

Final
12 October 2017

GOLDEN BAY GRANDSTAND DEED

TASMAN DISTRICT COUNCIL

GOLDEN BAY GRAND STAND COMMUNITY TRUST

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	4
2. DEMOLITION WORKS	5
3. COST OF DEMOLITION WORKS	6
4. TRUST OBLIGATIONS	6
5. TRUST ACKNOWLEDGEMENTS	8
6. CAPACITY OF COUNCIL	8
7. INDEMNITY	9
8. COSTS	9
9. RESOLUTION OF DISPUTES	9
10. GENERAL	10

DEED DATED**2017****PARTIES**

1. **TASMAN DISTRICT COUNCIL (Council)**
2. **GOLDEN BAY GRAND STAND COMMUNITY TRUST (Registered number 2646831)(Trust)**

PURPOSE

- A. This deed is an agreement between the parties which sets out a framework for the Council considering a proposal to preserve and restore the grandstand located at the Takaka Recreation Reserve. This deed sets out the terms and conditions agreed between the parties to give effect to the Council's resolutions of 27 July 2017.

BACKGROUND

- A. The Reserve is vested in the Council as recreation reserve subject to the Reserves Act 1977.
- B. The Grandstand is located on the Reserve and is owned by the Council.
- C. Since 2010 the Council has been actively planning for construction of the Recreation Facility on the Reserve, which required the removal of the Grandstand. The Recreation Facility cannot be used in accordance with the requirements of its building consent, and resource consent requirements for car parking may be triggered, if the Grandstand is not removed from its current location on the Reserve or suitably compliant parking otherwise provided.
- D. In 2016 concerns were raised by some members of the Golden Bay community about the proposal to remove the grandstand and the Trust has been formed to promote and assist in the preservation and restoration of the Grandstand, which includes, but is not limited to, the raising and provision of funding towards that goal.
- E. In June 2016 the Council resolved to remove the Grandstand at the end of the 2016 rugby season subject to approval of archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 which was required because part of the Grandstand was constructed prior to 1900.
- F. In December 2016, following receipt of archaeological authority to remove the pre-1900 parts of the Grandstand the Council confirmed its resolution to demolish the Grandstand.
- G. The Trust subsequently issued three sets of proceedings against the Council in the Environment Court related to the demolition of the Grandstand.
- H. The Environment Court declined the Trust's appeal against the archaeological authority decision and declined to make enforcement orders the Trust sought against the Council in a decision dated 29 June 2017. An application for a declaration had previously been struck out.

- I. On 19 July 2017 the Trust submitted a proposal to the Council for retention and restoration of the Grandstand.
- J. At its meeting on 27 July 2017, and in recognition of the work undertaken by the Trust and appreciation of the heritage value of the original Grandstand structure, the Council passed a number of resolutions to (amongst other things):
- a. to the extent practicable, authorise staff to arrange partial demolition of the squash courts, rear lean-to extension and part of the front extension of the Grandstand as an interim step (at the Trust's cost);
 - b. provide the Trust with three months to prepare a preservation and restoration programme for the remaining parts of the Grandstand, to the Council's satisfaction; and
 - c. require a formal agreement to be entered into with the Trust to document its agreement to the matters set out in the resolutions.

THIS DEED RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this deed, unless the context indicates otherwise:

Archaeological Authority means the archaeological authority granted by Heritage New Zealand Pouhere Taonga to the Council on 21 November 2016 under the Heritage New Zealand Pouhere Taonga Act 2014 to demolish the Grandstand;

Council means Tasman District Council;

Demolition Payment means the sum of \$73,000 plus GST (if any);

Demolition Works means all works and professional services necessary and incidental to the demolition of parts of the Grandstand as an interim measure, as more particularly described in clause 2;

Grandstand means the grandstand located on the Reserve, and includes any parts of the original structure erected in 1899 and subsequent additions;

GST has the meaning given to it in the Goods and Services Tax Act 1985;

Proposed Restoration Programme means a proposed preservation and restoration programme prepared by the Trust for consideration by the Council, as more particularly described in clause 4.1;

Recreation Facility means the shared recreation facility located on the Reserve;

Reserve means part of the Golden Bay Recreation Park being a parcel of land comprising 4.0469 hectares more or less, being Part Part 1 Section 22 District of Takaka comprised and described in Computer Freehold Register NL62/224 (limited as to parcels);

Trust means the Golden Bay Grand Stand Community Trust incorporated under the Charitable Trusts Act 1957 as Number 2646831;

1.2 Interpretation: In this deed, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning throughout this deed, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this deed's interpretation;
- (c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this deed. Each such schedule and attachment forms part of this deed;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. DEMOLITION WORKS

