

# **Rodney Business Improvement Districts (BIDs) Policy**

Rodney District Council

*in partnership with*

Rodney Economic Development Trust

Final Version November 2008

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## **1. Introduction**

This policy is intended as an operational document to assist those wishing to establish a Business Improvement District (BID)

### **1.1. Name & Purpose**

The name of the policy is the Rodney Business Improvement District policy

It is intended to assist those responsible for implementing the policy and developing and managing Business Improvement Districts throughout Rodney.

### **1.2. Description**

This policy has been developed following the identified need by Rodney Economic Development Trust and other Business Associations. The content is based on the Manukau City Council BIDs Policy that was developed by recognised experts in this field. The successful BID model currently operating within the Orewa commercial zone (Destination Orewa Beach) has also provided valuable learns that are reflected in this policy.

This policy is intended to be equitable, simple to understand and operate, while being sensitive to a range of diverse local needs.

## **2. Overview**

### **2.1. Definitions**

#### **Act**

Local Government (Rating) Act 2002.

#### **Business Improvement District (BID)**

A designated commercial zone, approved by Council, which acts collectively through an association to spend targeted rates and other funds for the end purpose of enhancing the economic vitality of the business area.

(A BID could also be described as "Town Centres", "Business Precincts", "areas of benefit", or "Mainstreets".)

#### **BID Association (BIDA)**

A body incorporated under the Incorporated Societies Act 1908 responsible for the administration and management of the BID.

The BIDA may choose to call themselves Town Centre Associations, Business Precinct Associations, Mainstreet programmes, or some other locally relevant name.

#### **BIDA Management Board of Directors**

Every BIDA is managed by a BIDA Board of Directors. The Board consists of elected BIDA members.

**BIDA Manager**

A person employed by the BIDA to administer and coordinate activities within the BID.

**BIDA Member**

A member of the BIDA is a commercial property or business owner, who is listed as a member of the BID or a commercial property or business owner who has been invited to formally join the BIDA.

**BID Proponent**

A person or group acting to establish a BID, such as a local Business Association or a Property Owners Collective.

**Business Owner**

An owner of a business that is a tenant in and permanently operates from a commercial property within the BID.

**Council**

Rodney District Council

**Mandate**

The level of business support required to initiate, continue, alter, or terminate a BID. The minimum mandate is defined to be 60% in favour from all the votes received.

**Owners**

A collective term for the Business Owners and Property Owners.

**Owners List**

The original list of Owners from which the votes register is created.

**Poll**

A poll is a ballot of registered voters. Polls are used for three purposes as per this policy (establishment, disestablishment or re-establishment of a BID)

**Property Owner**

An owner of a rateable commercial property located within the BID

**Rateable Business**

A legal entity that attracts liability for rates. It may be either an entire rating unit on its own (such as a separately owned shop), or a separately used part of a larger rating unit (such as a business within an office block).

**Registered Voter**

An individual who is listed on the local BID register of votes, and who is therefore able to vote in local BID polls.

**Targeted Rate**

A rate levied on property owners for special projects, as specified in sections 16 – 18 of the Act.

### **Voter Register**

A list of all eligible voters maintained by the BIDA.

## **3. *Considering a BID***

Discussions to explore the possibility to establish a BID may be initiated at any time by any interested party. Evidence must be sought to ensure there is sufficient support among BID proponents to sustain a prolonged and comparatively demanding project.

(Evidence such as a business association or group of long standing established business persons within the proposed BID)

## **4. *Establishing a BID***

### **4.1. *Determining BID Boundaries***

An initial project for BID proponents is to finalise the boundaries of the prospective BID in consultation with the Council or their appointed representatives or agents.

#### **4.1.1. Initial Consultation**

The Council will supply a satisfactory map of the surrounding business area, so that the BIDA can identify the boundaries.

BID proponents will discuss the proposed boundaries with key stakeholders within (and potentially outside) the suggested area. Such stakeholders might include, for example, owners of large or central businesses, Government or Council agencies within the proposed BID. A well advertised public meeting could be used as the method of communication.

Following such consultation, BID proponents will discuss their preferences with Council or their appointed representatives or agents.

#### **4.1.2. Private Residents**

Private (non-business) residents are not covered under this policy, and as such will not become liable for the targeted rate. Council will determine whether a particular property qualifies as a private residence for the purpose of this policy.

