

MARLBOROUGH STADIUM TRUST

DEED OF TRUST

17 AUGUST 1998

BACKGROUND

- A. The Trustees desire to create a trust to be known as "The Marlborough Stadium Trust".
- B. It is intended that the Trustees determine the means of financing and developing a Sports and Events Centre for Marlborough
- C. The Trustees have agreed to receive any donations, gifts, grants or other monies either now or in the future and to apply the income and/or capital as required from time to time for the purposes of the Trust set out herein.

THIS DEED RECORDS:

1. CREATION OF TRUST

1.1 The Trustees agree to hold any donations, gifts, grants or other monies received either now or in the future along with any accumulations of income and all investments representing the same ("the Trust Fund") on the Trust's set out in the attached Schedule.

2. TRUST POWERS

The Trustees have the powers set out in the Schedule.

3. TRUST PROCEEDINGS

The proceedings of the Trustees are governed by the rules set out in the Schedule.

4. ACCEPTANCE OF TRUST

4.1 The Trustees accept the trusts imposed by this Deed.

SCHEDULE

OBJECTS POWERS AND RULES OF

MARLBOROUGH STADIUM TRUST

1. INTERPRETATION

1.1 In this deed and Schedule the following expressions have the following meanings:

“the Centre or

“the Sports and Events
Centre

means the sports and events complex at Kinross St, Blenheim comprising the Marlborough Aquatic Centre, The stadium, all car parking and all improvements and modifications made and/or developed in the future.

“the Trust”

means the Marlborough Stadium Trust.

“the Trustees”

time

means the persons appointed as trustees from time to

And includes the Trustees named above.

2. NAME

2.1 The name of the Trust is “The Marlborough Stadium Trust”.

3. OFFICE

3.1 The office of the Trust is at Kinross St, Blenheim, PO Box 2000, or such other place as the Trustees may from time to time determine. *(Amended by resolution dated 18 October 2007)*

4. OBJECTS

4.1 The objects for which the Trust are established are generally: (a) to determine the means of developing a Sports and Events Centre for Marlborough, (b) to determine a fundraising plan to finance the Centre, (c) to develop an appropriate ownership and management structure for the operation of the Centre and (d) to do all such other things as are necessary or desirable in relation to the development and operation of the Centre.

4.2 Without derogating from the generality of the object in clause 4.1 hereof, the objects of the Trust include specifically:

a. To establish, fund, operate, maintain and improve a Sports and Events Centre for the public benefit of the population of Marlborough.

4.3 It is a fundamental objective of the Trust that the Sports and Events Centre shall at all reasonable times be available for community use on reasonable terms. All of the other provisions of this deed and all obligations of the Trustees shall be considered having regard to this fundamental objective. *(Amended by Resolution dated 21 March 2000)*

5. LIMITATIONS ON OBJECTS AND PURPOSES

5.1 The objects and purposes of this Trust are charitable.

6. POWERS AND DUTIES

6.1 The Trustees must manage and control the property and affairs of the Trust.

6.2 The Trustees, in addition to all other powers conferred by law, have the following specific powers which must be exercised in good faith for the objects and purposes of the Trust:

- a. To invest money on such terms as the Trustees think fit and to vary investments from time to time;
- b. To make advances to any person or organisation;
- c. To accept any donations, gifts or grants of money or property;
- d. To pay all or any of the expenses incurred in or in connection with the establishment, incorporation, running and objects of the Trust;
- e. To engage such staff or other contractors, whether directly or indirectly, on such terms as the Trustees see fit;
- f. To purchase, sell, lease, hire, exchange, mortgage or otherwise acquire or dispose of any property;
- g. To carry on any business to enter into any contract, joint venture or partnership or any other arrangements with any other person or body relating to any or all of the objects;
- h. To borrow or otherwise raise money (on provision of security or otherwise) required for the purpose of meeting any debt or other liability of the Trust;
- i. To alter in any way all or any of the Rules set forth herein in the manner provided in clause 12 of this Deed provided that no such alteration or addition shall be made in any way to detract from the charitable purpose of the Trust.
- j. Generally to contract with any person and to carry out any operation in the nature of a business or otherwise including power of sale and purchase of any assets for those purposes, as the Trustees may decide in their absolute discretion.
- k. To do such other lawful acts and things as necessary or desirable to carry out the objects and purposes of the Trust.
- l. The objects of the Trust extend to carrying out such commercial activities as the trustees from time to time think fit, so as to generate net income and benefits to apply for purposes relating directly or indirectly to the Trust. *(Added by resolution dated 26 August 2003)*

