

# Tender – 16-047

## Terms and Conditions of Tender

### Abandoned Land 2016

*Tenders Close*

*4.00 pm on Wednesday 15 June 2016*

**At the Offices of:**

Whakatāne District Council  
Civic Centre, Commerce Street  
Private Bag 1002,  
Whakatāne 3158

# Particulars

## Tenders

Tenders are invited for the purchase of one or more of the Properties described in **Appendix One** attached.

### Tenderers please note:

- i A deposit of \$100.00 per Property is required to accompany each Tender (see Clause 4.1).
- ii Tenderers are urged to read the attached Conditions of Tender. If there is any doubt as to the effect of the conditions, legal advice should be sought.

Enquiries should be directed to:

Diane Moore  
Credit Controller  
Whakatāne District Council  
Private Bag 1002  
**Whakatāne 3158**

e-mail:

diane.moore@whakatane.govt.nz

# Conditions of Tender

## 1 Preamble

- 1.1 The Properties in Appendix One have been abandoned and are being sold by Whakatāne District Council (WDC) under the provisions of the Local Government (Rating) Act 2002. WDC has the authority, by order of the District Court, to sell the Properties.
- 1.2 Sale is to be effected by tender on the conditions set out below.

## 2 Definitions

- 2.1 “Closing Date” means the closing time and date for this tender specified in Clause 3.2 of these conditions.
- 2.2 “Property and/or Properties” means the land and/or lands described in Appendix One and each, all or any of them.
- 2.3 “Purchaser” means the successful Tenderer.
- 2.4 “Reserve Price” means the reserve price set for each property by WDC.
- 2.5 “Settlement Date” means 24 June 2016.
- 2.6 “Tender Acceptance Date” means fifteen working days after the Closing Date.
- 2.7 “Tenderer” means the person or entity submitting the form of tender to WDC.
- 2.8 “WDC” means Whakatāne District Council and includes any agent or other authorised representative.
- 2.9 “Working Day” has the meaning given to it in the Property Law Act 2007.

**The following Conditions of Tender are notified to any intending Tenderer:**

## 3 Submission of Tender

- 3.1 Each tender shall be submitted by the Tenderer:
  - 3.1.1 Completing and signing the attached Form of Tender, and
  - 3.1.2 Completing and signing duplicate copies of the attached form of Agreement for Sale and Purchase, and
  - 3.1.3 Furnishing a deposit cheque/s in accordance with clause 4.

- 3.2 Tenders with all required supporting information shall be enclosed in a **sealed envelope**, clearly marked **“Tender for Abandoned Land, Tender number 16-047”** and shall be posted to the address below or shall be placed in the tender box on the ground floor in the Whakatāne District Council Civic Centre, Commerce Street, Whakatāne by:

**Time: 4.00pm**  
**Date: 15 June 2016**

Mail Address: Tender for Abandoned Land  
Whakatāne District Council  
Private Bag 1002  
**Whakatāne 3158**

- 3.3 Tenders by facsimile or email are not acceptable.

#### **4 Deposit to Accompany Tender**

- 4.1 Every tender must be accompanied by payment of the deposit. The deposit is \$100.00 per Property.
- 4.2 The deposit must be paid to WDC.
- 4.3 One deposit cheque per Property tendered for is required.
- 4.4 Deposit cheques will not be banked, but will be held in escrow pending acceptance of the successful tender in accordance with these conditions.
- 4.5 WDC shall not be liable for the payment of interest on any deposit or other monies paid in respect of any tender and/or any acceptance of any tender.

#### **5 Signing of Tenders**

- 5.1 If a company submits a tender, the tender must be executed by that company in accordance with its Constitution (if any) and the laws under which the company was incorporated and must be accompanied by a copy of the Company Extract and Certificate of Incorporation of the company. Any officer or officers of the company signing the tender for or on behalf of the company must include alongside their signatures their full name and office they hold in the company.
- 5.2 If a partnership submits a tender, the tender must be signed by all partners or, if pursuant to a deed of partnership all partners are not required to sign, by a duly authorised partner/s whose signature/s must follow the name of the partnership, followed by the word “Partner/s”, and accompanied by a legible copy of the partnership deed.
- 5.3 If a party executes a tender as agent for a principal, an authority signed by the principal, authorising the agent to execute the tender, must be attached to the tender.

5.4 If a party signs a tender as an attorney, a certificate of non-revocation of power of attorney together with a copy of the power of attorney must be attached to the tender.

5.5 Where a party signs a tender with provision for a nominee or on behalf of a company to be formed, the original party signing the tender shall at all times remain liable for all the obligations on the part of the Tenderer in respect of the tender.

## **6. Insertion of Details**

6.1 The Tenderer must insert the following details in the appropriate spaces in the Agreement for Sale and Purchase:

6.1.1 The purchaser's name.

6.1.2 The address and legal description of the Property or Properties tendered for.

6.1.3 The tender price, stated as an exact dollar amount without reference to any calculation or variation to the purchase price contained in any other tender.

