

[draft]

**HIGH PERFORMANCE AND
COMMUNITY SAILING
CENTRE IN AUCKLAND**

**RELATIONSHIP
AGREEMENT**

between

AUCKLAND COUNCIL

and

**YACHTING NEW ZEALAND
INCORPORATED**

JANUARY 2017

THIS AGREEMENT is dated:

BETWEEN

1. **AUCKLAND COUNCIL (Council)**

AND

2. **YACHTING NEW ZEALAND INCORPORATED** (number 217194) (**YNZ**)

Background

- A. The parties have identified an opportunity to work together for the mutual benefit of the public of Auckland, in developing, building and operating a High Performance and Community Sailing Centre (HPCSC) in Auckland.
- B. Auckland Council and Yachting NZ wish to work in conjunction with each other towards the realisation of the HPCSC, and record their agreement in respect of the Project.
- C. YNZ is the governing body of yachting and boating in New Zealand. YNZ is the national body for competitive and recreational sailing in New Zealand with around 30,000 members, represented by some 160 member clubs and class associations. It is estimated to have 150,000 participants. Yachting is a sport with considerable connection with New Zealanders. It is a sport of high achievement, adventure and enterprise.
- D. YNZ's purpose is to grow yachting and boating's accessibility, enjoyment and success on the water based on New Zealand's sailing heritage of great achievement, innovation and adventure.

THE PARTIES AGREE as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, unless the context requires otherwise:

Agreement means the agreement between Council and YNZ on the terms set out in this Agreement including the Schedules;

Business Day means any day on which trading banks are open for retail business in Auckland other than a Saturday, Sunday or national public holiday in Auckland and **Business Days** has a corresponding meaning;

Business Plan means the business plan developed by YNZ and approved by council under clause 5.2(e);

Conditions means the conditions to Council's funding detailed in clause 5.2 and **Condition** means any one of them;

Confidential Information means all information acquired or received by a Receiving Party from a Disclosing Party or its employees, contractors or agents under or in connection with this Agreement (including the existence and terms of this Agreement, notes and conclusions);

Council means Auckland Council, a territorial authority under the Local Government Act 2002, and includes its successors, and where appropriate. Its officers and agents;

Funders means any person or organisation providing Funding for this Project;

HPCSC means the High Performance and Community Sailing Centre being a strategically aligned, fit-for-purpose, future-proofed multi-functional building with hardstand, storage, accommodation and public space, located within Auckland that provides a world-class sailing, daily training environment for elite YNZ sailors and coaches plus community ocean water-sport facilities of value to the host community in accordance with the terms of this Agreement.

Project means the concept investigation, feasibility study, planning, design and construction of the HPCSC in its entirety and includes all work, including any design, construction or similar works to be undertaken to achieve that purpose;

Vision means the vision for the Project set out in clause 2;

1.2 Interpretation

In the construction of this Agreement, unless the context requires otherwise:

(a) **Defined Expressions**

Where a word or expression is defined in this Agreement, including the background, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

(b) **Headings**

Headings appear as a matter of convenience and do not affect the construction of this Agreement;

(c) **Negative Obligations**

Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

(d) **No Limitation**

References to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;

(e) **Parties**

References to parties are references to the parties to this Agreement;

(f) **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 entity;

(g) **Plural and Singular**

References to the singular include the plural and vice versa;

(h) **Sections and Clauses**

References to sections and clauses are references to sections and clauses of this Agreement;

(i) **Statutory provisions**

References to any statutory provision are to statutory provisions in New Zealand and include any 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; and

(j) **Writing**

A reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

2. **PROJECT VISION**

2.1 **Project Vision**

The Council and YNZ support the vision for the Project which in accordance with the principal purposes of YNZ is to provide marine access facilities and services for high performance sailing, club and community based water activities.

2.2 **Cooperative Relationship**

The parties intend to work together to advance the Project in accordance with this Agreement on a cooperative basis with a shared goal to contribute to the realisation of the Project for the benefit of all stakeholders, being Council, YNZ, the public and the sailing community.

