

DEED dated

November 2009

1

PARTIES

CHRISTCHURCH CITY COUNCIL
("Council")

[2=NAME OF LICENSEE - TO BE A NAMED INDIVIDUAL(S), TRUST OR COMPANY of
[3=Licensee's address]
("Licensee")

BACKGROUND

- A. The Licensee is the owner of a bach located at Taylor's Mistake.
- B. The legality of baches erected at Taylor's Mistake has long been the subject of debate and disagreement. An analysis of the background is set out in the Decision of the Environment Court C50/2002 dated 2 May 2002 (at paragraphs 21 – 56 inclusive), a decision dealing with references on the CCC City Plan in relation to the Taylor's Mistake baches.
- C. The Decision directed the Council to amend the provisions of its District Plan but did not, and could not, decide whether the Council would grant some sort of tenure for the future occupation of baches at Taylor's Mistake.
- D. At its meeting on ,date to be inserted. 2007 Council resolved to issue licences to the owners of the baches scheduled in the CCC City Plan upon the condition that:
 - (a) Prior to the issue of a licence the work (if any) then necessary to bring the bach to a reasonable standard of repair and appearance in compliance with the provision of the CCC City Plan would be undertaken; and
 - (b) Any licence issued would be on the terms and conditions set out in this licence.
- E. When making that decision Council accepted legal advice that there was no express authority for the grant of this licence but that such authority arises indirectly out of: customary local authority practice in New Zealand; sections 316 and 357(1) of the Local Government Act 1974 and section 12 of the Local Government Act 2002.
- F. Baches at Taylor's Mistake situated on legal unformed road (see Appendix 1) have been recognised as part of the social and cultural history of Christchurch and character of Taylor's Mistake. These baches, which are considered not to have undue detrimental impacts on visual, landscape or recreational values, have accordingly been scheduled in the Conservation 1A Zone. It is nevertheless recognised that they are located in a sensitive environment and controls are therefore needed. The Decision of the Environment Court C50/2002 at paragraph 367 includes the wording "Firstly the baches themselves are physical resources which require to be sustained .." and at paragraph 76 it says "We cannot assume the baches will be removed if they are not scheduled because their status is unclear". This Licence provides for the ongoing presence of the baches.
- G. As part of the overall resolution of the situation outlined in Note B above, the licensees have agreed to gift their interest in some approximate 70ha of surplus land to the Council. The decision of the Environment Court C50/2002 at paragraph 382 outlines the requirement for the transfer of this surplus land to the Council although it also refers to the fact that it had "no particular weight" in balancing its considerations. This licence confirms the true nature of the gift and will contain conditions under which all or part of land will have to be returned to the Licensees.

TERMS OF THIS DEED

1. INTERPRETATION

1.1 Definitions:

"Annual Licence Fee" means the annual licence fee specified in the First Schedule subject to changes consequent upon the exercise of the Council's right to review the annual licence fee;

"Authority" means and includes every government or local authority having jurisdiction over the Site or responsibility for regulation of any uses of the Site;

"Bach" means the structure erected on the Site at the Commencement Date (as that term is defined in the First Schedule);

"Boulder Bay" means the small bay 2.5 km further round Godley Head from Taylor's Mistake Bay;

"CCC City Plan" means the Christchurch City Council District Plan prepared under the Resource Management Act 1991 as amended from time to time;

"Council Outgoings" means to be confirmed

"CPI" means the Consumer Price Index (all groups) announced from time to time or such other index as may replace this index.

"the Decision" means a decision of the Environment Court C50/2002 dated 2 May 2002;

"Default Interest Rate" means the default interest rate specified in the First Schedule subject to changes consequent upon the exercise of the Council's right to review the default interest rate;

"Domestic Animal" includes any cat or dog of any breed and any size;

"Hobson Bay" means the small bay within the greater Taylor's Mistake Bay;

"Licensee" means the party signing this licence including the Licensees heirs and assignees

"Road" means the unformed legal road at Taylor's Mistake within which the Site is located;

"the Site" means the site at Taylor's Mistake specified and described in the First Schedule;

"Term" means the period specified in Clause 3 and includes the Initial Term specified in Clause 3.1 and (if this licence is renewed) any Renewal Term as provided for in clauses 3.2 and 4;

"Taylor's Mistake" means the bay and locality of this name at Christchurch which is referred to in the Decision and includes Boulder Bay, and Hobsons Bay as the context requires it;

"Working Day" has the same meaning as in Section 29 of the Interpretation Act 1999.