7. CONSTITUTION OF THE TRUST

- 7.1 The Trustees who are parties to this deed are intended to remain as trustees until the AGM following the financial year ending 30 June 2001.
- 7.2 From the first AGM after 30 June 2001, the Trustees are to be appointed as follows:
- a.(i) Two trustees are to be appointed by written notice signed by or on behalf of the Marlborough District Council.
 - a.(ii) Two trustees are to be appointed by resolution of the Trust, such appointments to be made from nominations received from user groups. *(Amended by Resolution 18 October 2007)*
 - a.(iii) Three trustees are to be appointed by resolution of the Trust, such appointments to be made from nominations received from any member of the public residing in Marlborough. *(Amended by Resolution dated 18 October 2007)*
 - a.(iv) Written notice of the nominations made under clauses 7.2 a ii and iii must be received at the office of the Trust at least 28 days before the date of the relevant AGM (or such later date as is accepted by the Trust) *(Amended by Resolution dated 18 October 2007)*
- 7.2 b. Each Trustee appointed under clauses 7.2 a.(i) – 7.2 a.(iii) is to be appointed for a term of 3 years or such other term as is necessary to ensure that a reasonable level of continuity is preserved among the trustees from time to time. In that regard the parties acknowledge that it is not desirable to have any more than 4 new trustees at any one time. *(Amended by Resolution dated 21 December 1999 and 18 October 2007)*
- c. Any person or persons appointing trustees must, where possible, have regard to the desirability of trustees fairly representing gender, ethnicity and the distinct community spheres of interest and geography of an area and the desirability of trustees having the necessary governance skills for sound decision making and guidance including (without limitation) finance, management, legal and marketing skills. *(Amended by Resolution dated 21 December 1999)*
- 7.3 The Trustees may engage such consultants and advisers as they think fit to assist with the administration of the Trust. The Trustees may constitute such management and other committees as they think fit to carry out the operations of the Trust. Any such consultants, advisers and committees are to be accountable to the Trustees on such basis as is determined by the Trustees from time to time.

8. PROCEEDINGS OF THE TRUSTEES

- 8.1 The office of a Trustee becomes vacant if:
- a. he or she resigns office; or
 - b. he or she becomes bankrupt or insolvent; or
 - c. he or she is convicted of an indictable offence; or

- d. he or she becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment Treatment) Act 1992; or
- e. he or she dies; or
- f. he or she is absent from New Zealand for a period of 12 months or more without obtaining leave from the other Trustees; or
- g. he or she is deemed to have failed to fulfil the duties of trusteeship by written resolution carried by a 75% majority of all Trustees; or
- h. the term of any appointment of that Trustee expires.

8.2 In the event of there being a vacancy in the number of Trustees contemplated under clauses 7.1 and 7.2 (whether as a result of any appointment not being made by the due date or otherwise), then the vacancy may be filled by an appointment by the remaining Trustees; provided that if, after the appointment of any Trustee appointed under clauses 7.2 a (i) to (iii), there is a vacancy in respect of any such Trustee, then the vacancy is to be filled by an appointment from nominations referred to in those respective clauses.
(Amended by Resolution dated 21 December 1999 and 18 October 2007)

8.3 The Trustees shall meet at least once every two months and otherwise may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, but shall meet, on requisition in writing to the secretary by any 3 Trustees, upon no less than 48 hours notice of such meeting. Such requisition must specify the purpose of the meeting and the secretary shall provide a copy of the requisition to all Trustees.

