



ORDINARY MEETING OF COUNCIL

Open Agenda Supplementary Item

Meeting Date: Thursday 2 June 2022

Time: 9.30am

Venue: The Ballroom
War Memorial Centre
Marine Parade
Napier

Livestreamed via Council's Facebook site

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AGENDA ITEMS

2. PROPOSAL FROM ART DECO TRUST - MEMORIAL SQUARE COMMUNITY ROOMS

Type of Report:	Legal and Operational
Legal Reference:	Reserves Act 1977, Napier Borough Endowments Act 1876, Napier District Plan
Document ID:	1464909
Reporting Officer/s & Unit:	Bryan Faulknor, Manager Property

2.1 Purpose of Report

To seek Council's approval to a Memorandum of Understanding (MOU) between the Art Deco Trust and Council. This document sets out the terms of how Council will partner with the Trust to restore, refurbish and progress towards a lease to the Trust of the Memorial Square Community Rooms.

Officer's Recommendation

That Council:

- a. **Resolve** to agree to partner with the Art Deco Trust to restore, strengthen, refurbish and lease to the Trust the Memorial Square Community Rooms
- a. **Resolve** to enter into a Memorandum of Understanding, which sets out the terms and requirements of how the parties will work in good faith and acting in a collaborative and constructive manner towards the above initiative and progress towards the granting of a lease to the Trust.
- b. **Resolve** to approve the Memorandum of Understanding attached to this report.

2.2 Background Summary

At the Future Napier Committee meeting of 24 March 2022, the Art Deco Trust (the Trust) presented a proposal to restore the Community Rooms to its original condition and to occupy the Community Rooms on a long-term lease.

The Trust subsequently sent a written proposal to Council. This proposal was presented to the Future Napier Committee held 5 May 2022.

At that meeting the following resolution was passed:

- a. **Resolve** to agree in principle to partner with the Art Deco Trust to restore, strengthen, refurbish and lease to the Trust the Memorial Square Community Rooms (Women's Rest).
- b. **Resolve** to enter into a Memorandum of Understanding, which will set out the terms and requirements of how the parties will work collaboratively and in good faith towards the above initiative and negotiate lease terms acceptable to both parties.

- c. **Resolve** that a draft Memorandum of Understanding be brought back to Council for final approval on 2 June 2022.

2.3 Issues

Regulatory and Legal Issues

As set out in the Future Napier Committee Agenda, there are various regulatory and legal issues to work through, however the Memorandum of Understanding is quite clear that both the building upgrade and lease are subject to obtaining all necessary regulatory consents and compliance with the District Plan and any relevant legislation.

Main terms and requirements of the draft MOU – the draft Memorandum of Understanding is attached.

- **Project Work Group** – To enable the Trust to partner with Council and for both parties to work in a collaborative way, a Project Work Group will be formed with an equal number of people from each party.

The Group will have responsibility to provide draft plans, specifications, costings and undertake building due diligence investigations. Further, the group will have responsibility for construction project management and financial monitoring with reporting back to both Council and the Trust.

- **Approvals required from Council** – It is recognised that Council is the building and land owner and is using ratepayer funds towards the project.

All contracts will therefore be between Council and the contractors.

Draft plans and specifications including Quantity Surveyor estimates will be approved by Council resolution.

Such approval will obviously take into account funding available.

- **Payment of project costs** – Costs associated with the project will be paid by Council. Council will invoice the Trust for funds raised by way of fundraising.
- **Fundraising** – This will be carried out by the Trust under the supervision of the Project Work Group.
- **Ownership of the restoration and fit-out work** – The work at all stages is owned solely by Council.

Main Terms of proposed lease

- **Operating Model:** Subject to compliance with all necessary regulatory requirements, it is proposed that the Trust will be granted a lease over the building.
- Areas for exclusive use by the Trust are to be agreed by Council. Use of the remaining areas are to also be agreed by Council.
- It is appreciated that there is a need to recognise in some way the historical significance of the building as a utilitarian First World War Memorial providing for the needs of woman.
- **Term:** Initial term of 15 years
- **Right of Renewal:** one right of renewal of a further 15 years. Such renewal will only be granted where the Trust is not in breach of the Lease and the Council is satisfied there is sufficient need for the use of the building for the purpose specified in the lease

and that Council is satisfied that it is not in the public interest for some other use to have priority.