1.2 Headings

Clause and other headings are for ease of reference only and do not form any part of the context nor affect the interpretation of this Deed;

1.3 Plural and Singular

Words importing the singular number include the plural and vice versa.

1.4 Negative Obligations

Any obligation not to do anything is deemed to include an obligation not to suffer, permit or cause that thing to be done.

2. GRANT OF LICENCE

2.1 The Council grants to the Licensee the right to occupy the Site for the Term upon the terms and conditions contained in this licence.

2.2 The Licensee must be a financial member of the Taylor's Mistake Association.

3. TERM

3.1 The term of this licence is 10 years commencing on the Commencement Date ("the Initial Term") subject to renewal as provided in Clause 4.

3.2 The licence will be renewed for further term(s) of 10 years each in accordance with Clause 4 below (a "Renewal Term").

3.3 Notwithstanding Clauses 3.1 and 3.2, the Term will end if, at any time (whether during the Initial Term or a Renewal Term), this licence:

- (a) expires due to circumstances eventuating as outlined in clause 16.1;
- (b) is cancelled by the Council under Clause 16.2;

4. RIGHT OF RENEWAL

4.1 Subject to Clauses 16.1, and 16.2 below, the Council, will renew this licence for a Renewal Term if:

- (a) at least two months prior to the expiry of the Initial Term or a Renewal Term and following a reminder from the Council, the Licensee has given the Council written notice of the Licensee's wish to renew this licence; and
- (b) the Licensee has reasonably complied with all of the obligations of the Licensee under this licence.

4.2 The renewed licence will be on the same terms as those set out in this licence, including this provision for renewal.

4.3 ~~The Licensee, its heirs and assigns will be entitled to a perpetual renewal of this licence under the terms and conditions contained under this licence. There will an expectation of renewal under the same terms and conditions as renewal falls due.~~

5. ANNUAL LICENCE FEE

5.1 The Licensee will pay the Annual Licence Fee by an annual payment in advance on the Commencement Date and each anniversary of the Commencement Date.

- 5.2 The Annual Licence Fee and other money payable by the Licensee under this licence must be paid to the Council without any deduction or set off.
- 5.3 All payments of the Annual Licence Fee must be paid by direct bank payment or as the Council may direct.

6. REVIEW OF ANNUAL LICENCE FEE

- 6.1 The first Annual Licence Fee has been ascertained as per the Third Schedule.
- 6.2 Any future increases of the Annual Licence fee will be no more than the actual movement in the Consumer Price Index for the preceding period..
- 6.3 The Annual Licence Fee and/or Default Interest Rate may be reviewed by the Council at any time during the Term by notice in writing to the Licensee.
- 6.4 Subject to Clause 6.1, the reviewed Annual Licence Fee and/or Default Interest Rate shall take effect on the date specified in the notice served under Clause 6.2, or if no date is specified, immediately.
- 6.5 No notice of review may be given under Clause 6.2 to take effect earlier than 12 months after the effective date of the last review.
- 6.6 Upon a review of the Annual Licence Fee the reviewed Annual Licence Fee must represent the Council's fair and reasonable assessment of the annual cost of the administration of licences for all batches at Taylor's Mistake, divided by the number of batches so licensed at the beginning of each annual period and recognising the provisions of 6.1.
- 6.7 Upon a review of the Default Interest Rate the reviewed rate must not exceed an interest rate equal to:
 - (a) The average cost of borrowing money by the Council at the date of the review plus;
 - (b) a margin of 5%.

7. OUTGOINGS

- 7.1 The Licensee will pay any rates or levies payable to any local authority (the "**Council Outgoings**" as specified and defined in 3rd schedule").
- 7.2 The first Annual "Council Outgoings" have been ascertained as per the Third Schedule.
- 7.3 Any future increases in the Council Outgoings will be no more than the actual movement in the Consumer Price Index for the preceding period.
- 7.4 The Council may estimate the annual Council Outgoings and require the Licensee to pay such estimate by quarterly instalments in advance on the Council Outgoings Payment Dates specified in the First Schedule. An appropriate adjustment will be made for any period current at the commencement or expiry of the Term.
- 7.5 After 30 June in each year of the Term (or such other date in each year as the Council may specify) and after expiry of the Term, the Council will supply the Licensee with reasonable details of the actual Council Outgoings for the preceding year or period. Any other payment will be credited, or refunded, to the Licensee and any deficiency will be payable to the Council, upon demand in writing by the party to whom payment is due.
- 7.6 The Council Outgoings will be paid to the Council, inclusive of GST if any.
- 7.7 All arrangements and charges for any services including water, electricity, telephone and any other utilities or services supplied to the Site are the sole responsibility of the Licensee, as further outlined in Clause 12 below.