3. COUNCIL AND YNZ ROLES

3.1 Design and Consenting

Subject to clause 5, YNZ will be responsible for all decisions relating to the location design and consenting aspects of the Project provided that the final design and location will be approved by both the Council and YNZ. The parties acknowledge and agree that the HPCSC must be located within the Auckland Council precinct and in an area where the HPSCS can fulfil the fit-for-purpose requirements of Sport NZ and YNZ.

3.2 Construction

Subject to clause 5, YNZ will be responsible for all decisions relating to the execution of the Project including entering into all contracts in respect of the Project, appointing consultants or contractors, and contract administration in respect of the Project. Subject to the terms of any contract, YNZ will be the owner of any intellectual property in relation to the Project.

4. PROJECT STAGES AND ROLES

4.1 Three Stages

The Council and YNZ acknowledge and agree that the Project will have three distinct stages being:

- (a) The Establishment & Funding Stage; and
- (b) The Delivery Stage; and
- (c) The Operation Stage;

4.2 Establishment & Funding

Council and YNZ agree that the establishment and funding stage will comprise those matters required to get the Project fully consented which matters will include (without limitation) securing funding, legal, concept and feasibility studies, design, resource consent applications and project planning. It is expected that YNZ will be the primary promoter of the Project to the public and will manage communications, public relations, and all media relations throughout the Project in consultation with Council.

4.3 Delivery

Council and YNZ agree that the delivery stage will generally comprise the tendering and awarding of contracts for the design and construction of the Project, and YNZ will have the primary responsibility for this stage.

4.4 Operation

Council and YNZ acknowledge and agree the HPCSC will be operated in accordance with the terms of the agreements referred to in the Conditions detailed in this Memorandum of Understanding and otherwise agreed by the parties. The Business Plan will document the key aspects of how the HPCSC will be used over the life of the facility.

4.5 Flexibility

Council and YNZ agree the above matters will, by necessity, incorporate a degree of flexibility in order to adapt to matters as the Project progresses. The Council and YNZ agree, if necessary, to redefine their roles under this Agreement.

5. FUNDING

5.1 Council Contribution

Subject to the Conditions in clause 5.2, Council will contribute to YNZ, funding of up to \$3,000,000 plus Goods and Services Tax (GST) (if any and provided YNZ is registered for GST at the first time any funding from the Council Contribution is released to YNZ) for the HPCSC Project ("**Contribution**"). Any Contribution to be provided by Council for the Project will be under a formal Funding Agreement between Council and YNZ, on terms and conditions as Council reasonably requires, reflecting the agreed delivery framework for the Project, including payment schedules, reporting requirements, objectives and measures, time frames, and health and safety obligations.

5.2 Conditions

Council's Contribution is subject to each of the matters set out in clauses 5.2(a) – 5.2(k) being completed or performed to Council's satisfaction in all respects by the third anniversary of the date that this Agreement is signed by both parties (**Sunset Date**).

Securing funding

- (a) YNZ must provide confirmation to Council, on terms reasonably acceptable to Council, that all conditions imposed by Sport NZ (acting on behalf of the New Zealand Government) to enable a funding contribution by Sport NZ to be made available to the Project have been satisfied.
- (b) YNZ must demonstrate to the reasonable satisfaction of Council that it has raised sufficient funds from the private sector, along with Council's and Sport NZ's contributions, to complete the Project.
- (c) YNZ must demonstrate to Council that it has formal arrangements with the future users of the HPCSC, and such terms to be reasonably acceptable to Council.

- (d) YNZ must provide to Council a 5-year business plan, which is acceptable to Council in all respects, for the operation of the HPCSC post-construction, including financial projections (**Business Plan**).