- **Rent:** For the initial term, rent shall be charged based on a notional Council rates calculation, adjusted annually. For subsequent terms rent will be charged at 50% of market rent with rent reviews every 5 years

2.4 Significance and Engagement

The restoration of the Memorial Square Community Rooms was consulted on as part of the 2021-2031 LTP.

Subsequently the Art Deco Trust has undertaken a wide range of preliminary engagement for their particular proposal and received letters of support and a local business petition. These include the National Council of Woman, Heretaunga Woman's Centre, Historic Places Hawke's Bay, Returned Services Association Napier and Hastings, RSA Woman's Division, Hon Stuart Nash MP for Napier, Business owners and staff in businesses surrounding Clive and Memorial Square.

It is intended that representatives of the National Council of Woman will be consulted as plans are developed and the operating model finalised. It is appreciated that there is a need to recognise in some way the historical significance of the building as a utilitarian First World War Memorial providing for the needs of woman.

2.5 Implications

Financial

Council has assigned capital budget of \$1.5 million, in years 2-3 of the Long Term Plan, with \$750k funded through loans and the remainder of funding through external and community funding.

As matters currently sit, half of the above budget becomes available 1 July 2022 and the other half 1 July 2023. Council management are however making a submission to the Annual Plan to request that the 2023/24 budget be brought forward to the 2022/23 year.

In addition, Council allocated \$100,000 of rates funding in year 2 of the Long Term Plan for a Feasibility Study and associated resourcing. Subject to the adoption of the Annual Plan, this budget becomes available 1 July 2022. It is proposed to use this budget for any required Feasibility Studies, fundraising costs, and due diligence.

Social & Policy

The proposal will revitalise the Memorial Square end of town and greatly improve security. Further it will restore a heritage building.

Risk

There is a risk that budgets and fundraising may fall short of what is required in which case the project may have to be re-evaluated

2.6 Options

The options available to Council are as follows:

- a. To approve the Memorandum of Understanding.
- b. To decline to approve the Memorandum of Understanding.

2.7 Development of Preferred Option

The proposal from the Art Deco Trust represents a significant opportunity for Council to partner with a community group that submits it has the skills and passion to lead and deliver the project for the community.

The LTP requires fundraising of \$750,000 to be undertaken. The Art Deco Trust submits that it has the necessary skills to achieve this fundraising.

The signing of a Memorandum of Understanding is an appropriate first step to enable the Trust to partner with Council.

Option a. therefore is the preferred option.

2.8 Attachments

- 1 Memorandum of Understanding (Doc Id 1466996) [↓](#)
- 2 Proposed Lease area to the Art Deco Trust (Doc Id 1467629) [↓](#)

Dated:

2022

NAPIER CITY COUNCIL

AND

ART DECO TRUST INCORPORATED

MEMORANDUM OF UNDERSTANDING



NAPIER & HASTINGS

MLRG-511732-95-9-1

THIS MEMORANDUM OF UNDERSTANDING made the _____ day of _____ 2022

PARTIES

1. **NAPIER CITY COUNCIL** Ground Floor, Dunvegan House, Hastings Street, Napier 4142 ("Council").
2. **ART DECO TRUST INCORPORATED** (Incorporation No. 340607) 7 Tennyson Street, Napier 4110 ("Trust").

BACKGROUND

- A. Memorial Square is vested in the Council as a recreation reserve.
- B. The Community Rooms are located on Memorial Square.
- C. The parties wish to proceed, in good faith and acting in a collaborative and constructive manner, towards the strengthening and restoration of the Community Rooms. At the completion of the District Plan assessment and the Reserves Act process the Council will enter into a lease with the Trust. The Trust will be responsible for applying for any necessary regulatory consents.
- D. The purpose of this Memorandum of Understanding is to record each party's respective responsibilities in relation to the strengthening and restoration works and progressing towards a lease.

OPERATIVE PART

1. INTERPRETATION

- 1.1 Definitions: In this Memorandum, unless the context otherwise requires:

"Community Rooms" means the Memorial Square Community Rooms (formally known as the "Woman's Rest") located on Memorial Square and shown bordered in orange on the annexed plan.

"Confidential Information" has the meaning provided in clause 9.1 of this Memorandum;

"District Plan" means the operative district plan for Napier City;

"Lease" means a lease granted by the Council to the Trust incorporating the terms set out in Schedule 1.

