

**MEMORANDUM OF UNDERSTANDING IN RELATION TO A CRUISE  
BERTH AT LYTTTELTON PORT**

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**LYTTTELTON PORT COMPANY LIMITED**

**CHRISTCHURCH CITY HOLDINGS LIMITED**

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DATED

17 May 2017.

## PARTIES

- 1 LYTTELTON PORT COMPANY LIMITED ("Company")
- 2 CHRISTCHURCH CITY HOLDINGS LIMITED ("Parent")

## BACKGROUND

- A The Company is the owner and operator of Lyttelton Port. The Parent is the sole shareholder of the Company. The Parent is in turn a wholly owned subsidiary of Christchurch City Council ("**Council**").
- B Due to the Company's need to utilise Cashin Quay berths 2 to 4 solely for container operations to meet customer demand, Lyttelton Port is currently only able to service smaller cruise ships. The Council's 2016 Visitor Strategy recognises that essential developments in Christchurch include a cruise wharf at Lyttelton Port as the key facility to enable the growing number of cruise passengers -particularly for larger ships - to access the Christchurch, Canterbury and South Island regional economies.
- C The Company, the Parent and the Council have accordingly been in discussions regarding the construction of a new purpose-built cruise berth at Lyttelton Port. This Memorandum records the outcome of those discussions.

## IT IS AGREED THAT:

### 1 ACKNOWLEDGEMENTS

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- The parties acknowledge and agree as follows:
- 1.1 The Parent's mission (as set out in the Parent's Statement of Intent for the year ending 30 June 2017) is *"to support the Council's vision for the city by investing in, and promoting the establishment of, key infrastructure assets in a commercially viable, and environmentally and socially sustainable manner to assist proactively in the development and recovery of Christchurch."* The Parent's objectives include: *"[t]o identify, in conjunction with relevant parties, present and future regional infrastructural needs, and to support the establishment and maintenance of resilient infrastructure in Christchurch and Canterbury"*. Having regard to the Parent's mission and objectives, the Parent considers that the construction of a cruise berth at Lyttelton Port is in its (and the Council's) best interests.
  - 1.2 The Parent has accordingly directed the Company, and the Company has agreed (subject to obtaining any consents or approvals required by applicable law), to construct a new purpose-built cruise berth at Lyttelton Port capable of accommodating the largest cruise ships operating in New Zealand ("**Cruise Berth**"). The Parent and the Company agree that the construction of the Cruise Berth is consistent with the principal objective of the Company contained in section 5 of the Port Companies Act 1988 to operate as a successful business. The reasons for this are:
    - (a) the Cruise Berth will make a financial return on investment;
    - (b) where the return on investment is lower than other Company infrastructure, the lower return will be offset by a reduction in the dividend that the Company pays to the Parent; and
    - (c) the Cruise Berth is a key infrastructure asset for the Company and generates benefit for the Canterbury region.
  - 1.3 The preferred location of the Cruise Berth is an extension to Cashin Quay on the southern side of 'Z Berth'.
  - 1.4 The target completion date for the Cruise Berth is the commencement of the 2019/20 cruise season, but the parties acknowledge that timeframe is not in any way binding on the Company nor shall give rise to any liability for the Company if not achieved.
  - 1.5 While the Cruise Berth is expected to have a significant positive impact on the local and regional economy and is expected to generate a positive economic return for the Company:

- (a) the construction of the Cruise Berth is expected to be debt-funded by the Company; and
  - (b) the Cruise Berth is expected to generate a lower economic return for the Company than other Company infrastructure or other potential investments the Company could undertake.
- 1.6 Accordingly, the construction of the Cruise Berth is expected to reduce the dividends which would otherwise be likely to be paid by the Company to the Parent and the Parent acknowledges that it is appropriate that the board of the Company take account of the matters referred to in clause 1.5 in determining the Company's dividend policy and declaring and paying dividends to the Parent. Without in any way limiting the board's discretion regarding dividends, it is the expectation of both parties that the construction of the Cruise Berth would not impact on the level of dividends forecast prior to the 2020 financial year of the Company.
- 1.7 This Memorandum is entered into under section 18 (non-commercial activities) of the Port Companies Act 1988.