#### **4.1.3. Final Determination**

Ideally, Council will allow BID proponents to determine prospective boundaries. However, should the BID proponents disagree Council's decision is binding, as only the Council can strike a rate.

### **4.2. *Paying for BID Establishment***

Having established the boundaries and consequent approximate number of Owners in the potential BID, BID proponents may apply to the Council or their appointed representatives or agents for the costs associated with the initial

establishment costs. These items and the amounts will be approved in writing prior to any commitments.

The BID proponents will be required to provide invoices and receipts for reimbursement.

### **4.3. Registered Voters**

The second major project for BID proponents is to complete a list of owners within the agreed boundaries of the BID. This list is then checked to create the voter register.

#### **4.3.1. Developing a list of Owners**

Council will supply the BID proponents with a list of Property Owners. Business Owners will be identified by the BID proponents through the use of a BID street survey, or other appropriate means. These two lists will be combined to create the Owners list.

#### **4.3.2. Developing the Voter Register**

BID proponents must next make contact with every Owner on the Owners list, in order to determine who will be registered as a voter on the final Voter Register.

If the Owner is an individual, that person should be registered as the voter unless s/he nominates someone else to act on his/her behalf. All future communication from the BID proponents or the eventual BIDA must be addressed to that nominated individual, unless the Owner subsequently communicates a desire to nominate a different representative to the BIDA.

If the Owner is not an individual, the BIDA proponents must communicate with the senior management of that body (typically a company or Trust) and request the name of a nominated representative to register as a voter. In both cases outlined above, a nominated representative can be either a specified person or a specified position (such as "store Manager" or "Chief Librarian").

Based on the principle of "one person – one vote", where an individual or organisation appears multiple times on the Owners list (because they own a number of properties or business in the BID) that person or group may only nominate one name for the register, no matter how many businesses or properties are owned. This person is expected to vote on behalf of all businesses or properties owned by that individual or group.

Voter information should include:

- Name
- Contact Details
- Mailing address
- Email address
- Telephone numbers

- Voters preferred method of communication. Note that email lists are a fast and virtually free method of communicating with groups and individuals.

### **4.3.3. Non-eligible Business Owners**

The following Business Owners are not considered eligible to register in a *BID* voter register:

- Business Owners who operate their businesses from residentially rated property within the BID.
- Business Owners who give a business address which is a commercial property within the BID, but who do not physically run their business from the address (for example businesses who use their accountant's address, or businesses who have mail delivered to a relative or friend running a business within the BID).
- Business Owners who lease, rent or hire a small area of commercial property within the BID, who do not permanently run their business from that address, and who appear to have taken on the liability primarily in order to gain BIDA membership and voting rights.

### **4.4. Developing Strategic and Business Plans**

Council or their appointed representatives or agents will provide assistance with the creation of a strategic and business plan for each BID that takes account of the particular requirements of the BID.

Council will fund the appointment of an independent commercial expert to peer review the Strategic and Business Plans of the proposed BID

There is no limit or restriction on the activities that BID proponents can propose BID should undertake other than to avoid duplicating services already provided by Council through the general rate.

However, as the strategic and business plans will be important documents for convincing voters to support the proposed BID, it is strongly recommended that these documents reflect a representative view of the needs of the BID. For example a primary purpose of the BID maybe to undertake promotions throughout the key selling periods of the year. This may include promotions including Christmas, Mothers and Fathers Days, Easter and other selling opportunities. Promotions should regularly include the widest spread of incentives so that all members benefit from the BID activities. Time would also be allocated to representing the members interests at Council level.

### **4.5. Creating a Budget**

One of the outcomes of the planning process is a detailed budget that translates the BID objectives into financial requirements. These requirements in turn should be used to determine the overall level of the Targeted Rate. Council or their representatives or agents will assist as required, and oversee the final budget to ensure it conforms to acceptable financial best practise.

Council will fund the appointment of an independent commercial expert to peer review the Budget of the proposed BID

#### ***4.6. Rating Method***

The targeted rate will be calculated either on the basis on current Council policy which is to use rateable value of the Rating unit or a fixed uniform charge or a combination of both. This method of apportionment is subject to change if Council rating policy is amended.