8.4 Questions arising at any meeting are to be decided by a majority vote of those present and constituting a quorum.

8.5 The quorum necessary at any meeting for the transaction of business of the Trustees or otherwise
is 4 Trustees present in person or by proxy. *(For proxies see clause 8.14)*

8.6 The Trustees shall determine who among them is to be the Chairperson for any term. If the Chairperson is not present within 15 minutes after the time appointed for the holding of a meeting, the Trustees present shall choose one of their number to be Chairperson for that meeting.

8.7 If a quorum is not present within 30 minutes after the time appointed for the holding of a meeting of the Trustees, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day or such other time and place as the Trustees present may determine and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the Trustees present shall form a quorum; provided that if such a meeting has been called by requisition as set out in clause 8.3, then the quorum shall in no event be less than 3 and if a quorum of 3 cannot be raised the meeting in respect of that requisition shall be abandoned.

8.8 In lieu of a meeting a resolution in writing signed by all Trustees indicating a unanimous agreement to the subject of the resolution shall be as valid and effectual as a resolution duly passed at a properly constituted meeting of the Trustees. Such a resolution when so signed shall be embodied in the minutes of the meetings of the Trustees and such resolution in writing

may be contained on one or more sheets to be combined as one resolution and signatures may be obtained by facsimile.

- 8.9 Each Trustee shall be entitled to one vote and the Chairperson shall have a casting vote as well as a deliberative vote.
- 8.10 The Trustees may appoint a secretary and treasurer who do not need to be Trustees and who may be paid such remuneration as the Trustees may from time to time decide.
(Amended by Resolution dated 18 October 2008)
- 8.11 The Trustees may refer by resolution any matters to committees consisting of such Trustee or Trustees as they think fit (and any such committee may confer with such others as the committee thinks fit) and may give to that committee such powers as the Trustees shall think fit including the power to bind the Trust.
- 8.12 A committee may elect a Chairperson of its meetings and fix its own procedure, provided that the voting at such meetings shall be determined by a majority of votes and the Chairperson of a committee shall not have a second or casting vote, with any matter at issue unable to be resolved by a majority vote being referred back to the Trustees for a decision.
- 8.13 Any notice required to be given is deemed duly given if sent by ordinary post to the last address of the intended recipient appearing in the records of the Trust.
- 8.14 A Trustee may exercise the right to vote either by being present in person or by proxy, any such proxy to be another Trustee. A proxy must be appointed by notice in writing signed by the Trustee and the notice must state whether the appointment is for a particular meeting or for a specified or general term. No proxy is effective in relation to any meeting unless a copy of the notice of appointment is produced before the start of any meeting.

9. MINUTES AND ACCOUNTS

- 9.1 A proper written record must be kept of all decisions and business transacted at every meeting of the Trustees.
- 9.2 Proper written books of account must be kept of the affairs and transactions of the Trust. These must be kept at the Trust's office or at such other place or places as the Trustees think fit.
- 9.3 The financial year of the Trust is from 1 July to 30 June and the accounts of the Trust are to be audited annually by a chartered accountant.
- 9.4 All records of the Trust must always be open for inspection by any Trustee.
- 9.5 The secretary (or some other person) shall give appropriate notice to all Trustees of any meeting and if by post such notice shall be deemed to be given the day after the date of posting by ordinary post to the Trustee's last known address. *(Amended by Resolution dated 18 October 2007)*

- 9.6 The Secretary (if any) shall also attend all meetings of the Trustees and shall arrange to take minutes of the proceedings at such meetings and shall keep and maintain a Minute Book and attend to all correspondence of the Trustees.
- 9.7 The Treasurer (if any) shall be responsible for keeping the accounts of the Trustees and shall supervise the finances of the Trust and shall at each meeting present to the Trustees a record of all accounts, transactions and financial performance.
- 9.8 As soon as possible after 30 June in any year, the Trustees must prepare an annual report, such report to be tabled at the annual general meeting of the Trust, such AGM to be a public meeting to be held no later than 31 October in any year. The Trustees must also make the annual report available for public inspection at the Trust's office and the Trustees may make the report available to such other persons and organisations as the Trustees think fit.
(Amended by Resolution dated 21 December 1999)

