioned |
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| 389 | Council | 25-Jun-14 | Resolution | Mark | DC2014/112 | <p>Featherston Town Centre/Menz Shed COUNCIL RESOLVED (DC2014/112):</p> <ol style="list-style-type: none"> 1. To receive the tabled information. (Moved Mayor Staples/Seconded Cr Riddell) Carried 2. To alter its motion of 4 June 2014 to read 'That following receipt of a letter from the Menz Shed members confirming their support, Council approves the location of the bottle store building on the proposed site adjacent to Featherston Skate Park, subject to final alignment being confirmed by a landscape designer'. 3. That Featherston Community Board, in conjunction with Council, lead further discussion around the use and design of the remaining area. (Moved Cr Montgomerie/Seconded Cr Napier) Carried |
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| 445 | FCB | 19-Jul-16 | Action | Mark | <p>Provide Dayle Harwood with answers to his questions on the Featherston Town Centre</p> <p>1. What happened to the pergola/rotunda? It was reported on 1 April 2016 that the pergola/rotunda was being fabricated offsite and that it was included in the \$652k budget, but Mr Harwood now understood it was no longer being delivered as part of the project.</p> <p>2. Where was the approved budget for the Featherston Town Centre documented and where is it itemised in the 16/17 Annual Plan?</p> | Actioned |
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Independent review of investigation into Featherston Land transactions

Report for South Wairarapa District Council by Christopher Hodson QC

I am making this report under the Terms of Reference issued in this matter, in the capacity of independent reviewer, as requested by Her Worship the Mayor.

1. I have been supplied with Council's files and have discussed the issues with the CEO, and as a result further information has been provided so that I believe I am fully informed on the matters in issue. I have not interviewed other Council officers, or former officers, nor have I been in direct contact with Mr Darley or his team. I am confining this report to the documented communications; I am in no doubt there would have been conversations between all parties.
2. My role is to review the "report prepared by SWDC officers" (in fact the CEO) to ensure it fairly reflects the history of events and is in accordance with documents and files held by SWDC;

and to review actions taken by SWDC officers relative to Council and FCB resolutions from 2010 to date relating to the area of land in question.
3. I have no issue with the report as being an accurate history of events and in accordance with the relevant files. The circumstances of the history of easement B are expanded below.

Easement B

4. The report is accurate as it stands. I note the following points:
 - The Council had knowledge from, at the latest, April 2014 of the terms of the easement as noted on the title, dating from 1991. The title summarised, as is usual, the provisions stated to be for a right of way, water and sewage, drainage and electricity rights. Council had not been supplied with the actual grant of

easement (Transfer B204864.1) which made express reference to fibre optic cables.

- The process undertaken in July 2015 did not reveal the existence of the fibre optic cables. After Council experienced considerable difficulties in getting communication Chorus consented to the sewer arrangements but did not draw Council's attention to the existence of the fibre optic cable.
- It was not until October 2017 that the fact that the easement was attached to the Chorus property was clarified. Although Council had obtained agreement in respect of the sewer, the existence of the fibre optics cable was not reported until February 2018. Its existence was known by the time Mr Darley withdrew, but Chorus had not then explained its full significance.
- Chorus has pointed out that the cables are covered by provisions in the Telecommunications Act. This means that if the easement is now relinquished the cables are nevertheless protected, and an arrangement with Chorus is necessary if the land is to be developed.
- It took 4 years from knowledge of the existence of the easement to appreciation of its practical importance. Given the complexities of the various legal arrangements, and the difficulties with communication with Chorus, I do not attach blame in this respect, commenting only that it is unfortunate that the physical on-site activities in 2015 and 2016 did not alert anyone to the existence of facilities other than the sewer.

Actions taken by SWDC officers from 2010

5. I have no issues with that part of the report describing the origins and effect of the land swap arrangement with Trust House and the public consultation leading to the establishment of the Town Square as presently constituted. The attempts to sell prior to the appearance of Mr Darley were appropriate. But I draw attention to aspects of the history from the signing of the agreement with him until his ultimate withdrawal.
- Mr Darley had no reason to concern himself with the terms of the easements, Council having contracted to remove them.
 - It took from July 2016 to December 2017 to cap the sewer and complete the paperwork.

- Issues which were later to play their part in the withdrawal were raised relatively early. On 20/21 October 2016 Mr Darley showed his plans to Council. He stressed the need to acquire the full area described in the agreement and he raised the issue of the western edge of the Town Square. In the event, Mr Darley's solicitor was asked to, and did, approve the plan with a reduced area, on 9 August 2017 (a year after the survey was commissioned).
- Mr Darley's planner first met Council in January 2017. After various emailed discussions, which included agreements to defer the date of settlement from time to time, formal application for resource consent was made on 13 September 2017. Council appropriately appointed an independent planner, who, curiously, wrote her requisitions on Council letterhead. The requisitions were issued promptly on 27 September but were never finally resolved.
- The carparking issue was first raised in March 2017. It was appreciated as crucial. In February 2018 as part of the consent issues a reasoned report for a substantial relaxation of the formal requirements was made by Mr Darley's advisers. I have seen no evidence of any reasoned reply; but I note that complete acceptance of the requests would have involved public notification. I comment that it would be fair to expect that this issue could have been resolved by mutual co-operation and agreement.
- Although the consent issue had been referred to an independent planner, on 13 March 2018 the then Council planner wrote a letter. It said that property-related issues that the applicant appeared to presume were resolved were not in fact resolved. Council had not agreed to occupancy of any land it owned (Mr Darley had been raising that issue for 18 months). The easements were not yet removed (that was entirely Council's responsibility). Planning issues, especially parking, were not resolved (Mr Darley had made his case without reasoned reply), and the Chief Executive would like a meeting. What the letter lacked was any indication of apology for Council's delays nor any suggestion of Council co-operation. It is fair to say that the Chief Executive had in his mind that all matters were capable of resolution (the fibre optic issue was not then fully known) with goodwill at the intended meeting. The letter did not convey this view.
- I have seen an email from Council's independent planner critical of Council's lack of preparation for the sale. It is clearly written with the benefit of hindsight; but it is correct that had the existence of the cable been known at the outset then it must have been appreciated that the land could not be sold for development until a solution had been reached with Chorus. I note that that discussion continues.

- The meeting took place on 5 April. Mr Darley made his intention to withdraw clear. Given agreement was thereafter reached on both sides I do not regard events after the withdrawal as being within the scope of this report.



CHRISTOPHER J HODSON QC

INDEPENDENT REVIEWER

22 June 2018