#### ***4.7. Preparing to be Incorporated as a Society***

BIDs should prepare the paperwork required to register the eventual BID Association as an Incorporated Society. Council will not strike a rate without evidence that the BIDA has incorporated, as the process can take some time to arrange. To this end, a draft constitution should be organised for the consideration and ratification of Members at the initial Annual General meeting.

#### ***4.8. Holding an Establishment Poll***

*BIDs* established through the Annual Plan process prior to 2006/2007 are exempt from the requirement to hold an establishment poll.

Having completed all the steps outlined, the final step in the establishment phase is to hold an Establishment Poll.

The following steps are required for an establishment poll to be considered valid.

##### **4.8.1. Choosing dates for the Poll**

All BID Polls are run as postal ballots. The period between mailout of the ballot papers, and close-off for returning of ballots is two weeks.

Given the two week Poll period, it is recommended the Establishment Poll should not be held later than the last two weeks of September. This is because BID applications for a Targeted Rate, based on a successful Poll, must be received by Council before the close off of the Annual Planning process which begins in late October. Applications that miss the Annual Plan may have to wait a year for approval.

As running a Poll requires the practical support of Council Officers (and or their representatives or agents) and an independent election monitoring service, a date for the Poll must be selected that suits all parties contributing to the administration and management of the Poll.

## **4.8.2. Informing Voters**

BID Proponents must inform all Registered Voters of the upcoming poll and ensure voters are aware of the main issues to be decided. Such issues include, but are not limited to –

- The boundaries of the proposed BID
- The suggested funding model applied
- The approximate rate to be levied
- The objectives of the BID Strategic and business Plans
- The identities of the principle BID proponents

### **To achieve these aims, BID proponents must**

- Mail a voting paper, return envelope and information sheet to all Registered Voters 14 days prior to the official close of the Poll.
- Hold at least one information meeting open to all interested parties, immediately before the mail-out of postal ballots.
- Place at least two advertisements in local newspapers advertising a meeting, at least one week apart and a minimum of three days prior to the meeting.

## **4.8.3. Sending out the Ballots**

Council will recommend an independent election monitoring service to BID proponents. BID proponents will contact the approved organisation as soon as the Voter Register has been finalised to enable the monitoring service to begin preparing for the Poll. Material prepared for the Poll will include –

- A copy of the Register of Voters.
- A copy of an information sheet outlining the BID proposal.
- A copy of a Ballot form approved by the election monitoring service.
- A copy of a membership application form of the proposed BIDA.

The monitoring service will send out an envelope including the information sheet, the Ballot form, the membership application form and a prepaid return envelope. Any requests for replacement ballots should be directed to the monitoring service.

## **4.8.4. Checking the Mandate**

A BID Poll will always require a minimum of 60% of returned Ballot papers to be in favour of any proposition put to the Poll (BID Polls include Establishment, Disestablishment and Re-establishment Polls), independent of the percentage of total votes returned.

## **4.8.5. Confirming the Result**

The monitoring service will receive, count and verify all returned Ballot papers. It will then report the result of the Poll to the BID proponents and the Council.

**Proxy and Absentee Voting.** Proxy voting is not permitted during BID Polls. Registered voters who will be absent from their registered addresses during the two weeks of the Poll should indicate a forwarding address to the BID proponents to pass on to the election monitoring service to use.

**Non-registered eligible voters.** Ideally, BID proponents should attempt to ensure all eligible voters in a BID area are registered. In practise this is not always easy, particularly in larger areas. In the event that an individual believes he or she is entitled to vote but does not appear on the register of voters used by the election monitoring service, the service shall determine the status of the individual and whether a ballot should be issued.

## **5. Operating a BID**

Following the announcement of a successful Establishment Poll, BID proponents must next begin the work of developing the Association membership base, and preparing for the first AGM of the new BID Association.

### **5.1. Developing the Association membership base**

#### **5.1.1. Membership Rights and Responsibilities**

Membership of the BIDA entitles the individual member to –

- Attend and vote at all Annual General Meetings
- Attend all meetings of the BIDA Directors and sub-committees (but not vote)
- Stand for election to the BIDA Board of Directors.
- Receive regular communications about BID activities.
- Receive notification of upcoming meetings and agenda items.

