

## **SUMMARY OF "COMMON AREAS" AND THE CONSEQUENCES OF THE EXPIRY OF THE CURRENT LEASE**

1. The "Common Areas" form part of the Resource Consent conditions, the Society's Rules, the transfer creating the "Land Covenants" and the memorandum of lease of the Common Areas. All documents should be read together.
2. The original subdivisional plan DP 198639 set out the various titles and also the parts of those titles that form part of the "common area". The "common area" included the farm, the recreation area down by the boat shed and also the conservation area which runs around all of those lots adjacent to the sand dunes. The titles to all of the properties affected are set out in Transfer D488558.7. That Transfer also sets out the covenants affecting all properties in the subdivision including the rules in relation to buildings etc. Some recent subdivisions have resulted in some new lots not having a specified covenanted area. The titles to those new lots are still subject to the land covenants which bind all owners.
3. "Common Areas" are defined in the Transfer document creating the land covenants. It provides that the "Common Areas" *"shall be held for the use and enjoyment of members of the incorporated society and all owners of the dominant lots"*. That means, all lots.
4. The "Common Areas" and the Land Covenants exist in perpetuity. The Lease does not.
5. The objects of the Society in which all owners are required to be members includes the following:
  - 3.3 To maintain and improve the Common Areas, facilities and amenities located within the Tern Point subdivision.
  - 3.4 To promote the conservation and recreation requirements of the resource consent in respect of the Common Area.
  - 3.6 To promote rural activities within the Common Area for the benefit of the members.

### **6. Lease**

A special plan DP 198893 was prepared and lodged with the Land Transfer Office describing all of the "Common Areas" as Lot 1 on that plan. Under that Lease all of the common area was leased to the Tern Point Recreation and Conservation Society Incorporated for a period of 99 years commencing 23 February 2000. Effectively that Lease gave the Society the rights to manage and control the Common Areas for the benefit of all Tern Point owners.

Even without the Lease, all owners can argue that they have the right in common with all other owners to have access to and use the Common Areas attached to the individual titles of the owners. This is consistent with the Rules of the Society and the Land Covenant registered against all titles.

If the Land Covenants and the Common Areas continue after the Lease expires then what are the advantages or disadvantages in allowing the Lease to lapse or have it extended:

- (a) If the Lease expires and the Society's right to manage the Common Areas is somewhat reduced, but not extinguished, the Society is still obliged by its rules to maintain the Common Areas.
- (b) While the Society's Rules may be changed by a 85% majority at an general meeting, any change to the Land Covenant would require 100% of all land owners as their titles are subject to the Land Covenant.
- (c) Under the Lease all current owners are now the Lessors . Any extension or variation to the Lease would require the consent of 100% of the land owners.

- (d) If the Lease was extended now to a term of say 150 years then the current status quo would continue.
- (e) What will Tern Point be like in 30 or 50 years . Rather than confirm an extension of the Lease term now, should we wait and re-visit the issue some time in the future.