

# **Memorandum of Understanding**

**Between the**

**Kaitaia Business Association**

**and the**

**Te Hiku Community Board (on behalf of the Far North District Council)**

## **PARTIES**

1. The Kaitaia Business Association (KBA) is registered under the Incorporated Societies Act 1908, and includes and represents almost 300 businesses in the Kaitaia Central Business District (CBD) and in the wider business area. The KBA undertakes business-led programs, initiated by the local business community, which promote and develop the local economy.
2. The Te Hiku Community Board (THCB) is authorised and empowered under the Local Government Act 2002 to represent the interests of its community. In entering into this Memorandum of Understanding (MOU), the THCB is acting on behalf of the Far North District Council (FNDC), which has principal offices located at 5 Memorial Avenue, Kaikohe 0440. Whenever the FNDC is mentioned in this MOU, it is agreed and understood that, unless otherwise stated, this wording is to be interpreted to mean the FNDC, acting through and represented by the THCB.

## **BACKGROUND**

3. The purpose of the Business Improvement District (BID) programme is to improve local business and economic development within the designated BID boundary area.
4. Attached to this MOU is a map indicating in red the boundaries of the Kaitaia BID area.
5. The BID Programme targeted rate is levied upon all business properties located within the boundary of the Kaitaia BID area and collected pursuant to powers conferred upon the FNDC by the Local Government (Rating) Act 2002.
6. In 2012, the appropriate BID Programme procedural steps were conducted by the KBA, including a successful balloting of businesses and owners of commercial properties located in the Kaitaia BID area. As a result, the Kaitaia BID Programme was established. The Kaitaia BID Programme Targeted Rate was first charged in the 2012/2013 rating year as per Far North District Council resolution dated 28 June 2012 and pursuant to the terms of a Memorandum of Understanding entered into at that time.
7. The present Memorandum of Understanding (MOU) replaces the 2012 Memorandum of Understanding. All events and circumstances occurring before the last date of signature hereto shall continue to be interpreted according to the terms and conditions of the 2012 Memorandum of Understanding. All events and circumstances occurring after the last date of signature hereto shall be interpreted according to the terms of the present MOU, and not the terms of the 2012 Memorandum of Understanding.

## **TARGETED RATE**

8. The FNDC shall continue to levy the targeted rate for the Kaitaia BID Programme upon all business properties located within the boundary of the Kaitaia Business Improvement District (BID). Funds received as a result of this targeted rate will be paid to the KBA. The FNDC shall continue to ensure that the Kaitaia BID Programme Targeted Rate be included in each Annual Plan and Long Term Plan, subject to the terms and conditions contained within this MOU.

## **ROLE OF KAITAIA BUSINESS ASSOCIATION (KBA)**

### **Implementation**

9. The KBA shall implement this BID Programme by carrying out the various activities and projects proposed by the KBA and funded by the BID Programme, approved by the FNDC. The KBA shall also implement this BID Programme through the performance of its other duties set forth in this MOU.

### **Reporting**

10. The KBA will report, inform and update the THCB on all significant matters pertaining to the BID Programme, as soon as may be reasonably possible.
11. In addition, not later than 1 December of each year, the KBA shall provide the THCB with the following 3 financial documents:
  - a. An Annual Report for the previous financial year; and
  - b. Audited Annual Financial Accounts for the previous financial year; and
  - c. An Annual Business Plan including a Financial Budget for the next financial year showing expected income and expenditure.

The 1 December reporting date is intended to allow the THCB sufficient time to review these 3 annual financial documents and to report to the FNDC not later than 1 March of each following year as discussed in clause 20 below.

### **Annual Presentation**

12. Each year, on an agreed day, the KBA shall make an annual presentation to the THCB, during which the 3 financial documents referred to in clause 11 above shall be discussed.
13. Other presentations to the THCB shall be as mutually agreed upon between the parties.

### **Standards**

14. The KBA shall at all times conduct its affairs in full compliance with the requirements contained within the Incorporated Societies Act 1908, as well as the terms contained in the KBA Constitution.

### **Membership**

15. All businesses within the BID Programme boundary pay the targeted rate and should therefore benefit from its activities. Accordingly, the KBA shall extend full membership without payment of any membership fee to the owners of all business properties located within the BID Programme boundary indicated on the map attached to this MOU.

### **Member Appointed**

16. The KBA will admit the representative member appointed by the THCB, referred to below in clause 23, and permit him or her to attend KBA proceedings such as ordinary meetings, Executive Committee meetings, and other such proceedings.