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“Memorial Square” means the parcel of land, vested in the Council, with an area of 3,555m² and the legal description Lot 3 DP 22314 contained in Record of Title HBW2/162.

“Project Work Group” means the project work group, made up of persons representing the Trust and the Council, formed for the purpose of managing the implementation of the Works.

“Works” means all works related to the strengthening, restoration and upgrade of the Community Rooms undertaken in accordance with this Memorandum.

- 1.2 The Council and the Trust are to be referred to in this Memorandum collectively as “parties” or singularly as “party” as the context requires.

2. **RESPONSIBILITIES AND TIMELINE**

- 2.1 The Council and the Trust hereby agree to collaborate in good faith to proceed with the design and completion of the Works in relation to the Community Rooms. The method of such collaboration shall be through appointing members to the Project Work Group. Nothing in this clause 2.1 shall be taken to fetter in any way the parties’ rights to terminate this Memorandum in accordance with its terms or to affect any discretion the parties’ have within this Memorandum, or as a regulatory body or otherwise.
- 2.2 Following the signing of this Memorandum, the Trust and the Council will appoint their respective members of the Project Work Group. At its initial meeting, the Project Work Group may agree on a list of specific actions to be taken and the timeframes within which they are to be completed.
- 2.3 No agreement or decision made within the Project Work Group regarding actions to take and the timeframes within which to take them, will create a legally binding obligation (in contract or otherwise) on either of the parties to carry out any such action or to complete it within a particular timeframe.

3. **PROJECT WORK GROUP**

- 3.1 The role of the Project Work Group is to:
 - 3.1.1 arrange for draft plans and specifications for the Works;
 - 3.1.2 arrange for costings for the Works to be provided (on a basis to be agreed by the Project Work Group);
 - 3.1.3 undertake all due diligence relevant to the Works (including, but not limited to, asbestos surveys; assessments of matters relating to the roof, general building condition, electrical, plumbing, insulation and seismic; and any other due diligence deemed necessary);

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- 3.1.4 manage the implementation of the Works (including, but not limited to, project management, awarding of contracts and approval of any contract variations);
 - 3.1.5 manage and oversee external fundraising efforts associated with the Works in accordance with the Council's Long Term Plan or otherwise as instructed by the Council;
 - 3.1.6 undertake financial monitoring and reporting back to the Trust and the Council; and
 - 3.1.7 do all things necessary to facilitate the timely implementation of the Works.
- 3.2 The Council and the Trust will endeavour, shortly after the creation of the Project Work Group, to establish the level of authority to be granted to the Project Work Group and to identify which decisions will require further authority from the Trust and/or the Council. The parties acknowledge that it is for each party to decide what level of authority they are willing to grant the Project Work Group and each party has the ability to withdraw all or any authority at any time (although such withdrawal would not apply retrospectively to decisions already made).
- 3.3 The Project Work Group shall consist of a minimum of 4 persons and a maximum of 8 persons, with the Trust and the Council entitled to appoint an equal number each.
- 3.4 The Council and the Trust may at any time:
- 3.4.1 remove from the Project Work Group any persons appointed by them;
 - 3.4.2 appoint a replacement for any person removed by them or any person that otherwise leaves the Project Work Group for any reason; and
 - 3.4.3 where a person is unable to attend a meeting of the Project Work Group, provide a temporary substitute (who will have the same authorities as the person they are substituting for).
- 3.5 The Project Work Group may invite additional persons to meetings to provide expert advice or assistance.
- 3.6 It is acknowledged that:
- 3.6.1 each member of the Project Work Group will have 1 vote in any decision. Persons invited to meetings of the Project Work Group in accordance with clause 3.5 will have no vote;
 - 3.6.2 the Trust shall be entitled to appoint a Chairperson of the Project Work Group (if it decides such a role is required);
 - 3.6.3 any decision of the Project Work Group requires:

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- (a) agreement from a majority of the persons appointed by each party (the Chairperson will not have any sort of casting vote); and
- (b) confirmation by the persons appointed by each party that no further consent or authority is required from the party that appointed them.

3.6.4 any costs or expenses incurred by, or owed to, a member of the Project Work Group is solely the responsibility of the party that appointed them.

