

NGĀTI MARU

and

NGĀTI PAOA

and

NGĀTI TAMATERĀ

and

NGAATI WHANAUNGA

and

TE PATUKIRIKIRI

and

THE CROWN

**MARUTŪĀHU IWI COLLECTIVE REDRESS DEED
SCHEDULE: DOCUMENTS**

9

DOCUMENTS

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1 STATEMENTS OF ASSOCIATION

The settling group's statements of association are set out below. These are statements of the settling group's particular spiritual, cultural, historical, and traditional association with identified areas.

BACKGROUND

1. The Marutūāhu Iwi Collective Redress Deed provides for statutory acknowledgements over five areas within Tāmaki Makaurau. This background section sets out the Marutūāhu traditions of their customary interests across Tāmaki and provides historical context for the statements of association.
2. At 1840, the Marutūāhu occupied settlements and exercised customary rights across their rohe, generally described in the following pepeha:

“mai Ngā Kuri a Whārei ki Mahurangi”

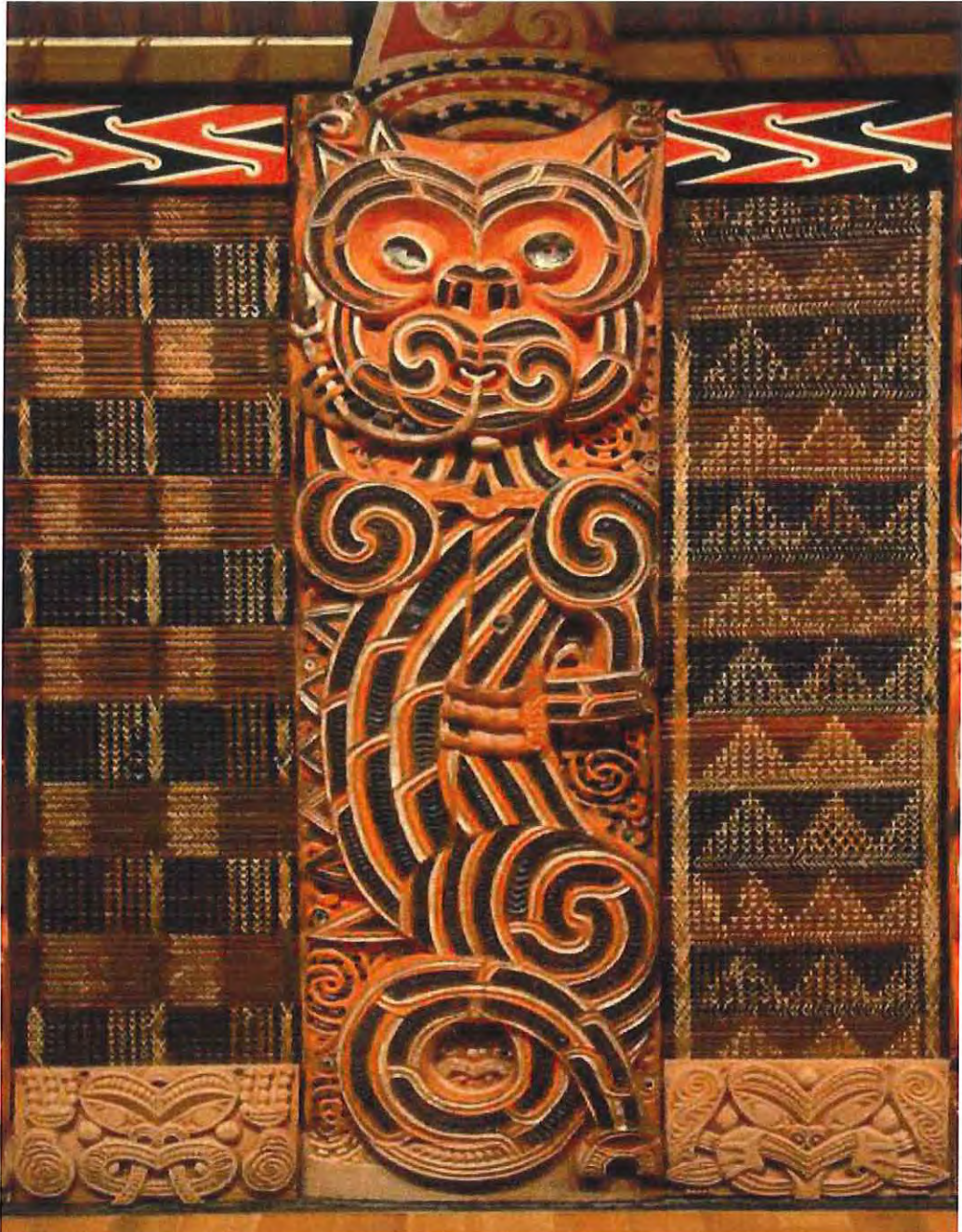
“mai Matakana ki Matakana”