8. DEFAULT INTEREST

- 8.1 If the Licensee fails to pay any instalment of the Annual Licence Fee or any other money payable under this Licence within 20 working days of the due date for payment (or if there is no due date within 20 working days of the date of any written demand for payment by the Council) then the Council may require the Licensee to pay interest at the [Default Interest Rate on the money unpaid from the due date for payment (or if there is no due date for payment from the date of demand by the Council) down to the date of actual payment. Interest at the default interest rate shall continue to accrue both before and after judgment.

9. COSTS

- 9.1 Both parties to this Licence will be responsible for their own costs and expenses in relation to the preparation and execution of this licence and for any ongoing future costs ~~associated~~ associated with this licence.

10. USE OF SITE

- 10.1 The Site may only be used for residential occupation on a casual basis.
- 10.2 The Site must not be used:
- (a) for permanent residential occupation;
 - (b) for the carrying on of any permanent business, trade, occupation or profession; or
 - (c) as a principal residence.
- 10.3 Without limiting the generality of Clause 10.2, occupation will be deemed to be permanent residential occupation if the residents have, or the principal resident has, no other place of fixed abode.
- 10.4 The Licensee will make reasonable efforts to keep:
- (a) the Site clear and free from vermin, weeds and litter; and
 - (b) the Bach in a good, orderly state of repair and condition.

11. SITE ACCESS

- 11.1 Motor vehicles belonging to the Licensee or any visitor of the Licensee must be parked in parking spaces designated by the Council for that purpose in the locality of the Site. This provision will not prevent the Licensee from using whatever public access is available for drop off or emergency purposes.

12. SERVICES

- 12.1 All services to the Site that are permitted and that the Licensee may wish to install (power, telephone, water, sewer or storm water) must be installed underground, unless otherwise agreed to in writing by the Council, and such agreement will not be unreasonably withheld.

- 12.2 The Licensee will ensure that at all times adequate systems exist for the disposal of sewage, grey water and storm water in a manner approved by the Council. In any case where sewage disposal to a reticulated outfall is not possible, the sewage disposal system must be:
- (a) of a type approved by the Council in writing. Such approval will not be unreasonably withheld;
 - (b) maintained at all times in a good, efficient operational order and condition.
- 12.3 For the avoidance of doubt, the Council is under no obligation to supply any services and all services shall be arranged by and at the cost of the Licensee. This provision will not prevent the Licensee from arranging connection to the closest existing Council services.
- 12.4 The Licensee accepts full responsibility for any such services that it continues or arranges.

13. BUILDINGS, FENCES, PLANTING AND SIGNS

- 13.1 The Licensee must not at any time erect any structure, fence or other improvement, nor plant or permit any tree or shrub to grow, in or about the site without the prior written approval of the Council. Such approval shall not be unreasonably withheld.
- 13.2 The Licensee must not make any additions or alterations to the Bach, (except (a) routine maintenance and (b) repairs required in an emergency) without the prior written approval of the Council, such approval not to be unreasonably withheld if that repair or maintenance is in accordance with any management plan for the retention of heritage and cultural values of the Bach developed, or approved, by the Council. No additions or alterations will be authorised by the Council where such alterations or additions propose to increase the height of the Bach to more than one storey, or to a floor area in excess of 50 m².
- 13.3 The Licensee must not erect any signs, billboards or banners on the Site or on or about the Bach.

14. ASSIGNMENT OR SUBLETTING

- 14.1 The Licensee may assign, transfer or charge the Licensee's interest under this Licence, and may sublet or dispose or otherwise part with possession of the Site.
- 14.2 Where there is more than one Licensee the transfer of this Licence by way of survivorship or by will to a surviving Licensee will constitute an assignment for the purposes of Clause 14.1.
- 14.3 The use of the Site by a child, grandchild, sibling or other relative of a Licensee shall not constitute a subletting for the purposes of Clause 14.1.

15. INDEMNITY AND LIABILITY

- 15.1 The Licensee accepts that there is some residual doubt as to the ability of the Council at law to grant this licence. The Licensee enters into this licence in full knowledge of those circumstances and will make no claim against the Council for any costs, damages or claims whatsoever arising directly or indirectly as a consequence of any Court order declaring this licence to be unlawfully granted.
- 15.2 Nothing in Clause 15.1 may be construed as imposing any obligation upon the Council to expend time, money or effort defending any legal proceedings to set aside this licence, or any other licence for another bach at Taylor's Mistake, whether such challenge is mounted on the grounds of illegality or otherwise.
- 15.3 The Licensee acknowledges that the road must be available for reasonable use and passage by members of the public at all hours of the night and day.