4. OWNERSHIP AND COST OF WORKS

- 4.1 All contracts relating to the provision of the Works will be between the Council and the relevant supplier or service provider.
- 4.2 All costs associated with the Works will, in the first instance, be paid by the Council directly to the suppliers or service providers in accordance with the relevant contracts.
- 4.3 Ownership of all materials used in, and all fixtures, fittings or fit-out resulting from, the Works vests in the Council without compensation and with no further documentation required.

5. FUNDRAISING

- 5.1 It is anticipated that any fundraising required for the Works will be carried out by the Trust under the supervisions of the Project Work Group. All funds raised by the Trust for the Works shall be kept in a separate bank account dedicated for that purpose and are not to be mixed with any other funds held by the Trust or used for any other project or matter not associated with the Works.
- 5.2 In order to apply the funds raised by the Trust to the Works, the Council will invoice the Trust for an amount equivalent to the funds raised and such funds will be paid by the Trust to the Council promptly upon receipt of such invoice.

6. LEASE

- 6.1 The parties acknowledge that:
 - 6.1.1 as at the date of this Memorandum a Lease has not been granted to the Trust in respect of the Community Rooms;
 - 6.1.2 subject to sub-clause 6.1.3 below, the Council will notify the Trust of what actions are required before a Lease can be granted. The proposed steps are:
 - (a) A resource consent application will be made setting out the proposed activities to be carried out in the Community Rooms and compared to the provisions of the Operative District Plan;

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- (b) Subject to the above, the Council will process a Lease pursuant to the Reserves Act 1977;
- (c) Upon the granting of a Lease early access shall be allowed for investigations and due diligence.

6.1.3 in addition to the provisions of clause 8.1, nothing in this Memorandum shall be taken to expressly or impliedly represent that any approval or resource consent will be granted by the Council in its capacity as administrator of the reserve and/or as regulatory body or that any necessary change to the District Plan will be agreed to or implemented by the Council;

6.1.4 where a Lease is not ultimately able to be granted to the Trust for any reason, no compensation or other amount will be payable by the Council to the Trust save that an invoice and payment will still be required in accordance with clause 5.2 for any funds raised by the Trust for the Works.

6.2 Subject to clause 6.1, where it is determined that a Lease may be granted by the Council to the Trust for the Community Rooms, such Lease will contain terms the same or similar as those described in schedule 1.

7. TERMINATION

7.1 This Memorandum will terminate immediately upon:

7.1.1 a code compliance certificate issuing in respect of the Works; or

7.1.2 either party providing written notice.

7.2 Upon termination of this Memorandum for any reason no compensation or other amount shall be payable by any party and neither party will have any ongoing obligations to the other save that:

7.2.1 the proceeds of all funds raised by the Trust for the Works must be invoiced and paid in accordance with clause 5.2; and

7.2.2 the provisions of clauses 4, 5.2, 7.2, 8.1 and 9 shall continue to apply.

8. CONSENTS

8.1 By the Council:

8.1.1 entering into this Memorandum;

8.1.2 appointing persons to the Project Work Group;

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- 8.1.3 having its appointees to the Project Work Group making any decisions;
- 8.1.4 providing any consent or approval associated to the Works; and
- 8.1.5 negotiating the terms of any subsequent Lease,

the Council is merely acting in its capacity as the owner of the Memorial Rooms and not in its capacity as a regulatory body or the administrator of the reserve on which the Memorial Rooms are situated. Any such action, decision, consent or approval made or granted by the Council shall not imply the consent of the Council as a regulatory authority or administrator nor represent that such consent will be forthcoming. The Council reserves the right as regulatory authority and administrator to decline building consents, resource consents, proposed changes to the District Plan, leases and/or consent for any matter the Council considers does not comply with the bylaws or district plan or the provisions of any statute applying to the activity concerned.