6.1.4 The deposit amount, which must be \$100.00 per Property tendered for.

6.1.5 Whether a LIM Report or Building Report is required.

6.1.6 Whether Overseas Investment Commission (OIC) consent is required and, if so, the Overseas Investment Act (OIA) date, which must be the date approval is obtained, as evidenced by the approval to be attached to the tender in accordance with clause 13.

6.1.7 The tenderer's GST information in Schedule 2 (questions 2 – 11 as applicable).

6.1.8 The name and contact details of the purchaser's solicitor and the individual acting.

6.2 A tender may be made for any one or more of the Properties.

6.3 Unless the tender is submitted with specific conditions inserted by the Tenderer, only those special conditions contained herein and in the attached form of Agreement for Sale and Purchase shall apply to the sale of the Property.

## **7. Acceptance of Tender**

7.1 A tender will not be opened before the Closing Date.

7.2 The highest or any tender will not necessarily be accepted and WDC reserves the right to reject any or all tenders and to re-advertise for tenders or to otherwise sell any of the Properties in such manner as WDC thinks fit.

7.3 No tender will be accepted for less than the Reserve Price.

- 7.4 WDC reserves in its absolute discretion the right to:
- 7.4.1 Consider any tender (whether or not it conforms with these terms and conditions.
  - 7.4.2 Accept a tender for any one or more of the Properties to the exclusion of any other of the Properties tendered for by the same party.
  - 7.4.3 Reject any tender which does not comply with these terms and conditions.
  - 7.4.4 Refuse to accept any Tenderer including any tender properly complying with these terms and conditions.
  - 7.4.5 Negotiate with any Tenderer to the exclusion of others (whether on the basis of that Tenderer's tender or on any alternative or non-conforming basis).
  - 7.4.6 Require any of the Tenderers to resubmit tenders on a revised or alternative basis.
  - 7.4.7 Waive any minor irregularity or informality in the tendering process.
  - 7.4.8 Decline to accept the highest or any tender.
  - 7.4.9 Withdraw one or more of the Properties from sale or tender at any time without notice.
  - 7.4.10 Extend the Closing Date, in which case the settlement date and the Tender Acceptance Date shall be deemed to be extended by an equivalent period.

## **8 Formation of Contract**

- 8.1 WDC's invitation to tender contains no contractual offer of any kind. It is merely an invitation to treat and a tender submitted by any Tenderer will be regarded as an offer and not as an acceptance of any offer.
- 8.2 A contract for the amount of the successful tender shall be formed when WDC has informed the successful Tenderer ("the Purchaser") by written notice delivered to the Purchaser or the Purchaser's solicitor that WDC accepts the tender submitted by the Purchaser. Having communicated acceptance, WDC will then forward an executed copy of the Tender (including the Agreement for sale and purchase) to the Purchaser's solicitor.

## **9 WDC's Notice of Acceptance**

- 9.1 WDC's notice of acceptance of the tender shall be addressed to the Purchaser or the Purchaser's solicitor at the physical address, postal address, facsimile number or email address given for the Purchaser or for the Purchaser's solicitor (as the case may be) on the Purchaser's form of tender.

- 9.2 Delivery of WDC's notice may be effected by hand, by post with postage prepaid, by facsimile or by email.
- 9.3 If delivered by hand, WDC's notice shall be deemed to have been received at the time of delivery. However, if delivery is not made on a working day or is made after 5.00pm on a working day, then the notice will be deemed to have been delivered on the next working day.
- 9.4 If delivered by pre-paid post, WDC's notice shall be deemed to have been received on the next working day after posting.

## **10 Return of Deposit**

- 10.1 Deposits lodged by unsuccessful Tenderers will be returned no later than 10 working days after the Tender Acceptance Date.
- 10.2 Each unsuccessful Tenderer indemnifies WDC from any liability for loss or misappropriation of deposit where WDC returns the deposit by posting to the Tenderer's address given in the Tenderer's form of tender.

## **11 Tenders to Remain Open Until Tender Acceptance Date**

- 11.1 Every Tender shall be a continuing offer and irrevocable until after the Tender Acceptance Date even if WDC has accepted a tender or another offer to purchase the Property on or before the Tender Acceptance Date.
- 11.2 Any negotiations which may occur between WDC and any tenderer during the period after the Closing Date but on or before the Tender Acceptance Date, shall not entitle any Tenderer (including any Tenderer which may be a party to such negotiations) to withdraw its tender as submitted until after the Tender Acceptance Date.

## **12 Description of the Property**

- 12.1 WDC accepts no liability for any inaccuracy in the description of any Property.
- 12.2 All intending Tenderers are advised to personally inspect the Property that they are to tender for.
- 12.3 Any and all warranties or representations as to the order, repair and conditions of any of the Properties made on behalf of or implied by law against WDC is expressly negated. Each Tenderer shall be deemed to have submitted their tenders and, if successful, purchased the Property/ies in full reliance on the Tenderer's own judgement, and not in reliance on any statement, warranty or representation by or on the part of WDC.
- 12.4 Any and all warranties or representations as to the fitness of the Properties for any particular use or purpose made on behalf of or implied by law against WDC are expressly negated and the Tenderer shall make no claims in respect thereof. In particular the Tenderer shall satisfy

itself as to all planning requirements, and matters pertaining to the Building Act 2004 and the Resource Management Act 1991 insofar as they affect any Property.