Membership of a BIDA requires agreement to abide by the Association's constitution, and follow all rules. Further, it is important to ensure Targeted Rates are spent exclusively on BID projects.

#### **5.1.2. Turning Voters into Members.**

While registered Voters are always allowed to vote in BID Polls, they have to apply to become members of their BIDA. Application must be made to the BID proponents (before the first AGM), or to the secretary of the BIDA (after the initial AGM). Registered Voters who submit a completed application must be granted membership as a right.

Blank Association membership application forms should be sent out with the Voting Ballot Papers, with instructions on where and who to return them to. Initially these will be returned to the BID proponents who will begin the development of an Association membership list.

Blank membership forms should also be readily available from the BID proponents. Where possible, an electronic version should be made available

on the internet, either on a site maintained by the BID proponent or an interested party.

Blank membership forms should be available at the initial AGM to allow Registered Voters who want to sign up on the spot to be able to vote on motions at the meeting.

## ***5.2. Holding the First AGM***

### **5.2.1. Notification**

Following a successful Establishment Poll the BID proponents must promptly notify Registered Voters of

- The date and place of the initial AGM of the BIDA.
- Their opportunity to nominate individuals to the BIDA Board of Directors and how to do this.
- Their opportunity to study the proposed BIDA constitution.
- Their opportunity to study the proposed BIDA strategic and business plan.
- The name and contact details of the Council officer or Council representative or agent who will receive all nominations.

Registered Voters could be notified by placing one or two newspaper advertisements in local papers, or by placing photocopied notices in Community Notice boards, and in the windows and notice boards of interested shops and offices. Where the register of Voters includes email information, a group email could be sent out.

### **5.2.2. Timing**

The AGM should be held at least two weeks after the Poll, to allow for nominations for the election of directors, and consideration of the draft constitution and draft strategic and business plans.

### **5.2.3. Nominations for Election of Officers to the BIDA Board**

Nominations can be made for positions on the BIDA Board of Directors either for a director or for the Chair. Nominations must be made in writing, signed by two BIDA members, and the nominee themselves. These should be mailed, faxed or handed to the Council Officer or representative or agent in publicity about the AGM. Nominations will close 24 hours before the scheduled time of the Annual Meeting.

### **5.2.4. Key Activities in the AGM**

#### **Election of Officers**

The AGM will be chaired initially by the Council Officer or their representative or agent assigned to the BIDA. She/he will begin by reading out nominations and calling for a vote in favour in each case.

There must be a minimum of three members elected (a chair and two other directors), and a maximum of six members. All elected directors have full voting rights on the Board.

Once directors have been elected to the Committee they should, in discussion with the other directors, select a Treasurer and a secretary.

Once a Board Chairman has been selected, the Council Officer or their representative or agent will hand over the remainder of the meeting to his/her control.

### **Introduction of Appointed Directors**

Council has the right to appoint up to two directors to the Board.

- A local ward Councillor (with voting rights)
- A Council Officer or representative or agent (without voting rights)

The roles of the Ward Councillor are to provide assistance with, and overview of, BID activities, particularly programme and budget development. In addition they provide information on Council, its processes and structures and provide the link between the BID and Council.

The role of the Council Officer or representative or agent is to assist the BID achieve its goals, and be available as a point of contact within or for Council on a day to day basis. They will assist with overseeing the timely preparation of Annual Accounts through to final Audit. They will also seek opportunities to leverage off other Rodney BID associations through joint purchasing (and sharing) arrangements for services, marketing material, accounting and other activities in order to save costs. They will encourage dialogue between BIDs and other organisations such as district and local tourism groups, arts & events organisers, social and economic development providers. They will assist with representation and preparation of submissions to Council on matters which interlink with the business community. They will act as an extra conduit between other district organisations (such as wine clusters) so that activities in one area can where appropriate leverage off their promotional activities.

The Chair should introduce these people and explain their role to members.

### **5.2.5. Ratification of Key documents and decisions**

Having elected and confirmed the directors in their positions, the AGM should move to a discussion and ratification of the documents and decisions made by the BID Proponents, in particular, the draft BID constitution, the draft strategic and business plans and draft budget. Formal acceptance of these documents and any amendments are subject to the majority vote of the assembled BIDA members.