10. LIABILITY AND INDEMNITY

- 10.1 The Trustees shall invest the Trust Fund in such investments as the Trustees in their absolute discretion think fit. Sections 13B and 13C of the Trustee Act 1956 do not apply to any Trustee of the Trust. This clause represents a "contrary intention" for the purposes of section 13D of the Act.
- 10.2 The Trustees (as Trustees for the Trust) shall be entitled to retain any assets of whatever kind or nature gifted or transferred by any person to the Trust and the retention of such assets by the Trustees shall not breach any duty of the Trustees under the Trustee Act 1956 or otherwise.
- 10.3 For the purposes of Section 13F of the Trustee Act 1956, no Trustee is under any duty to take any advice in relation to exercising any power of investment. Further, no Trustee is under any duty to diversify or consider diversifying any or all of the Trust fund.
- 10.4 Subject to clause 10.5 below, no Trustee shall have any liability to any person in respect of the investment of the Trust Fund, including in respect of any loss of income or capital suffered by the Trust Fund.
- 10.5 No Trustee or former Trustee of the Trust Fund acting or purporting to act in the execution of the Trust shall be under any personal liability for any loss however arising whether directly or indirectly (and whether in equity or in negligence or otherwise at law) from the execution of, or otherwise in connection with the Trust, unless such loss is attributable to the dishonesty of the Trustee or to the wilful commission or omission by the Trustee of an act known by the Trustee to be a breach of trust.
- 10.6 The Trustees and officers, if any, are indemnified by the Trust from and against all claims, losses and expenses properly incurred by them in or about the discharge of their respective duties.

11. FUNDS AND PROPERTY

- 11.1 All monies received must be paid to the credit of the Trust at such trading bank or savings bank as the Trustees from time to time appoint, and withdrawals on the bank account and other negotiable instruments must be signed by such persons as are appointed from time to time by the Trustees for that purpose.
- 11.2 The Trustees have the power to receive and give receipts for all gifts, donations, grants, legacies or other monies bequeathed made or given to the Trust and every such receipt is an effective discharge for the money or other property stated in that receipt to have been received.
- 11.3 The Trustees have the power to expend the whole or any part of the Trust Fund for the objects of the Trust.
- 11.4 The property must be applied solely towards the promotion of the objects of the Trust and no part of the property may be paid or transferred directly or indirectly by way of profit to any Trustee.
- 11.5 It is specifically recorded for the purposes of this clause that the provisions of this Deed shall not prevent the Trust from employing on an arms-length basis any individual Trustee by way of contract for services or employment contract or consultancy agreement, provided that no surplus of income after meeting all expenses of the Trust (such expenses including such contractual or consultancy expenses) shall be paid to any Trustee.
- 11.6 The Trustees shall be entitled to payment of reasonable travelling expenses and reimbursement for other out of pocket expenses as determined by the Trust from time to time.
- 11.7 Any Trustee may act as director, officer or employee of or consultant to, any company or other entity the shares, securities or other rights of which form part of the Trust Fund, or as a director, officer, or employee of or consultant to, any subsidiary or associated company of any such company or other entity, may retain for himself or herself any remuneration which he or she may receive as any such director, officer, employee or consultant notwithstanding any rule of law or equity to the contrary and also notwithstanding that the votes or other rights attached to any such shares, securities or other rights may have been instrumental, whether alone or in conjunction with other votes or rights, in securing such appointment as director, officer, employee or consultant.
- 11.8 Notwithstanding clauses 11.5 to 11.7, no Trustee shall in any way materially influence or determine any income, benefit or advantage that he or she may receive from the Trust, whether from any business operation of the Trustee or otherwise. In that regard, forthwith after becoming aware of the fact that he or she is materially interested in a transaction or a proposed transaction with the Trust (whether directly or indirectly and whether interested personally or as a parent, spouse, director, officer or trustee of another party who may be materially interested), any trustee must disclose to the Trust the nature and extent of any interest.
- 11.9 Without limiting any other power referred to in this Deed, the Trustees have the power to resettle

all or any real and personal property held by the Trustees under this Trust (on such terms and conditions as the Trustees in their absolute discretion think fit) on any trust which is consistent both with the objects set out in clause 4.1 and with the fundamental objective set out in clause 4.3 above; provided that any such resettlement must be to a charitable trust.
(Amended by Resolution dated 21 March 2000)