### **13 Overseas Tenderers**

- 13.1 Overseas Tenderers and any Tenderer in which there is an element of overseas ownership or control should obtain legal advice as to whether or not they are an “overseas person” as defined in the Overseas Investment Act 2005 and whether an application is required to be made to the Overseas Investment Commission for approval to the sale. Where such approval is required, Tenderers are to obtain approval to the proposed purchase from the Commission in advance of submitting their tenders. A copy of the approval should be submitted with the Tenderer’s form of tender.

### **14 Lowest Price**

- 14.1 The Tenderer acknowledges that (if the Tenderer is the successful Tenderer) for the purposes of sub-part EW32(3) of the Income Tax Act 2007 the total tender price does not include any capitalised interest and is the consideration the parties would have agreed on the date the Agreement for sale and purchase is entered into if payment was required in full at the time the first right in the Property was transferred.

### **15 Vacant Possession**

- 15.1 Unless provided otherwise each Property will be sold with vacant possession.

### **16 New Zealand Law**

- 16.1 Any tender and any resulting Agreement shall be governed by the laws of New Zealand, and Tenderers and WDC agree to submit to the non-exclusive jurisdiction of New Zealand in respect of any dispute or proceedings arising out of the tender or the resulting Agreement.

### **17 GST**

- 17.1 The tender price includes GST (if any) unless otherwise stated.

### **18 Costs**

- 18.1 The Tenderer shall be responsible for all costs in submitting a tender.

### **19 Agreement for Sale and Purchase**

- 19.1 Annexed to these terms and conditions is a modified form of the Agreement for Sale and Purchase of Real Estate Ninth Edition 2012 (3) approved by the Real Estate Institute of New Zealand and the Auckland District Law Society (“Agreement”). The tender and the Agreement shall be read together and shall comprise the Contract for Sale and Purchase between WDC and the successful Tenderer.



19.2 In the event of any inconsistency between the Agreement and this tender, the provisions of this tender shall prevail.

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

To: **Whakatāne District Council**

I/We \_\_\_\_\_  
**(Full Name in Block Letters)**

submit the following tender in accordance with the Particulars and Conditions of Tender for Abandoned Land 2016.

	PROPERTY ADDRESS	PRICE TENDERED
1	33 Kauri Street, Murupara	\$
2	24 Tawa Street, Murupara	\$
3	28 Tawa Street, Murupara	\$
4	15 Rata Street, Murupara	\$
5	23 Rewa Crescent, Murupara	\$
6	1 Karamea Street, Murupara	\$
7	19 Karamea Street, Murupara	\$

OBJECTIVE REF: A1086944

ABANDONED LAND 2016 – TENDER – 16-047

I/We acknowledge:

1. That I/we have satisfied myself/ourselves that the Property/ies being tendered for is/are suitable for my/our requirements and I am/we are making this application solely in reliance upon my/our own judgement and not upon any representation or description made by or on behalf of WDC in the Terms and Conditions of Tender or otherwise.
2. That I/we have read the Terms and Conditions of Tender under which the Property/ies is/are tendered and agree to abide by these conditions.
3. I/we enclose \_\_\_\_\_ cheques, each for \$100.00, as the deposit required for each Property tendered for.
4. I/we enclose completed Agreement for Sale and Purchase documents for the Property/ies tendered for.

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**Signature**

The foregoing Tender is accepted by WDC

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**Signature**

Marty  
**Chief Executive**

**Grenfell**

# Appendix One – Description of Properties

## Legal Description and Area:

1. 33 Kauri Street, Murupara  
Fee Simple, approximately 754 square metres being Lot 71 Deposited Plan South Auckland 4889, comprised in Computer Freehold Register SA3A/1404.
2. 24 Tawa Street, Murupara  
Fee Simple, approximately 819 square metres being Lot 99 Deposited Plan South Auckland 4888, comprised in Computer Freehold Register SA44B/841.
3. 28 Tawa Street, Murupara  
Fee Simple, approximately 832 square metres being Lot 97 Deposited Plan South Auckland 4888, comprised in Computer Freehold Register SA41C/914.
4. 15 Rata Street, Murupara  
Fee Simple, approximately 809 square metres being Section 115 Block XIII Galatea Survey District, comprised in Computer Freehold Register SA30B/952.
5. 23 Rewa Crescent, Murupara  
Fee Simple, approximately 716 square metres being Lot 28 Deposited Plan South Auckland 9398, comprised in Computer Freehold Register SA5B/203.
6. 1 Karamea Street, Murupara  
Fee Simple, approximately 675 square metres being Section 169 Block XIII Galatea Survey District, comprised in Computer Freehold Register SA49C/179.
7. 19 Karamea Street, Murupara  
Fee Simple, approximately 675 square metres being Section 227 Block XIII Galatea Survey District, comprised in Computer Freehold Register SA30B/954.