Project Planning

- (e) YNZ must provide to Council a project execution plan (PEP) encompassing all aspects of management, design, pre-construction and construction works for the HPCSC. The PEP must be acceptable in all respects to Council.
- (f) YNZ must provide to Council a procurement plan for the procurement of goods and services necessary for the completion of the HPCSC, which includes processes to ensure transparency in the appointment of suppliers of goods and services to the Project. The procurement plan will comply with Crown guidelines for best practises and probity in procurement.
- (g) YNZ must provide to Council for its approval (in its sole discretion) the construction contract of the HPCSC.

RMA, Building Act and other Approvals

- (h) YNZ must obtain all resource consents required to build the HPCSC. The terms of such consents must be reasonably acceptable to Council.
- (i) YNZ must secure a building consent for the HPCSC and ensure a Code of Compliance is issued for the completed works.
- (j) YNZ must secure other approvals as necessary to support legal operation of the facility, including reserve and / or other licences or approvals as required.

5.3 Condition Waiver

The Council may waive any of the conditions in 5.2 (a) – 5.2 (k) above by written notice to the YNZ.

5.4 Early Release Funding

Despite not all Conditions being fulfilled, if Council is satisfied adequate progress is being made on the Project, and adequate funding safeguards are in place, it may consider requests from YNZ for the early release of part or all of the Council Contribution set out in Clause 5.1. Any early release of funding shall be in Council's sole discretion.

5.5 Sunset date

If all Conditions are not performed to Council's satisfaction in all respects or waived by Council in accordance with clause 5 by the Sunset Date then Council may terminate this Agreement and any agreement entered into in relation to the Project by written notice to YNZ.

6. PROTOCOLS

6.1 Protocols

Council and YNZ acknowledge that the operations of the HPCSC will require protocols to be put in place dealing with day to day operational matters, safety issues and other matters. These protocols will be captured in the Business Plan.

6.2 Agreement

Council and YNZ acknowledge they will prior to the final commissioning of the HPCSC agree the protocols referred to above in the Business Plan. The parties also acknowledge that the protocols will require constant monitoring to ensure the HPCSC is being operated in an efficient and safe manner for (where applicable) athletes, coaching and support staff, and all recreational users, in accordance with the Business Plan.

7. OTHER ASPECTS OF THE RELATIONSHIP

7.1 Nature of Relationship

Nothing expressed or implied in this Agreement constitutes either party the partner, agent, employee or officer of, or as a joint venture with, the other party. Neither party will make a contrary representation to any other person or party in respect of this MOU.

7.2 Yachting New Zealand

YNZ may not pledge the credit of Council or give any security or promise for the payment of money on account of Council or for the performance of any obligation by Council.

8. OTHER ACKNOWLEDGEMENTS

8.1 Council Expertise

Subject to clause 12.1, Council acknowledges:

- (a) that, in order for YNZ to efficiently arrange funding and carry out any other roles that Council and YNZ agree should be carried out by YNZ, then YNZ may need to utilise the expertise of Council and Council officers, and the Council where appropriate agrees that its officers will be made available upon reasonable notice to assist; and
- (b) the importance of the early completion of the Project to assist with Olympic preparations and the securing of key events. As part of its contribution, Council undertakes to co-ordinate and expedite its own processes, including support for public consultation.

8.2 Scope of Relationship

The Council and YNZ acknowledge that the purposes of this Agreement will be best served if either party is able to consider all such matters as they see fit that will help promote the principal purposes of YNZ and the Council pursuant to this Agreement. The cooperative relationship set out earlier in the Agreement will be construed to be as wide as possible so that the parties can efficiently, proactively and with a view to achieving the Vision, work in a way that allows them to consider as wide a range of issues as is possible.

9. DISPUTE RESOLUTION

9.1 Notice and Discussions

In the event of a dispute between the parties arising out of this Agreement, a party claiming that a dispute has arisen must give written notice to the other party. Within 10 Business Days of such notice, the Council and YNZ must enter into discussions with a view to resolving the dispute.