12.1 These objects, powers and rules may be altered, added to, cancelled or otherwise amended at any meeting of the Trustees subject to the following conditions:

- a. Not less than 14 days notice stating the general tenor of the proposed alteration, addition, cancellation or other amendment must be given to each Trustee;
- b. The meeting may amend any such proposals;
- c. No resolution of any meeting shall affect any alteration, addition, cancellation or amendment unless it is carried by a decision of 75% of all Trustees;
- d. No addition to or alteration or rescission of the rules shall be approved if it affects:
 - (i) the charitable objects or the charitable limitations (clauses 4.1 to 5.1), the personal benefits restrictions (clauses 11.4 to 11.8), this alteration provision (clause 12.1d (i)) or the winding up provision (clause 13.2), without first obtaining the written consent of Marlborough District Council or its successor.
(Amended by Resolution dated 18 October 2007)

13. DISSOLUTION AND DISPOSAL OF FUNDS

13.1 The Trust Board may be wound up voluntarily by the passing of a resolution by the Trustees to that effect. Such a resolution shall be passed by 75% of all Trustees. The resolution must be confirmed at a subsequent meeting of the Trust called for that purpose and held not sooner than the 28th day and not later than the 42nd day after the date on which the resolution so to be confirmed is passed. Such confirming resolution shall also require a 75% majority of all Trustees. *(Amended by Resolution dated 21 December 1999)*

13.2 On the winding up or dissolution of the Trust, all surplus assets of the Trust after payment of all costs and debts and discharge of all liabilities shall be given to the Marlborough District Council (or its successor) for the purpose and on the condition that such surplus assets be applied to some charitable objective in Marlborough. If necessary, directions may be sought and obtained from the High Court or any other court exercising appropriate jurisdiction.
(Amended by Resolution dated 21 December 1999)

13.3 Before any decision is made by the Marlborough District Council (or its successor) in terms of applying such surplus assets, Marlborough District Council shall consult with the Community Trust Board (or its successor) or any similar associated body operating in its place and the Lottery Grants Board (or its successor) or any other similar body operating in its place.
(Amended by Resolution dated 21 December 1999)

13.4 Before an application (if any) is made to the High Court or to any other court exercising

appropriate jurisdiction, the applicant must incorporate into the application the views of those bodies consulted under clause 13.3 above. *(Amended by Resolution dated 21 December 1999)*

- 13.5 It is expressly acknowledged that, in relation to the fundraising prior to commencement of construction, certain contributions are expected to be provided to the Trust (whether under a capital gifting programme or otherwise) on the basis that such contributions will be used only for the purpose of constructing the Sports and Events Centre. The Trustees must hold such funds on trust for the donors until the Trust enters into an unconditional agreement to have the Centre built and it is expressly acknowledged that such funds do not form part of the Trust Fund until such agreement is entered into. *(Amended by Resolution dated 21 December 1999)*

14. REGISTRATION UNDER CHARITABLE TRUST ACT 1957

- 14.1 The Trustees hereby agree that as soon as practicable the Trust hereby created shall be registered as a charitable trust pursuant to Part II of the Charitable Trusts Act 1957.
- 14.2 Upon registration all references to the Trustees acting jointly shall from that date be read as references to a Trust Board.

15. COMMON SEAL

- 15.1 The Trust shall obtain a common seal which may be affixed to any document only with the authority of the Trust. The seal shall be so affixed in the presence of two Trustees who shall countersign every document so sealed.

March 2008