3. The rohe of the Marutūāhu spans the areas of Tauranga Moana, Coromandel Peninsula, Hauraki Plains, northern Waikato, Hunua Ranges, South Auckland, Auckland Isthmus, North Shore, Mahurangi, Hauraki Gulf / Tīkapa Moana and the islands of Tīkapa Moana and Te Tai Tamawahine.
4. The Marutūāhu Iwi are Tainui Waka peoples, and Tāmaki Makaurau was the first point of contact their tūpuna had with Aotearoa. It was these tūpuna who named areas of Tāmaki, for example commemorating place names from the Hawaiiki homeland.
5. The warm climate, multiple harbours, and fertile volcanic soil of Tāmaki made it desirable for Māori. Tāmaki also provided an important overland pathway between eastern and western coasts. Over the centuries, many groups established themselves in Tāmaki, only to be superseded by new arrivals or integrated through intermarriage. The long and dynamic history of human occupation in Tāmaki has created dense layers of interests. The establishment of Pākehā settlement on the shores of the Waitematā only added to its attraction.
6. Marutūāhu tradition is that their settlement in Tāmaki followed widespread battles across the region following the murder of two Ngāti Maru rangatira, Kahurautao (son of Te Ngāko / grandson of Marutūāhu) and Kiwi (son of Kahurautao) at Patutahi in modern day St Johns.
7. Kiwi had married Ngawhakawanga, daughter of Hape (son of Korokī), and soon after their marriage Kiwi and Kahurautao travelled with their people from Hauraki to the Waikato to stay with the people of Ngawhakawanga and collect Te Hunga o te Toroa, a pātaka of Hape
8. Kahurautao and Kiwi returned from Hauraki by way of Awaroa and Manukau. This route was taken to visit relatives at Waiuku. They then crossed the Manukau to Pukaki to receive taonga as muru (payment) for the murder by Tāmaki iwi of the Marutūāhu taniwha Ureia. The

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

highly prized taonga were the mere pounamu named Whakarewa (or Whakarewatahuna) and the hei tiki named Taiparoro.



