

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DIRECTOR-GENERAL OF CONSERVATION

AND

THE SOUTHLAND DISTRICT COUNCIL

THIS MEMORANDUM dated the day of 2008

THE PARTIES TO THE MEMORANDUM OF UNDERSTANDING ARE:

THE DIRECTOR-GENERAL OF CONSERVATION acting through the Southland Conservator, Department of Conservation (“the Department”)

AND

SOUTHLAND DISTRICT COUNCIL acting through the Chief Executive (“the Council”)

BACKGROUND:

- A. MILFORD is a small geographic area situated within Fiordland National Park and is managed by the Department of Conservation.
- B. WITHIN the Milford area several separate legal arrangements are in place covering Freshwater Basin, the Milford Hotel, the Lodge, the airport; and the Cleddau fan/Deepwater Basin; the state highway; and specific Department of Conservation facilities around Milford and on the roadside.
- C. FOR a number of years the Milford community have expressed the need that more should be done to co-ordinate overall site management at Milford. Over that period of time various management models have been proposed.
- D. THE proposal to establish a Trust for Milford, to be known as the Milford Community Trust, has grown from the concepts developed by the Milford Governance Group and the Milford Planning Group. These concepts have been expanded and worked through by joint working parties between principally, the Department and the Council, with the assistance of Environment Southland.
- E. DRAFT proposals have been sent to a number of public and private bodies and have also been presented at several public meetings. Modifications and alterations

to the proposal have meant that the Trust has evolved as the preferred form of governance on behalf of the community.

Proposal

- F. THE Council and the Department proposed a council-controlled organisation (CCO) in the form of a Trust (“the Trust”) be established to provide the community of Milford with community leadership and governance.

- G. THE Trust is proposed to operate as an umbrella governance organisation to provide community input into the whole area at Milford. This is seen as a key step in ensuring preservation of the iconic status of Milford.

Purposes

- H. THE purposes of the Trust are:
 - (a) To manage and carry out services and undertake leadership, planning and advocacy for the general benefit of the Milford community so as to ensure as far as possible that the infrastructure of the community and its sense of identity, viability and wellbeing are maintained and enhanced.

 - (b) To liaise with and communicate with all individuals; organisations, groups and other parties with interests in the Milford community for all purposes which are beneficial to the community.

 - (c) To represent the interests of the Milford Community to ensure that the natural environments and outstanding values of the Milford Sound area are safeguarded and protected for all residents and visitors to the area.

 - (d) To monitor and maintain an overview of all activities and services provided within the Milford community.

- (e) To consider and report on all matters either referred to and/or delegated to it from time to time by the Department of Conservation and the Southland District Council and on any matter of interest or concern to the Milford community.
 - (f) To access, use or invest funds and enter into arrangements, contracts and other agreements upon such securities or in such manner and upon such terms and conditions that the Trustees deem suitable for the purpose of furthering the objects and purposes of the Trust.
 - (g) To carry out such other lawful activities which are incidental or conducive to attaining the objects and purposes of the Trust.
- I. THE powers required by the Trust to enable it to undertake tasks at Milford are given to it by the terms of the Trust Deed.
- J. THE types of authorisations required for the Trust to undertake its specific tasks will be provided to it by:
- (i) delegation from the Council;
 - (ii) a contract with the Department; and/or if necessary;
 - (iii) a concession from the Minister of Conservation.
- K. THE tasks to be undertaken by the Trust will incur costs that need to be funded from the beneficiaries of those services. Costs of certain tasks may also be funded directly by Government, the Council, the Department or other funding sources.
- L. THE key criteria for selection and implementation of any system for charging fees for services provided to users at Milford is that the system be fair and equitable.
- M. CONCESSION holders at Milford are liable to pay a community contribution for any community service, benefit or facility provided to them by the Minister of Conservation or the Department.

- N. IN addition to a community contribution, any lease of land for a term of greater than the qualifying term of ten years comes within local government legislation is liable to rating by the Council and Environment Southland.