2.1 The Council will, as soon as practicable following payment of the Demolition Payment by the Trust in accordance with clause 3.1, vary its existing contract with its contractor (Gibbons Construction) (or if appropriate, enter into a new contract with that contractor or another contractor) in accordance with its usual procurement policies and guidelines and otherwise take all steps necessary to complete the Demolition Works, which will include:

- (a) obtaining a structural engineering report to determine whether the demolition outlined in paragraph (b) below can be undertaken in a safe manner that ensures the integrity of the remaining structure;
- (b) demolition of the squash courts and the rear lean-to extension down to the ground level, as shown in the plan attached at Appendix 1 to this deed;



- (c) temporary weather-proofing, bracing, and enclosing the remaining parts of the Grandstand and any other temporary works that may be required to ensure the remaining structure is safe and secure;
 - (d) obtaining any necessary consents (or applying to vary any existing consents) required for the purposes of the Demolition Works and complying with the conditions of the Archaeological Authority and any further requirements or conditions that may be required by Heritage New Zealand Pouhere Taonga in relation to the Demolition Works.
- 2.2 The costs of and incidental to the Demolition Works in clause **Error! Reference source not found.** will be met by the Trust, in accordance with clause 3.

3. COST OF DEMOLITION WORKS

- 3.1 The Trust will pay the Demolition Payment to the Council within 10 Working Days of the date of signing of this deed by both parties.
- 3.2 The Demolition Payment will be held in trust and used by the Council for payment of all costs of and incidental to the Demolition Works.
- 3.3 If, following completion of the Demolition Works, the Demolition Payment is more than the actual cost of the Demolition Works, the Council must immediately refund any overpayment to the Trust.

4. TRUST OBLIGATIONS

- 4.1 On or before 31 October 2017, the Trust must provide to the Council a proposed preservation and restoration works programme for the remaining Grandstand structure that includes the following documents for consideration by the Council:
- (a) a detailed assessment from a qualified Structural Engineer outlining specific preservation and restoration works proposed including the safe demolition of the front extension of the Grandstand and structural works necessary to hold up the Grandstand, and including a detailed breakdown of costings and a timeline for restoration or relocation of the Grandstand;
 - (b) a detailed conservation plan for the Grandstand prepared by a suitably qualified and experienced heritage expert or conservation architect that includes:
 - (i) proposed management and maintenance obligations;
 - (ii) a report outlining consultation undertaken by the Trust with Heritage New Zealand Pouhere Taonga regarding heritage issues and any approval likely to be required for restoration or relocation of the Grandstand under the Heritage New Zealand Pouhere Taonga Act 2014; and
 - (iii) that gives precedence to heritage values over community use;



- (c) a health and safety plan in relation to the proposed restoration, management, operation and maintenance of the Grandstand and an asbestos management plan;
- (d) a plan to raise funds for fully funding the proposed preservation and restoration works and ongoing operational and maintenance costs related to the Grandstand, including repayment of any loans provided to the Trust for any purposes related to the Grandstand;
- (e) draft applications for any necessary building and resource consents required to carry out the proposed preservation and restoration works and the future use of the Grandstand, including agreement of the Trust to meet all consent conditions;
- (f) a proposal for the intended future use of the Grandstand, in a way that does not interfere with the use, enjoyment, and financial viability of the Recreational Facility; and
- (g) a proposal for the Trust to take ownership of the Grandstand with a lease of the footprint of the Grandstand site to the Trust including proposed key terms of the lease.

4.2 The Trust covenants with the Council not to:

- (a) make or bring any objection, claim or demand, take any legal or other action, or allege any liability on the part of the Council related to:
 - (i) the Council's activities on the Reserve;
 - (ii) the use and enjoyment of the Recreation Facility on the Reserve; or
 - (iii) the Grandstand and any decision made by the Council relating to the preservation or demolition of the Grandstand;
- (b) make, lodge or be a party to any submission, application or proceeding (under the Resource Management Act 1991 or otherwise) that could limit or detrimentally affect:
 - (i) the Council's activities on the Reserve;
 - (ii) the use and enjoyment of the Recreation Facility on the Reserve; or
 - (iii) any decision made by the Council relating to the preservation or demolition of the Grandstand;
- (c) not to aid, abet, support, counsel or procure any person to exercise any of the actions restricted by clauses 4.2(a) or 4.2(b).