## **ROLE OF TE HIKU COMMUNITY BOARD (THCB)**

### **Liaison**

17. The THCB shall share relevant information in a timely manner with the KBA as to all matters which may have an impact upon the KBA and its activities. Where appropriate, the THCB may act as a liaison point or conduit for the relationship between the BID Programme and the local community.

### **Advocacy**

18. Where appropriate, the THCB may advocate on behalf of the KBA to FNDC departments and Council Controlled Organisations in order to advance business outcomes and local economic development.

### **Reports**

19. Not later than 1 December of each year, the THCB will receive from the KBA the 3 annual financial documents referred to in clause 11 above. In February of each year, the THCB shall receive the annual presentation made by the KBA, referred to in clause 12 above, during which the 3 financial documents shall be discussed.
20. After receiving and reviewing the 3 annual financial reports and the annual presentation, the THCB will report to the FNDC not later than 1 March of each year. This report to the FNDC shall contain:
- a. The THCB's recommendation to the FNDC as to the dollar amount to be rated in the Kaitia BID Programme Target Rate for the next financial year. The report and recommendation shall be supported by the 3 financial documents submitted by the KBA to the THCB; and,
  - b. Information about the effectiveness of and any other economic development about the Kaitia BID Programme.

### **Standards**

21. By virtue of being a local government organisation, the THCB is obliged to observe and comply with due process of law, both procedural and substantive, as well as the requirements imposed by the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987. In addition to these standards, the THCB is also subject to FNDC processes and policies.

### **Member Appointed**

22. The THCB will appoint one of its members to represent the Board at KBA proceedings such as ordinary meetings, Executive Committee meetings, and other proceedings as referred to in clause 16 above.

## **MODIFICATIONS**

23. This Kaitia BID Programme may be expanded, reduced, or otherwise modified in any way only by a written agreement between and executed by the duly authorised representatives of the KBA and the THCB.

### **Variation in Funding**

24. If the modification requested consists of an increase or decrease in the amount to be rated in the Kaitia BID Programme Target Rate for the next financial year, the request must be approved by the KBA through a vote of its members at an Annual General Meeting (AGM) or a Special Meeting (SM).

25. In the interests of transparency and accountability, the KBA must, at a reasonable period of time before the AGM or SM referred to above, distribute to all of its voting members relevant financial planning documents and budgets, which include the proposed increase or decrease, clearly identified and explained in reasonable detail.
26. The maximum amount of any such requested increase or decrease in the amount to be rated for the next financial year shall be 5% of the presently existing amount of the targeted rate, or \$5,000, whichever is less, absent a written agreement between, and executed by, the duly authorised representatives of the KBA and the THCB.
27. In order to align with the FNDC's annual planning process, a request from the KBA to the FNDC for an increase or decrease of the amount to be rated in the Kaitaia BID rate must be included in the KBA's Annual Report referred to in clause 11 above and accompanied by the recommendations of the THCB to the FNDC. This will enable the FNDC to include the increased or decreased amount to be rated in the FNDC's Annual Plan process.

### **SPECIAL CIRCUMSTANCES**

28. Under ordinary circumstances, the Kaitaia BID Programme shall be administered by and through the KBA. However, if Special Circumstances should arise relating to governance, management, or operational procedures of the Kaitaia BID Programme, certain exceptional measures described below may be necessary. Special Circumstances shall include, but are not limited to:
  - a. Non compliance with the KBA's constitution and rules;
  - b. Non compliance with the terms of the Incorporated Societies Act 1908;
  - c. Any misappropriation of BID Programme funds;
  - d. Any other inappropriate business practices;
  - e. Financial errors such as underspending, overspending, or the accumulation of unsustainable debt;
  - f. Failure to meet legal obligations.

### **Support**

29. As a first measure in response to Special Circumstances, the FNDC may offer to provide support to the BID Programme in the form of FNDC officers or nominated representatives who shall work alongside members of the KBA's executive committee on a case-by-case basis to resolve issues and to find solutions to any problems.

### **Written Notice**

30. Alternatively, if the FNDC believes that the Support described above will be insufficient to cure the Special Circumstances, it may decide instead to send a written notice to the executive committee of the KBA. This written notice shall describe the Special Circumstances and shall extend to the KBA a reasonable period of time (but not less than 30 calendar days) to cure the Special Circumstances.
31. If, in the sole discretion of the FNDC, the KBA fails to cure the Special Circumstances within the period of time extended by the written notice, then the FNDC may forthwith, and without further notice, suspend payments to the KBA of the funds generated by the BID Programme Targeted Rate, and may further take one or both of the following exceptional measures:
  - a. **Intervention:** The FNDC may decide to direct that FNDC officers or nominated representatives intervene to directly manage the business affairs of the BID Programme until the Special Circumstances have been cured and the BID Programme is ready to be returned to the management of the KBA. During this period of intervention management, KBA staff will cooperate with the FNDC

officers or nominated representatives and shall support them in their efforts to cure the Special Circumstances.