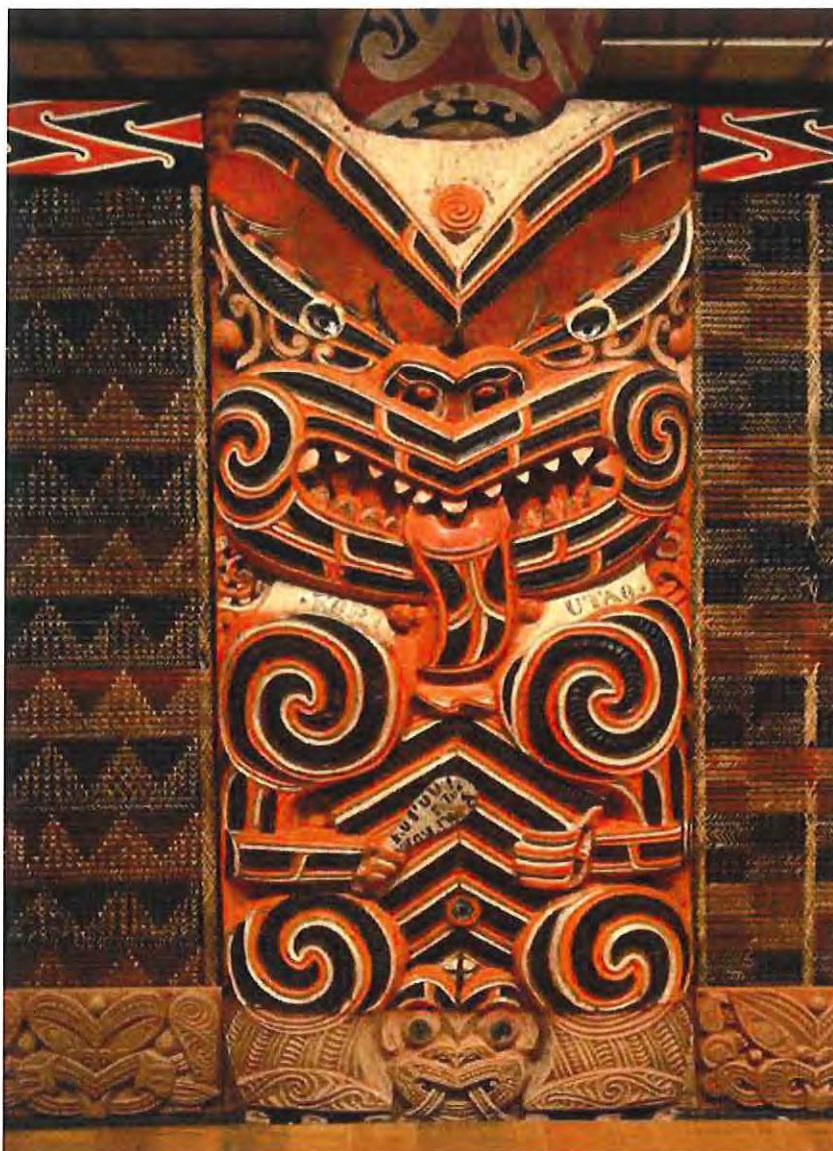
The carved pou Urela in the Ngāti Maru Wharenuī Hotunui

9. Kahurautao and Kiwi then travelled to Maungawhau Pā and stayed for a time. Their hosts were related to a former people of Hauraki who had been defeated by the Marutūāhu, and decided to take the opportunity to kill Kahurautao and Kiwi. Warriors were secretly posted to a track leading to the Tāmaki River which the Marutūāhu party would pass on their return to Hauraki.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

10. On departing from Maungawhau, Kahurautao and Kiwi travelled toward the Tāmaki River via the ridgeline in modern day St Johns where they were set upon and killed. The site of the murder became known as Patutahi, with the body of Kiwi being hung on a tree at Orere, a point on the Tāmaki River. The Tāmaki iwi attackers also repossessed the pounamu taonga.
11. It was Rautao (son of Kahurautao and brother of Kiwi) who raised a massive tauā (war party) of Marutūāhu Iwi to avenge their murder. This galvanized Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā and Ngāti Whanaunga - the descendants of Marutūāhu and his two wives, Paremoehau and Hineurunga – who then carried out a series of devastating attacks across Tāmaki.



The carved pou Rautao in the Ngāti Maru Whareniui Hotunui

12. The Marutūāhu campaign began at Wairoa, in the area of modern Clevedon (with attacks on Oue, Te Kowhai and Whakakaiwhara pā) before moving to the gulf islands of Waiheke and Motutapu. After conquering pā in these areas, the Marutūāhu tauā pursued those tribes who

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1: STATEMENTS OF ASSOCIATION

had killed Kahurautao and Kiwi into the Tāmaki River and beyond (including Mauinaina, Mokoia and Mutukaroa pā), to Mangere and then around central Auckland, overrunning a number of major pā (including Maungataketake, Maungarahiri, Taurere, Maungarei, Te Kopuke, Maungakiekie, Maungawhau and Taurarua,). The Marutūāhu then travelled up the east coast north of Auckland as far as Te Arai, carrying out further attacks on pā (including Takarunga, Maungauika, Takapuna, Te Pupuke, Mahurangi, Orewa, Pakiri and Te Tii). During the campaign, the Marutūāhu conquered dozens of pā and inflicted severe defeats on their residents.