4.3 For the purposes of complying with its obligations under clause 4.1, the Council will provide the Trust with access to the Grandstand during the timeframe contemplated by that clause on the following basis:

- (a) the Trust must not access the Grandstand during the Demolition Works without the prior written approval of the Council;



- (b) the Trust acknowledges that the Grandstand is closed and will remain closed until the Council agrees otherwise and that the Trust does not have authority to allow the Grandstand to be used for any purpose;
 - (c) the Trust acknowledges that for safety reasons, the public will have no right of access the Grandstand and in exercising its rights under this deed, the Trust agrees that it must, at all times, ensure that its agents, employees, contractors and invitees take all reasonable steps to ensure the safety of the public, including ensuring that the Grandstand remains locked and secure;
 - (d) the Trust must ensure that the use and operation of the Recreation Facility is not impeded in any way;
- 4.4 The Trust must provide the Council's Chief Executive (or his delegate) with regular updates (and at least monthly or more frequently if requested by the Chief Executive or his delegate) on its progress with complying with its obligations under this agreement.

5. TRUST ACKNOWLEDGEMENTS

5.1 The Trust acknowledges and agrees that:

- (a) the Council has sole discretion to determine whether or not to demolish the Grandstand in its entirety and entering into this agreement does not amount to agreement to restoration and protection of the Grandstand in accordance with the Proposed Restoration Programme or otherwise;
- (b) the Council may be required to consult interested and affected people, groups and the community before any decision can be made to retain the Grandstand;
- (c) even if the Council ultimately decides to agree to restoration and protection of the Grandstand:
 - (i) there is no obligation on the Council to transfer ownership of the Grandstand or grant a lease of part of the Reserve to the Trust or any other party; and
 - (ii) the grant of a lease (if any) of part of the Reserve for purposes related to the Grandstand will be entirely dependent upon due compliance with the procedures set out in the Reserves Act 1977; and
 - (iii) if a grant of a lease for purposes related to the Grandstand is proposed, the exercise of the Council's functions as administering body and delegate of the Minister of Conservation with respect to the grant of a lease under the Reserves Act, may result in a decision not to grant a lease.

6. CAPACITY OF COUNCIL

- 6.1 The Council has signed this deed in its non-regulatory capacity. This deed does not bind the Council in its capacity as a regulatory authority in any way, and any consent or agreement the Council gives under this deed is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, the Council is entitled to consider all applications to it without regard to this deed. The Council will not be liable to the Trust or any other party if, in its regulatory capacity, the Council declines



or imposes conditions on any consent or permission that the Trust or any other party seeks for any purpose associated with this deed.

7. INDEMNITY

7.1 The Trust indemnifies the Council against:

- (a) all costs (including legal costs) and expenses incurred by the Council in taking action to demand and/or recover any part of the Demolition Payment or other money payable by the Council under this deed; and
- (b) all actions, proceedings, calls, costs (including legal costs), expenses, claims, demands, damages, losses or liabilities of any kind suffered or incurred by the Council as a result of:
 - (i) the act or neglect of the Trust or of any person for whom the Trust is responsible relating use or occupation of the Grandstand; or
 - (ii) the Trust's breach of, or failure to comply with, the Trust's obligations under this deed.

7.2 The Trust must pay on demand all amounts owing to the Council as a result of the indemnity contained in clause 7.1.

8. COSTS

Each party will pay their own costs of preparation and execution of this deed.

9. RESOLUTION OF DISPUTES

9.1 If any dispute, difference or question arises between the parties about:

- (a) the interpretation of this deed;
- (b) anything contained in or arising out of this deed;
- (c) the rights, liabilities or duties of the Council or the Trust; or
- (d) anything else relating to the relationship of the parties under this deed (including claims in tort as well as in contract);

the parties will refer that matter to informal mediation.

9.2 The parties must try to agree on the mediator. If they cannot agree, the Nelson Branch President of the New Zealand Law Society (or his or her nominee) will nominate the mediator on either party's application. The mediator's decision will be final and binding on both parties.

9.3 The parties must go to mediation under this section before they can begin any action at law (other than an application for injunctive relief or debt collection).

10. GENERAL

- 10.1 This deed records the entire arrangement between the parties relating to the matters dealt with in this deed and supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.
- 10.2 No amendment to this deed will be valid unless it is in writing and executed by both parties in the same manner in which this deed has been executed.
- 10.3 Any waiver by either party of any of its rights or remedies under this deed will be effective only if it is recorded in writing, and signed by a duly authorised representative of that party. If the waiver relates to a breach of any provision of this deed this will not (unless stated otherwise) operate as a waiver of any other breach of that provision.

EXECUTED AND DELIVERED AS A DEED

Signed on behalf of
TASMAN DISTRICT COUNCIL



 L McKenzie, Chief Executive

Dated 12 October 2017

 Signature

Signed on behalf of
GOLDEN BAY GRAND STAND COMMUNITY TRUST by:

Full name of Authorised Signatory

Signature of Authorised Signatory

Full name of Authorised Signatory

Signature of Authorised Signatory

APPENDIX 1

PLAN OF STRUCTURES TO BE DEMOLISHED (Clause 2.1)