9. CONFIDENTIALITY

- 9.1 Subject to clause 9.2, the Council and the Trust agree that they will keep confidential the provisions of this Memorandum, all details of the Works and all related documents (together being the “**Confidential Information**”). Neither party may disclose, or permit to be disclosed, any Confidential Information to any person not a party without first obtaining the written consent of the other party as to both the person to whom disclosure is to be made and the terms of such disclosure.
- 9.2 The restrictions in clause 9.1 will not apply to any disclosure of Confidential Information:
 - 9.2.1 to any member of the Project Work Group;
 - 9.2.2 by order of any court or tribunal of competent jurisdiction or where otherwise required by law;
 - 9.2.3 which is already in the public domain at the time of its disclosure (other than by breach of the provisions of clause 9.1 by either party);
 - 9.2.4 where disclosure is expressly permitted by the Memorandum (including to the extent it is necessary to obtain any regulatory consents or approvals anticipated by the Memorandum in relation to the Works or the Lease);
 - 9.2.5 to suppliers, contractors or sub-contractors that will be used in relation to the Works, provided that disclosure will be limited to the extent necessary to allow said suppliers, contractors or sub-contractors to carry out their respective works;
 - 9.2.6 to either party's respective professional advisors;

9.2.7 to as required for any consents or approvals needed under the Reserves Act 1977 in respect of the Lease.

9.3 No publicity will be given to any matters relating to this Memorandum and the Works (including press releases and other marketing material) without prior written approval being given by both the Trust and the Council as to the content of such publicity.

10. MISCELLANEOUS

10.1 This Memorandum is governed by and construed in accordance with the laws of New Zealand and the New Zealand courts shall have exclusive jurisdiction in relation to it.

10.2 This Memorandum may be executed in any number of counterparts and by the parties on different counterparts. Each counterpart shall constitute an original of the Memorandum but all the counterparts shall together constitute one and the same agreement.

10.3 The Trust will not assign any of its rights or benefits under this Memorandum to any other person without the prior written consent of the Council.

EXECUTED on behalf of the ART)
DECO TRUST INCORPORATED by its)
Authorised Persons)
)
)
)
Authorised Person)

SEALED with the Common Seal of the)
NAPIER CITY COUNCIL in the)
presence of:)

Mayor

Chief Executive

SCHEDULE

TERMS OF THE PROPOSED LEASE

The matters to be agreed within the binding Lease shall include (but not be limited to):

- **Initial Term:** Initial term of 15 years.
- **Right of Renewal:** one right of renewal of a further term of 15 years – save that such renewal will only be granted where the Trust is not in breach of the Lease and the Council is satisfied there is sufficient need for the use the Memorial Rooms are being put and it is not in the public interest for some other use to have priority.
- **Use:** a mixture of offices for the Trust and areas made available for community use (with some priority to be given to uses delivering community services to women).
- **Rent (Initial Term):** In recognition of the effort by the Trust with regards fundraising and the actual restoration of the Community Rooms, the Trust shall pay rent based on a notional Council rates calculation. This basis recognises that the Trust directly will not pay Council rates but will use Council services.
- **Rent (Subsequent Term):** Market Rent (to be determined) with a Community Services Organisation discount of 50%. Without guaranteeing the outcome, nothing in the Lease will prevent the Trust from applying for a further grant from the Council in respect of the rent.
- **Rent reviews (Initial Term):** The rent to be reviewed one (1) year after the Commencement Date and annually thereafter. The new annual rental applicable from each rent review date shall be determined by the Council in accordance with the below formula:
 - Average city residential land value / average residential section size = land value per square metre.
 - Lease area x land value per square metre = land value of leased area.
 - Napier City Council equivalent residential rates based on the land value of the leased area = annual rental.
- **Rent reviews (Subsequent Term):** 5 yearly intervals using CPI adjustment provided that either party may require instead a market rent review be undertaken. Any rent review after the first five years of the subsequent term whether market rent or CPI shall be capped at a maximum of a 20% increase over the rental payable in the preceding 5 year period.
- **Outgoings:** The Trust will pay for all utility services (gas, water, electricity, telephone, internet) and other services such as cleaning and security. Local and territorial rates or levies will be paid by the Council.
- **Insurance:** Council will be responsible for insuring the Community Rooms and fit out. Trust will be responsible for its own contents insurance. Trust must hold public liability cover for a minimum amount of \$1 million.
- **Maintenance:** Council will be responsible for the external and structural maintenance and building warrant of fitness compliance costs. The Trust will be responsible for all non-structural internal maintenance and repairs to the building including painting. The Trust will maintain and service air conditioning units or other appliances in the building to an appropriate standard. Should any such units or appliances owned by the Council need replacing, the the cost will be met by the Council.
- **Signage:** Council consent is needed for the display of signage on the exterior of the building and in internal public areas.