13. In recording these traditions in *The Ancient History of the Maori*, John White also included two non-Marutūāhu versions - from a Waikato hapu and Tāmaki iwi with similar accounts.
14. The lengthy warfare came to an end when overtures for peace were made to the Marutūāhu. At Oue, Parekaiangaanga, a puhi (young woman of high rank) was offered in marriage to Rautao to secure a tatau pounamu (peace agreement) with Marutūāhu. This compact has held ever since.
15. In the following years, Marutūāhu settled pā and kāinga in Tāmaki Makaurau, including at modern day Panmure, Mt Wellington, Otahuhu, Mutukaroa, Taurarua, Waipapa, Takapuna, and on the motu of Tīkapa Moana, including Motutapu.
16. The cultural landscape of Tāmaki Makaurau was disrupted by the warfare with northern iwi in the 1820s which led to the Marutūāhu and a Tāmaki hapu living with their relations in the Waikato. Marutūāhu returned to Tāmaki in about 1830. The Tāmaki hapu did not return until 1836 under the protection of Waikato-Tainui. The movements in Tāmaki in these years created periods of high tension, conflict, and peace agreements. Contact with Pākehā missionaries, traders and settlers brought new opportunities and created some further tensions.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

A. TAURARUA

[Statement of Association will be inserted in the signing version of this deed and this note will be removed]

B. WAIPAPA

[Statement of Association will be inserted in the signing version of this deed and this note will be removed]

C. MUTUKAROA

[Statement of Association will be inserted in the signing version of this deed and this note will be removed]

D. MOTUTAPU

[Statement of Association will be inserted in the signing version of this deed and this note will be removed]

E. FORT TAKAPUNA

[Statement of Association will be inserted in the signing version of this deed and this note will be removed]



2 ENCUMBRANCES



DOCUMENTS

2.1 MOUTOHORA (MOTUORA) EASEMENT



DOCUMENTS

2.1: MOUTOHORA (MOTUORA) EASEMENT

EASEMENT INSTRUMENT
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

South Auckland

Grantor

Surname must be underlined

[Taonga o Marutūāhu Trustee Limited]

Grantee

Surname must be underlined

Her Majesty the Queen acting by and through the Minister of Conservation

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee in gross and in perpetuity the easement set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this

day of

20

ATTESTATION:

<hr/> Signature of Grantor	Signed in my presence by the Grantor:
	<hr/> Signature of Witness
	Witness Name:
	Occupation:
	Address:

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.1: MOUTOHORA (MOTUORA) EASEMENT

<p>Signed on behalf of Her Majesty the Queen by <i>[name and role of person]</i> acting under a delegation from the Minister of Conservation</p> <p>_____</p> <p>Signature of Grantee</p>	<p>Signed in my presence by the Grantee</p> <p>_____</p> <p>Signature of Witness</p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
---	--

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Grantee



All signing parties and either their witnesses or solicitors must sign or initial in this box.