### ***5.3. Incorporating as a Society***

Following the initial AGM, the BID secretary should, as soon as possible, register the approved BIDA constitution with the Register of Incorporated Societies. This process can take some time, which is why it is important for the BID proponents to do as much of the preliminary work before the Poll as possible.

Where the BID has misjudged the amount of time required to finalise incorporation, and is at risk of missing the close-off for the Annual Plan as a result, Council will accept evidence of application to incorporate, so long as confirmation is forwarded to the Council Officer or representative or agent as soon as it is available.

### ***5.4. Applying to Council for a Targeted Rate***

Once confirmation of incorporation has been received from the Register, the BIDA can move to apply to Council for a Targeted Rate in its area. To be successful in its application, the BIDA must present the following information to Council –

- Evidence of a mandate (report from election monitoring agency)
- Evidence of incorporation (Register of Incorporated Societies)
- The agreed BID Boundaries (Council)
- The ratified budget (AGM minutes)
- The ratified business plan (AGM Minutes)

### ***5.5. Signing the BID Contract***

Once the Council has approved the application for a Targeted Rate, and before any funds can be released, a BID Contract must be signed by the Chair and Treasurer/Secretary of the BIDA, and returned to Council. From this point the Council will begin releasing funds to the BIDA on a quarterly basis.

The purpose of the BID contract is to ensure that BIDA and Council clearly understand each others responsibilities, including the required standards around –

- Planning and Budgeting
- Accounting and handling of public funds
- Meeting procedures
- Human Resource Management

In addition, the BID contract specifies remedies when either Council or BIDA does not abide by the terms of the contract.

### ***5.6. Hiring a BID Manager***

Once the council has released funds to the BIDA, it will be necessary to hire a BID manager. The position should be full or part time as determined by the BIDA Board.

## **5.7. Day-to-Day Operating**

### **5.7.1. Managing a BID**

#### **Committee Meetings**

The BIDA Board must meet at least 10 times per year. A quorum for the transaction of business shall be any three voting directors of the Board.

#### **Annual General Meetings**

BIDA AGMs must be held annually, around the anniversary of the initial AGM.

#### **Managers Activities**

On a day to day basis the BID manager should liaise with the BIDA Chair / directors, BIDA members, and Council staff as appropriate. The BID Manager may take on the role of secretary of the Board of Directors but cannot, even in this capacity, vote on any BIDA matters.

It is important for the BIDA to be seen to be acting quickly to achieve some of the short term operational objectives outlined in the first business plan. At the same time, there is a need to ensure adequate levels of management control are being exercised. To this end, it is expected that each BID Board will develop a set of operational, project-related and strategic Key Performance Indicators. Practical assistance is available from the Council's representative or agents.

### **5.7.2. Quality Management**

#### **Management Education**

Early in the establishment of the BIDA, the Board and the manager may be asked, or be required to, attend a BID Management Training Course held or recommended by Council. Council or their representatives or agent will assist with training as required.

#### **Programme Benchmarks and Key Performance Indicators**

To enable objective evaluation of BID projects, each BIDA will be expected to establish a number of benchmarks rated to their strategic and business plan objectives. These benchmarks will provide baseline measures against which progress can be objectively measured. Useful benchmarks include, but are not limited to –

- Total Retail Sales
- Pedestrian Activity
- Business longevity
- Commercial rates
- Vacancy rates
- Shopper/visitor satisfaction surveys
- Member surveys on promotional success

### **5.7.3. Budgets**

BIDA Boards are responsible for preparing annual budgets. Budgets may be increased or decreased by up to 5% per annum without a Rate Alteration Poll to be held.

In addition to the Targeted Rate, Directors may raise funds through other mechanisms. In particular, directors may decide to leverage certain key advertising promotions by selling advertising space. This could be in local newspapers or through advertising in a business guide etc.

## ***5.8. Altering, Disestablishing or Re-establishing the Targeted Rate***

### **5.8.1. Rate Alteration Poll**

The BIDA may increase or decrease the Targeted Rate by more than 5% (Budgets may be increased or decreased up to 5% per annum with a simple majority vote in favour at the BIDA AGM). BIDAs wishing to significantly alter the Targeted Rate must run a Rate Alteration Poll, following the procedures required for the Establishment Poll. Once again, where a mandate is shown, the BIDA must then apply to Council to increase or decrease the Rate. Council may refuse to alter a significant Rate, but must explain its refusal to a BIDA meeting called to discuss the refusal.