Legislative Environment

- O. THE Trust, and the arrangements under which it fulfils its responsibilities, needs to operate effectively and equitably in an environment governed by two distinct sets of legislation;
- (a) Local authority legislation including
 - (i) The Local Government Act 2002
 - (ii) Local Government (Rating) Act 2002
 - (iii) Ratings Valuations Act 1998
 - (iv) The Local Electoral Act 2001
 - (v) The Electoral Act 1993
 - (b) National parks and conservation legislation
 - (i) The National Parks Act 1980
 - (ii) The Conservation Act 1987

Activities

- P. THE activities at Milford and Milford Sound/Piopirotahi are principally centred on tourism, to enable the public to appreciate the beauty of the surrounding area.
- Q. INFRASTRUCTURE assets and services provided at Milford may not only support the operations of the commercial tourism operators but also benefit the public directly. In addition, Milford is a port for the local fishing industry.
- R. VARIOUS parties hold the ownership of the infrastructure assets and services that currently exist at Milford, who have occupancy and operational rights granted to them by means of concession agreements with the department.

- S. SOME tourism operators use Milford Sound as the area on which to operate cruise vessels. The infrastructure assets and services within Milford aid this substantial activity.

THE PARTIES AGREE AS FOLLOWS:

Legal arrangements with the Trust

1. Desired tasks for the Trust to carry out are set out in Appendix 1.
2. Given the different governing legislation and the different purposes of the legislation, The Department and the Council will need to enter into separate arrangements with the Trust to achieve the desired outcomes to benefit Milford:
 - 2.1 The Department can enter into a contract with the Trust to carry out certain tasks on its behalf and where appropriate or necessary the Trust may need to apply for a concession.
 - 2.2 The Council may delegate powers to the Trust as a council-controlled organisation or the Trust may need to enter into a separate arrangement with the Council.
3. The Trust as a Council Controlled Organisation (CCO) is required to undergo various public planning and reporting processes as stipulated in the Local Government Act 2002.
4. The Department does not, via any separate Agreement it may have with the Trust, wish to duplicate any process or decision-making referred to in 4. above but has powers under the Conservation Act 1987 and National Parks Act 1980 that cannot be delegated. The Department will use its best endeavours to ensure any unnecessary overlap or duplication, via any separate Agreement it has with the Trust, is avoided.
5. Subject to the above, both parties will use their best endeavours to ensure:
 - (i) the proposed tasks are able to be carried out by the Trust on behalf of the Parties, and

- (ii) funds will be collected under the appropriate legislation from users who benefit.
- 6. The Trust Deed (attached as Appendix 2) sets out the broad objects, purposes and powers of the Trust.
- 7. The Department has drafted a proposed contract (attached as Appendix 3) which sets out the tasks the Department wishes the Trust to carry out on its behalf. Further tasks may be contracted to the Trust in future or a concession may be necessary for some tasks.

Tasks

- 8. The proposed territorial authority tasks are based on the tasks that the Southland District Council undertakes for its district. As Milford is situated in a national park, there is an overlap with the tasks that the Council would normally undertake for its district and the tasks that can be carried out by the Department.
- 9. Where services, benefits or facilities are provided by the Department or Minister of Conservation for the benefit of concessionaires at Milford, contributions can be sought from Concessionaires to recompense for such.
- 10. Some territorial authority tasks are peculiar to local government legislation and can not be undertaken by the Director-General.

Nature of relationship

- 11. The parties wish to conduct their relationship on the basis of good faith and respect for each other's views and in pursuance of the purposes for which the Trust was set up.

Term

12. The term of the Memorandum is for 10 years unless either party wishes to withdraw before then, in which case 3 months written notice must be given to the other party.

Dispute Resolution

13. Any dispute concerning the subject matter or purposes of this document will be settled by full and frank discussion and negotiation between the parties.