- b. Termination: The FNDC may decide to terminate the Kaitaia BID Programme by sending written notice of such termination to the executive committee of the KBA. The FNDC shall continue to levy the BID Targeted Rate until the 1<sup>st</sup> of July next occurring, upon which date the FNDC shall cease to levy the BID Targeted Rate.

32. All matters relating to Special Circumstances and/or Termination shall be decided according to the sole judgment and discretion of the FNDC. This includes, but is not limited to, the existence of Special Circumstances, the form of exceptional measures to be taken, the length of the reasonable period of time granted within which to cure any Special Circumstances (but not less than 30 calendar days), and the manner and period of the Intervention Management to be undertaken.

## **REVIEW BALLOTING**

33. At any time, either the THCB or the KBA may request a ballot of KBA voting members to determine whether the BID Programme should continue or cease. Whichever party makes the request shall forward to the other party a copy of the minutes of the meeting at which the relevant resolution was adopted.

34. The ballot shall be conducted by the KBA in a manner similar to the balloting referred to in clause 6 above.

35. If the balloting produces a mandate to discontinue the BID Programme, the FNDC shall cease to levy the Kaitaia BID Programme Targeted Rate on the 1<sup>st</sup> of July next occurring.

36. If the balloting produces a mandate to continue with the BID Programme and to continue to receive the funds produced by the BID Targeted Rate, the BID Programme shall continue to function and operate as before the Review Balloting took place.

## **RIGHT OF TERMINATION**

37. The length of the period of time during which the Kaitaia BID Programme shall remain in full force and effect under the terms of this MOU is subject to the legal principle that an elected Council may not unreasonably fetter, bind, or obligate a future Council which is yet to be elected. In accordance with this principle, the FNDC, in its sole discretion and through no fault or dereliction of duty on the part of the KBA, and with no obligation to provide cause or reason, shall have the absolute authority to terminate this Kaitaia BID Programme on 30 calendar days written notice given to the KBA. In the event of such a termination, the BID Targeted Rate shall continue to be levied until the 1st of July next occurring.

## **NO OBLIGATIONS**

38. This MOU does not give either party any power or authority to incur any debts or obligations which bind, obligate, or encumber the other party unless there is a written document, properly witnessed and signed by duly authorised officers of the FNDC and by the Executive Committee of the KBA.

## **DISPUTE RESOLUTION**

### Negotiation

39. In the event of any disagreements or disputes between the parties, it is agreed that there shall be a good faith effort made to resolve the matter by negotiation.

### Mediation

40. If such negotiation does not succeed in resolving the disputed matter after a period of one calendar week, or such longer period of time upon which the parties may mutually agree, then either party may serve upon the other a written Notice of Mediation. The Chairperson of the New Zealand Chapter of Lawyers Engaged in Dispute Resolution "LEADR" shall be invited to appoint a mediator by the party serving the Notice of Mediation. Each party shall bear its own mediation costs and one-half of the mediator's fees.
41. All discussions, documents, or proposals presented or exchanged during the negotiation period or the mediation process shall be made "without prejudice" and thus shall be inadmissible in the binding arbitration proceeding referred to below.

### Binding Arbitration

42. If the disputed matter is not resolved within 30 calendar days of the appointment of a mediator or within such other period of time upon which the parties may mutually agree, either party may refer the disputed matter to binding arbitration and may request that the Chairperson of the Auckland District Law Society appoint an arbitrator.
43. Arbitration proceedings are to be conducted in accordance with the provisions of the Arbitration Act 1996, with the arbitrator having full authority to decide all procedural or substantive issues. Both parties agree to be bound by the decision of the arbitrator, which may contain an award of costs and/or fees as the arbitrator shall see fit to make.

For and on behalf of the Kaitia Business Association

Dated: 12/01/17

  
\_\_\_\_\_  
Signature

SHIRLEY WILLIAMS  
\_\_\_\_\_  
Printed Name

CHAIRPERSON.  
\_\_\_\_\_  
Office or Title

For and on behalf of the Te Hiku Community Board, (acting for and on behalf of the Far North District Council)

Dated: 11/7/17

  
\_\_\_\_\_  
Signature

Adele Gardner  
\_\_\_\_\_  
Printed Name

Te Hiku Community Board Chair  
\_\_\_\_\_  
Office or Title