9.2 Submission to Mediation

If discussions referred to in 9.1 fail to resolve the relevant dispute, either party may by written notice to the other party require that the dispute be submitted for mediation by a single mediator agreed to by the parties or otherwise nominated by the President for the time being of the Auckland District Law Society. In the event of any such submission to mediation:

- (i) **Expert:** the mediator will be deemed to be not acting as an expert or as an arbitrator;
- (ii) **Procedure/Timetable:** the mediator will determine the procedure and timetable for the mediation; and
- (iii) **Costs:** the cost of the mediation will be shared equally between the parties.

9.3 Legal Proceedings

Neither party may issue any legal proceedings (other than for urgent interlocutory relief) in respect of any such dispute, unless that party has first taken all reasonable steps to comply with this Clause 9.

10. NOTICES

10.1 Method of Delivery

Any written notice to be given by any party under this Agreement must be signed by a duly authorised senior representative of the party giving notice and (without limiting the means by which notice may be given under the Agreement) will be deemed to be validly given if:

- (a) Personal Delivery: delivered by hand to the intended recipient's address as set out below, or

- (b) Facsimile Delivery: sent by facsimile to the intended recipient's facsimile number as set out below, provided that the sender's facsimile machine confirms transmission to the intended recipient.

10.2 Notice to Council

Any notices to Council must be sent to:

Physical Address: [INSERT HERE]

Facsimile No: [INSERT HERE]

Attention: [INSERT HERE]

10.3 Notice to YNZ

Any notices to YNZ must be sent to:

Physical Address: [INSERT HERE]

Facsimile No: [INSERT HERE]

Attention: [INSERT HERE]

10.4 Time of Delivery

Any notice transmitted by facsimile or delivered after 5.00pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9.00am on the next Business Day.

11. ASSIGNMENT

11.1 Conditions for Assignment

Either party may assign any or all of its title, right or interest in or obligations under this Agreement provided it first obtains the written consent of the other party to the proposed assignment. It is expressly acknowledged that either party may withhold its consent to such assignment for any reason, or may impose conditions on such consent as it sees fit in its sole discretion.

12. REGULATORY MATTERS

12.1 Council Regulatory Functions

YNZ acknowledges that nothing in this Agreement shall fetter or otherwise constrain Council in the proper exercise of its regulatory functions, or more particularly fetter or constrain Council's discretion when considering submissions received during any consultation process regarding the Project.

13. GENERAL PROVISIONS

13.1 Term

This Agreement will take effect on the date of completion of execution by both parties and will remain in effect until the earlier of:

- a) completion of the Project;
- b) termination pursuant to clause 5; and
- c) termination by written agreement between the parties.

The parties acknowledge the Business Plan will continue to apply post the termination of this Agreement.

13.2 Entire Agreement

This Agreement records the entire understanding and Agreement between the parties regarding the matters dealt with in this Agreement upon execution and supersedes all previous understandings of Agreements between the parties in relation to these matters.

13.3 Variation/Termination

This Agreement may be varied or terminated by Agreement between the parties, provided that no Agreement to vary or terminate this Agreement will be effective unless it is in writing and executed by each party. For the avoidance of doubt an exchange of emails will not constitute evidence of an agreement to vary or terminate this Agreement.

13.4 Counterparts

This Agreement, and any Agreement to vary or terminate this Agreement, may be signed in any number of counterpart copies which, read together, will constitute one and the same document.

13.5 Facsimile Copies

Any Facsimile or pdf copy of this Agreement or any Agreement to vary or terminate this Agreement (including any facsimile or pdf copy of any document evidencing any party's signature of this Agreement or such further Agreement) may be relied upon by the other party as though it were an original copy.

13.6 Further Assurances

Subject to Clause 5.2, each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Agreement.

13.7 Governing Law and Jurisdiction

This Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

Signed as an Agreement

THE COMMON SEAL OF AUCKLAND COUNCIL was affixed in the presence of:

Mayor

Council CEO or delegate

SIGNED BY THE BOARD REPRESENTATIVES OF YACHTING NEW ZEALAND

Full name of Board Representative

Signature of Board Representative

Full name of Board Representative

Signature of Board Representative