### **5.8.2. Dis-establishment Poll**

In exceptional circumstances Council may initiate and arrange a Dis-establishment Poll. Such circumstances might involve evidence of serious or ongoing mismanagement of the Targeted Rate Funds, a significant conflict arising among members of the BIDA or directors, or a serious conflict arising between the BIDA and the Council itself. Where a Dis-establishment Poll indicates support for the continuance of the Targeted Rate, Council should attempt to resolve the issue using other means, where at all possible.

It should be noted that Council does not need a Dis-establishment Poll to stop striking a Targeted Rate. The Dis-establishment Poll is simply a mechanism for Council to assess members attitudes to the BIDA and the Targeted Rate before making any final decision.

### **5.8.3. Re-establishment Poll**

Where a Dis-establishment Poll has been won, the BIDA must wait two years before seeking support to re-establish a mandate.

### **5.8.4. Alterations of BID boundaries**

A BIDA may wish to alter the BID boundaries set at the time of the Establishment Poll. Specific reasons for altering the Boundaries include –

## **BID Expansion**

A BIDA may wish to expand the BID to include an area of neighbouring businesses such as an adjoining street originally left out of the BID. The proposed expansion must be first endorsed by a majority vote in favour at a Special Meeting of BIDA members. Second, the BIDA must apply to Council for a list of Property Owners in the new area, conduct a street survey of Business Owners, develop a Voter Register for the area, and arrange for a Poll to be conducted in that area only. Required return rates and votes in favour are the same as for all other Polls.

## **5.9. Resolving Disputes**

### **5.9.1. Resolving Disputes between Council and BIDA**

Any decisions whether or not to strike a Targeted Rate, the amount of that rate, the boundaries of the area, and whether or not to establish, disestablish, reduce or extend the BID are within the discretion of Council to make as part of its annual funding and rating decision-making process.

Any other disputes between BIDA and the Council will be settled in accordance with the following procedure:

Having exhausted normal means of resolving a dispute or difference (by engaging in the process of good faith negotiation and information exchange), either party may give written notice specifying the nature of the dispute and its intention to refer such dispute or difference to mediation. If a request to mediate is made then the party making the request will invite the chairperson of the NZ Chapter of Lawyers Engaged in Alternative Dispute Resolution (LEADR) to appoint a mediator to enable the parties to settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in later proceedings. The parties will bear their own costs in the mediation and will equally share the mediator's costs.

If the dispute is not resolved within 30 days after appointment of a mediator by LEADR, any party may then invoke the following provisions –

- The dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996.
- The award in the arbitration will be final and binding on the parties.

### **5.9.2. Resolving Disputes between Owners or their nominated representatives and BIDA**

Disputes between Owners or their nominated representatives (ONR) and BIDA will be settled in accordance with the following procedure:

- Unless matters can be resolved quickly and informally, ONR are obliged to bring their concerns to the attention of the BIDA Board in writing. An initial written response is required within 7 days, outlining the manner and the time frame in which the concerns will be addressed.
- Having exhausted reasonable means of resolving a dispute or difference in accordance with the first clause they may bring their concerns to the

attention of Council or their representative or agent so that their concerns can be addressed. Alternatively, Council or their representative or agent will contact the BIDA Board to discuss the concerns, and, if required negotiate a process of resolution. Council or their representative or agent will advise in writing within 10 working days, outlining the manner and the time frame in which the concerns will be addressed.

- Having exhausted reasonable means of resolving the dispute or difference using the above procedure Council or their representative or agent may give written notice to both ONR and BIDA, specifying the nature of the dispute and its intention to refer such dispute or difference to mediation. Council or their representative or agent will invite the chairperson for the time being of the NZ Chapter of Lawyers Engaged in Alternative Dispute Resolution (“LEADR”) to appoint a mediator to enable the parties to settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings. The parties will bear their own costs in the mediation and will equally share the mediator’s costs. If the dispute is not resolved within a further 30 days after appointment of a mediator by LEADR, and party may then invoke the following provisions:
  - The dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996.
  - The award in the arbitration will be final and binding on the parties.

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25/6/2008

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23/7/2008