Appendix 1 – Desired Tasks

1. Specific territorial authority type tasks that it may be desirable for the Trust to carry out, some of which may be undertaken by the Trust through its contract with the Department, include:

- a. Provide governance of new entity.
- b. Develop (or contribute to) policies relevant to Milford, which Southland District Council may prepare for its district.
- c. Prepare strategic plans including:
 - “Overarching Vision”;
 - Long-term Business Plan – equivalent to Long Term Council Community Plan (LTCCP).
- d. Undertake adequacy monitoring annually, to ensure the balance between availability and requirements for capacity of infrastructure services provided by all parties at Milford (including other concessionaires) is positive:
 - Approach existing providers to raise concerns;
 - If no action by existing provider(s), propose options for intervention to ensure continuity of capacity;
 - Undertake financial analysis of options;
 - Decide action to be taken;
 - Prioritise activities for the planning period (10 years);
 - Include priority activities in Assets and Services Management Plan.
- e. Prepare Operational Plans:
 - Asset and Services Management Plan – prepare initial version and annually review;
 - Annual Plan, (also to be included in Southland District Council Annual Plan document);
 - Hazard Plans;
 - Tourism Continuity Plan
 - (e.g. Homer Tunnel closure
 - dealing with cases of bird flu)

f. Undertake Financial management:

- Establish policies, including Revenue and Financing Policy;
- Monitor compliance with policies;
- Ensure fair and equitable means of raising revenue;
 - Basis for calculation;
 - Inter-generational equity;
- Manage debt raised for asset financing;
- Manage finances in accordance with Annual Plan.
- Manage routine financial processes.

g. Provide range of “SDC Community Board” tasks:

- Rubbish removal service (on priority list);
- Other “SDC Community Board” tasks
 - Local policy determination (as appropriate) for:
 - Water supply
 - Sewerage and drainage
 - Footpaths
 - Street lighting
 - [Camping grounds] – remains with DOC
 - Traffic management
 - Waste management
 - Other similar local tasks;
- Consideration and reporting on matters affecting Milford community;
- Over-viewing and setting priorities for local works;
- Recommending local rating levels to SDC;
- Consider and report on all matters referred to it by the SDC;
- Undertake any other appropriate responsibilities that are requested by the SDC;
- Support Provision and Management of fire fighting services (Southland Rural Fire District);
- Support Civil Defence initiatives.

- h. Guidance of future direction
 - Develop or contribute to policies for the well-being of Milford and its community.
- i. Quality Improvement
 - Take a lead role for resolution of issues such as the perceptions of congestion and overcrowding at Milford.
 - Advocate for raising the standards of concessionaire infrastructure and services.
- j. Interface with other regulatory agencies (eg DOC, SDC, ES, Ministry of Transport/CAA, Transit).
- k. Make contractual agreements for supply of services by service providers:
 - To implement Asset and Services Management Plan:
 - New Infrastructure assets;
 - Maintenance and operational services;
 - To implement Annual Plan.
- l. Monitor performance of contractors who supply services.
- m. Manage community infrastructure owned by MCT or SDC (eg community hall, recreational facilities).
- n. Water quality testing.
- o. Provide for community well-being, e.g. liaise with Police on issues, such as drugs.

2. Potential Regional Council Task:

Manage Cleddau River bank protection works (maintain, and upgrade if required).

- The works are in Crown ownership;
- Responsibility is partly the Department as landowner and partly ES via its statutory functions;
- Potential to align with ES expertise.

3. Contract to undertake DOC Responsibilities (if required):

The performance of any of the responsibilities below is subject to negotiations with the Trust on the nature of the responsibility referred to the Trust.

- Deepwater Basin pier
- “Whitehouse” toilet and showers at Deepwater Basin – upgrade and manage
- Maintain local roads
- Maintain walking track: car park to airport
- Manage “gravel pit” area (i.e. in existing state)
- Noxious weed control
- Pest control
- Manage wharf and jetties in coastal marine area

4. Other Necessary Community Services:

Facilitation, or provision and management of emergency medical services