15.4 The Licensee acknowledges that there is a risk of rock fall and/or storm events having an effect on the Bach and its occupiers from time to time. The Licensee agrees to accept all risk to life and property resulting from the presence and occupation of the Bach and acknowledges that there is no minimisation or assumption of such risk by the Council in granting this Licence or otherwise.

15.5 The Licensee agrees to release the Council and keep the Council indemnified to the fullest extent possible by law against any claim for damage or injury that may occur to the Bach, the Licensee, or any person using the Bach with the consent of the Licensee, arising directly or indirectly out of:

- (a) the use of the Road by a member of the public; or
- (b) any other cause whatsoever.

15.6 The Licensee must, at all times during the Term:

- (a) take out and maintain public liability insurance jointly with other bach holders for an amount not less than the amount stated in the First Schedule in the joint names of the Licensee and the Council;
- (b) provide the Council with such written evidence as the Council may reasonably require during the Term from the Licensees' insurers that the insurance required under this Clause is in force; and
- (c) whenever reasonably required by the Council during the Term, produce the relevant policies of insurance and evidence of payment of current premiums.

16. EXPIRY, CANCELLATION AND/OR TERMINATION OF LICENCE AND REMOVAL OF BACH

16.1 This licence will expire if:

- (a) the Bach remains unoccupied for a continuous period of 365 days; or
- (b) the Bach remains dangerous, as defined in Section 121(1) of the Building Act 2004; or
- (c) the Bach remains insanitary, as defined in Sections 123(a) (situation, construction or state of repair offensive or likely to become injurious to health) or 123(d) (inadequate sanitary facilities) of the Building Act 2004; or
- (d) the Bach is damaged beyond repair or habitation by rockfall, landslip, storms, wave action or any other like natural event; and
- (e) The Council has first given the Licensee written notice of the impending expiry allowing a period of 30 calendar days from the date of such notification in which the Licensee may remedy the issue.

16.2 This licence may be cancelled at any time by the Council if:

- (a) the Licensee is in significant breach of any term or condition of this licence and fails to remedy that breach with the reasonable period stated in a notice given

by the Council specifying the nature of the breach and the required remedy;

16.3 Subject to Clause 16.5 below, upon expiration of the Licence under Clause 16.1, cancellation under Clause 16.2, a new licence may be negotiated between the parties.

16.4 Any licensee who intends removing or demolishing the Bach must first give 2 months written notice to the Council. The licensee must then ensure, all utilities and services to the site are safely and securely terminated (where appropriate by suitably qualified tradesmen) and all rubbish and debris removed so that the Site is left clean, clear, safe and suitable for use by the public as legal (albeit unformed) road.

16.5 Subject to the provisions of Clause 16.3 above, upon notification under clause 16.4 the Council may in its absolute discretion direct, by giving notice in writing to the Licensee, that the Bach must not be removed from the Site in which case upon such notice being given:

(a) subject to any agreement in writing between the Council and the Licensee to the contrary, the Licensee must at the end of the notice period cease to occupy the Bach after first ensuring that all utilities and services to the site are safely and securely terminated (where appropriate by suitably qualified tradesmen), that all rubbish and debris are removed from the Bach and the Site and the Bach are left in a clean, safe and undamaged condition.

17. NO WAIVER

17.1 No waiver or failure to act by the Council in respect of any breach by the Licensee of any term or condition of this licence on an earlier occasion or occasions will operate as a waiver of the same breach on any subsequent occasion, or as a waiver of the right to enforce any other term or condition of this licence.

18. NOTICES

18.1 Any notice to be served under this Agreement may be served as provided in Section 152 of the Property Law Act 1952 and shall be deemed sufficiently served:

- (a) If sent by registered post to the addressee's last known address in New Zealand, on the day following posting; or
- (b) if there is no last known address, when placed conspicuously on the Site or fixed conspicuously to the Bach.

18.2 Notwithstanding 18.1 a notice must also be sent to the registered office of the Taylor's Mistake Association.

19. THE COUNCIL ACTING AS TERRITORIAL AUTHORITY

19.1 The Licensee acknowledges that:

- (a) The Council, in its capacity as a territorial authority, is required to carry out its statutory consent functions under legislation including the Local Government Acts 1974 and 2002, the Building Act 2004 and the Resource Management Act 1991 in accordance with the provisions of those and other statutes.
- (b) The granting by the Council of any consent or approval by the Council as territorial authority under any of those Acts or any other legislation will not of itself be deemed to be a consent or approval by the Council under this Licence.
- (c) The Council is bound by statutory obligations to exercise its powers,

including discretionary powers and duties under any of those Acts or any other legislation without regard to any relationship it may have with the Licensee under this Licence.