## **2 STATEMENT OF CORPORATE INTENT**

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- 2.1 Pursuant to section 11(2) of the Port Companies Act 1988 and clause 6.5 of the Company's constitution, the Parent hereby requires the board of the Company to modify the Company's statement of corporate intent for the financial year of the Company ending 30 June 2018 (and, when prepared, the Company's statement of corporate intent for each subsequent financial year until the Cruise Berth is completed) by including the construction of the Cruise Berth at the preferred location referred to in this Memorandum as an activity the Company is required to undertake at the request of the Parent. This clause 2.1 shall take effect as a written resolution of the sole shareholder of the Company for the purposes of section 11(2) of the Port Companies Act 1988 and clause 6.5 of the Company's constitution.
- 2.2 The parties acknowledge and agree that, prior to the date of this Memorandum, the Parent has, in respect of the requirement set out in clause 2.1:
- (a) had regard to the Company's principal objective under the Port Companies Act 1988 to be a successful business and the reporting requirements set out in clauses 16 and 17 of the Company's Constitution;
  - (b) consulted with the board of the Company.
- 2.3 The Parent also acknowledges and agrees that Company statements of corporate intent may take account of the implications of constructing the Cruise Berth (as referred to in clause 1.5 and 1.6 above) in setting out:
- (a) the performance targets and other measures by which the performance of the Company may be judged in relation to its objectives; and
  - (b) the Company's estimate of the amount or proportion of accumulated profits and capital reserves that it is intended to be distributed to the Parent as sole shareholder.

## **3 CONSTITUTION**

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- 3.1 The Parent resolves as a special resolution pursuant to section 32 of the Companies Act 1993 to amend the Company's constitution by inserting the following additional provision:
- 7A Directors may act in interests of Parent**
- If at any time the Company is a wholly-owned subsidiary of the Parent then, when exercising powers or performing duties as a Director, a Director may act in a manner which he or she believes is in the best interests of the Company's holding company, even though it may not be in the best interests of the Company but provided that such act or omission is consistent with the Port Companies Act 1988 and the Company's statement of corporate intent.
- 3.2 The amendment to the Company's constitution is conditional upon the written approval of the Minister of Transport pursuant to section 4 of the Port Companies Act 1988. The parties shall co-operate, work together and each use their respective reasonable endeavours to obtain such approval as soon as reasonably practicable after the date of this Memorandum.



#### **4 WAIVER AND INDEMNITY**

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- 4.1 The Parent unconditionally and irrevocably agrees not to make, and to waive, any claim against any current or former director, officer or employee of the Company, including any person subsequently appointed to such a position after the date of this Memorandum (each a "**Protected Person**") for breach of any duty that may be owed by that person to the Company as a result of the Company's entry into this Memorandum and/or the Company's agreement to proceed with construction of the Cruise Berth.
- 4.2 The Parent indemnifies each Protected Person from and against any loss, liability, cost or expense (including any statutory penalty) suffered or incurred by that Protected Person arising out of any claim that the Company's entry into this Memorandum and/or the Company's agreement to proceed with construction of the Cruise Berth constitutes a breach of any duty that may be owed by that person to the Company.
- 4.3 This clause 4 is for the benefit of the Protected Persons and is intended to be enforceable by each of them for the purposes of the Contracts (Privity) Act 1982.

#### **5 GENERAL**

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- 5.1 This Memorandum and its subject matter is confidential and may not be disclosed to any other person except to the extent required by applicable law.
- 5.2 Despite clause 5.1, the parties will promptly following the execution of this Memorandum issue a public announcement regarding the Cruise Berth in a form agreed between the parties.
- 5.3 This Memorandum may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each party may enter into this Memorandum by executing a counterpart. The parties acknowledge that this Memorandum may be executed by an exchange of scanned and emailed PDF copies and execution of this Memorandum by that means is valid and sufficient execution.

**EXECUTED** on the date first written above

**SIGNED** for and on behalf of )  
**CHRISTCHURCH CITY HOLDINGS** )  
**LIMITED** )

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) \_\_\_\_\_  
) Authorised Signatory

**SIGNED** for and on behalf of )  
**LYTTELTON PORT COMPANY** )  
**LIMITED** )

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) Authorised Signatory