20. DISPUTE RESOLUTION

20.1 If any dispute or difference shall arise between the parties as to:

- a) the meaning or application of any part of this licence; or
- b) any other matter in connection with, arising out of, or which may have an effect on, this licence;

then representatives of the licensee and the Council shall meet within 14 days of the dispute or difference ("issue") arising to endeavour to reach an agreement on the resolution of the issue.

20.2 If the meeting referred to in 20.1 ("meeting") does not result in the resolution of the issue:

- a) then the licensee and the Council shall, within 14 days of the date of the meeting, appoint a mediator to mediate the issue;
- b) if the parties are unable to agree upon the person to be appointed as mediator, then the president of the New Zealand Law Society shall be asked to appoint the mediator.
- c) the mediation shall be held within one month of the date of the meeting; and
- d) the licensee and the Council shall attend and participate in the mediation in good faith to negotiate towards achieving a settlement of the issue.

20.3 If at the mediation the issue is not resolved then the issue shall be determined by arbitration.

20.4 If the Council and the licensee are unable to agree upon a single arbitrator within 10 days of either party notifying the other in writing of their wish to have the issue arbitrated then either party ("Notifying Party") may at any time subsequently by written notice to the other party ("Receiving Party") require the issue to be determined by two arbitrators (one to be appointed by the Council and one to be appointed by the licensee) and their umpire (to be appointed by the arbitrators before proceeding to determine the issue). The notice to be given by the notifying party pursuant to this subclause shall:

- a) nominate the arbitrator appointed by the notifying party; and
- b) require the receiving party to nominate their arbitrator by a date not less than 10 days after the date of the notice by the receiving party; and
- c) warn the receiving party of the consequences under subclause 20.5 of failure to appoint an arbitrator by the date specified by the notifying party.

20.5 If the receiving party fails to appoint their arbitrator by the date specified then the notifying party may by written notice to the receiving party have the issue determined solely by the notifying party's arbitrator.

20.6 If any arbitrator appointed pursuant to clause 20.4 refuses or fails to act (including appointing

an umpire if necessary) within a reasonable time of their appointment then either the Council or the licensee may (provided the defaulting arbitrator has first been given in writing a reasonable time in which to act) request the president of the New Zealand Law Society to appoint a replacement arbitrator or an umpire who shall act in lieu of the defaulting arbitrator or as the umpire as the case may be.

- 20.7 Time shall be of the essence under this clause.
- 20.8 The parties agree to be bound by any decision or award completed pursuant to this clause.
- 20.9 The parties will be solely responsible for the costs that they incur in resolving the issue either through mediation or arbitration pursuant to this dispute resolution clause.
- 20.10 This provision shall survive the expiration or earlier determination of this licence.
- 20.11 Any referral to arbitration under this clause shall be a submission to arbitration under the Arbitration Act 1996 which Act shall, to the extent not inconsistent with anything in this clause, apply to any such submission.

21. GIFT OF LAND

- 21.1 The Council acknowledges that the Licensee had an interest in approximately 70ha of land at Taylors Mistake, such land being transferred to the Council as a gift contemporaneously with the execution of this Licence. The gift was at no cost to the Council with the condition the land to be used for the benefit of all the citizens of Christchurch.
- 21.2 The Council further acknowledges that the gift contained the portion of land identified in Schedule 4 and that as a condition of the gift this portion of land is to be offered back to the entity named in Schedule 4 at no cost to the entity if the Council ever rezones or sells this portion, or if any of the adjacent land or land in close proximity to it is rezoned. It further acknowledges it is legally proper for it to make this acknowledgement and that it agrees that a caveat and/or restrictive covenant to this effect will be registered against the title of the land so gifted.
- 21.3 The Council further acknowledges that in the event of any of 19.1, 19.2, 19.3 or 19.4 occurring and resulting in the removal of the bach within 50 years of the original date of this licence, the land gifted to the Council and referred to in the Environment Court Decision and the Background Notes and Clause 21.1 to this Licence, will be transferred back to the entity named in Schedule 4 at no cost. It further acknowledges it is legally proper for it to make this acknowledgement and that it agrees that a caveat and/or restrictive covenant to this effect will be registered against the title of the land so gifted.

22. GOOD FAITH

- 22.1 Both the Council and the Licensee enter into this Licence in good faith and undertake to deal with each other in good faith throughout the term of this Licence.