DOCUMENTS

2.1: MOUTOHORA (MOTUORA) EASEMENT

ANNEXURE SCHEDULE A

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

Purpose (nature and extent) of easement	Shown reference (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT)
Right to convey water	As marked A on SO 502698.	Section 1 SO 502698.	In gross
	The Easement Area	The Grantor's Land	The Grantee's Land

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 apply to this easement EXCEPT to the extent as set out in **Annexure Schedule B**.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.1: MOUTOHORA (MOTUORA) EASEMENT

ANNEXURE SCHEDULE B

Easement Instrument	Dated:	Page of pages
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RIGHTS AND POWERS

1 Right to convey water

- 1.1 The right to convey water includes the right for the Grantee to take and convey water in free and unimpeded flow from the source of supply or point of entry through the Easement Facility and over the servient land to the dominant land.
- 1.2 The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the Easement Facility.
- 1.3 The Easement Facility referred to in 1.1 is the Easement Facility laid within the Easement Area.
- 1.4 The Grantor must not do and must not allow to be done anything on the servient land that may cause the purity or flow of water in the water supply system to be diminished or polluted.

2 General rights

- 2.1 The Grantee has the right to use:
 - (a) any easement facility already situated on the stipulated area or course for the purpose of the Easement granted; and
 - (b) if the Easement Facility needs replacement, the right to lay, install, and construct a replacement Easement Facility reasonably required by the Grantee (including the right to excavate land for the purpose of that construction).
- 2.2 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this Easement or of any other party or interfere with the efficient operation of the Easement Area.
- 2.3 Except as provided in this easement the Grantee must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Area.

3 Repair, maintenance, and costs

- 3.1 The Grantee is responsible for arranging the repair and maintenance of the Easement Facility on the Easement Area and for the associated costs, so as to keep the Facility in good order and to prevent it from becoming a danger or nuisance.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.1: MOUTOHORA (MOTUORA) EASEMENT

Easement Instrument	Dated:	Page of pages
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- 3.2 The Grantee must meet any associated requirements of the relevant local authority.
- 3.3 The Grantee will repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this Easement.
- 3.4 The Grantor will repair at its cost all damage caused to the Easement Facility through its negligence or improper actions.



All signing parties and either their witnesses or solicitors must sign or initial in this box.



DOCUMENTS

2.2 MOUTOHORA (MOTUORA) CONSERVATION COVENANT



DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

- "Conservation and Reserve Values"** means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
- "Director-General"** means the Director-General of Conservation.
- "Fence"** includes a gate.
- "Land's Values"** means the Conservation and Reserve values specified in Schedule 1.
- "Natural Water"** includes water contained in streams the banks of which have, from time to time, been re-aligned.
- "Owner"** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- "Working Days"** means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

2.1.2 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

3 IMPLEMENTATION OF OBJECTIVES

- 3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
 - 3.1.6 any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;
 - 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
 - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
 - 3.2.2 co-operating with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
 - 3.2.3 keeping the Land free from exotic tree species;

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

- 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

4 PUBLIC ACCESS

- 4.1 The Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes, without the consent of the Owner provided the public :
 - 4.1.1 only access the Land by foot;
 - 4.1.2 do not take firearms or animals on the Land;
 - 4.1.3 do not camp, or hunt, on the Land.

5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must:
 - 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
 - 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

6 JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7 DURATION OF COVENANT

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

8 OBLIGATIONS ON DISPOSAL OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.
- 8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

- 9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

10 MISCELLANEOUS MATTERS

10.1 Trespass Act:

- 10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

10.2 Reserves Act

- 10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

10.3 Registration

- 10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

10.4 Acceptance of Covenant

- 10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

11 DEFAULT

- 11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:
- 11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 11.2.1 advise the defaulting party of the default;
 - 11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

12 DISPUTE RESOLUTION PROCESSES

- 12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 **Mediation**
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
 - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 **Failure of Mediation**
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
 - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the New Zealand Law Society.

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

13 NOTICES

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.

13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:

- (a) personal delivery, on the date of delivery;
- (b) pre-paid post, on the third working day after posting;
- (c) facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;
- (d) electronic mail, on the day of successful delivery of the mail.

13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

14 SPECIAL CONDITIONS

14.1 Special conditions relating to this Covenant are set out in Schedule 3.

14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.



DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

Executed as a Deed

Signed by _____ as)
Owner in the presence of :)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ and)
acting under a written delegation from the Minister)
of Conservation and exercising his/her powers under)
section 117 of the Reserves Act 1977 as designated)
Commissioner in the presence of :)

Witness: _____

Address : _____

Occupation: _____

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

SCHEDULE 1

Deed plan reference: OTS-403-09.

Description of Land: 2.5000 hectares more or less, being Section 1 SO 502698 and known as Moutohora.

The Land is part of Motuora Island, a long narrow island, which lies 5 km off the entrance to Mahurangi Harbour. The below values occur on the Land (except where specified).

The island, including all the Land, has outstanding spiritual, ancestral, cultural, customary and historical significance for the people of Marutūāhu.

Conservation and Reserve Values to be protected:

While much of the original coastal forest and shrubland vegetation on the island was cleared, remnant pōhutukawa, karo (*Pittosporum crassifolium*) and māhoe (*Melicactus ramiflorus*) scrub growing on coastal cliffs, including on part of the Land, remained. Since 1990, a community-led restoration project has planted much of the island, including part of the Land. One tree on a part of the Land is the only seeding karaka on the island.

Motuora has always been free of mammalian pests. The pest-free status of Motuora assists to provide habitat for a number of native species, including shorebirds, seabirds and little blue penguins that breed on the island including on part of the Land. Biosecurity measures for visitors and pest monitoring on the island protect this aspect.

The island is currently a 'kiwi crèche' for young North Island brown kiwi until they are big enough to defend themselves from stoats (*Mustela erminea*) and be returned to the mainland. A resident population of kiwi now remains on the island. Motuora is also significant for its population of ōi/grey-faced petrel (northern muttonbird) which are present on part of the Land.

Part of the Land contains infrastructure (water pipes) and areas comprising kikuyu grass.

More recent work carried out by the Motuora Restoration Society has led to native species such as pōpokotea/whitehead (*Mohoua albicilla*), wetapunga/Little Barrier giant weta, Duvaucel's gecko (*Hoplodactylus duvaucelii*) and shore skink (*Oligosoma smithi*) returning to the island, which may all be on parts of the Land from time to time.

Motuora is a significant landscape feature, able to be viewed from a wide area of the mainland east coast in this region. Part of the Land is situated at the high point of that part of the Island and as such is part of that landscape. Special characteristics relating to the Land and the Island are the coastal cliffs, shore platform, and a natural outline with existing structures not visible.

The island is a low-key visitor destination. The majority of visitors are day visitors while the camping ground (outside the Land) is popular over the summer. The track which currently runs through the Land is a key part of the island's track network and is widely used.

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

SCHEDULE 2

Address for Service

The address for service of the Owner is:

The address for service of the Minister is:



DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

SCHEDULE 3

Special Conditions

1. Clauses 3.1 and 3.2 are amended:
 - a. After the words "Unless agreed in writing by the parties" in clause 3.1 insert the words "and subject to Schedule 3".
 - b. After the words "The owner must" in clause 3.2 insert "subject to Schedule 3".
2. The Owner may undertake minor clearance of vegetation for the purposes of access to the Land and for pest plant or pest animal control, and for the facilities and activities specified in paragraphs 4 and 5, and the activity specified in paragraph 20 of this Schedule.
3. The Owner may undertake other activities otherwise prohibited by clause 3.1 of the Covenant as are reasonably required for the development of the cultural facilities and the associated activities specified in paragraphs 4 and 5.
4. The Owner, provided it has obtained all required statutory consents, may in consultation with the Minister of Conservation build facilities for cultural purposes not exceeding 250m² on the Land within the location shown edged blue on the attached Deed Plan that is consistent with the Conservation and Reserve values of the Land specified in Schedule 1 and with paragraphs 2 and 3 of this Schedule.
5. The facilities will incorporate the cultural and spiritual values of Marutūāhu iwi and provide for usual cultural activities and may also include:
 - a. accommodation for attendees;
 - b. freshwater storage, wastewater disposal, and power generation facilities;
 - c. facilities to store and maintain fire-fighting equipment; and
 - d. general storage facilities.
6. Public access to the Land provided for by clause 4.1 of the Covenant does not include access without the Owner's consent to any cultural facilities built on the Land.
7. Clause 4.1 (the public's right to enter the land) is amended by adding:

"4.1.4 do not interfere with the Owner's reasonable quiet enjoyment of the facilities for cultural purposes and cultural spaces associated with the facilities on the Land;"
8. Despite clause 4.1, the Owner may manage public access which may result in exclusion from part, but not the whole, of the Land in order to protect wāhi tapu, the Conservation or Reserve Values, or for the purposes of public safety.
9. Subject to paragraph 10 of this Schedule, the Minister may maintain the existing track on the Land marked *black* on the attached Deed Plan to a width of up to 5 metres and to a standard the Minister considers suitable for the right of access and in so doing the Minister, the Director-General's employees or contractors may proceed along the existing track by foot and with hand-held tools, or may on giving prior notice (where practical and if not practicable as soon as possible after entry) by vehicle or any other means of transport and

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2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

with all necessary tools, vehicles and equipment to carry out the work.

10. Prior to commencement of construction of the cultural facilities the parties are to agree to a new route for the track referred to in paragraph 9 so it avoids the location of the cultural facilities, or the Minister may choose a new route outside the Land. If a new route is agreed within the Land the Minister may construct a new track over that new route and the provisions of paragraph 9 of this Schedule apply to that new track.
11. The owner agrees to keep the track clear at all times of obstructions, deposit of materials, or unreasonable impediment to the use and enjoyment of the track.
12. Paragraphs 2 to 5 of this Schedule are subject to paragraphs 13, and 15 to 18 of this Schedule.
13. To minimise biosecurity risks and visitor impacts the Owner must:
 - a. before every entry to the Land ensure that the Owner and its invitees, employees and contractors, and their equipment and materials, have been through a biosecurity process in line with the Department's island biosecurity processes, under the supervision of a person approved by the Department of Conservation to ensure that pests and weeds are not introduced to the island;
 - b. control refuse;
 - c. ensure that the Owner and its invitees, employees and contractors do not take pets or any other live animals onto the Land;
 - d. participate in the maintenance of pest invasion detection and control measures, in conjunction with the Department of Conservation, as relevant to the Land; and
 - e. participate in contingency response action if a pest invasion incident is suspected or detected anywhere on the island.
14. Clause 4.1 of the Covenant (the public's right to enter the Land) is amended by adding:

"4.1.5 before entering the Land have been through a biosecurity process in line with the Department's island biosecurity processes, under the supervision of a person approved by the Department of Conservation to ensure that pests and weeds are not introduced to the island."
15. The Owner must take the following steps to minimise the fire risk:
 - a. not allow smoking on the Land except in a safe designated area approved by the Minister;
 - b. not allow fires on the Land except in a safe designated area;
 - c. keep flammable vegetation on the Land (for example, rank or dead grass, manuka and kanuka) at least four metres back from buildings; and
 - d. control machinery use, particularly in drought conditions.
16. The Owner must take the following steps to minimise disturbance to wildlife:
 - a. discourage the feeding of birds; and
 - b. ensure that all those on the Land are aware that they may not catch or handle wildlife unless as specified in a permit issued under the Wildlife Act 1953 or the Reserves Act 1977.
17. Despite paragraph 18 of this Schedule, the Minister or authorised agent of the Minister or any employee of the Director-General may access the Land without consultation, or prior notice, if responding to a known or suspected animal pest incursion. This right includes

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2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

access to buildings that are unsecured. Access to secured buildings, which includes those described in paragraph 18, requires the Owner's consent and if granted can only occur at reasonable hours.

18. Clause 3.2.5 (right of access to the Land) is deleted and replaced with:

"subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, implements of any kind, and dogs for species management purposes, to examine and record the condition of the Land, or to carry out protection or maintenance work, or species management activities including weed and pest control and monitoring, on the Land, or to ascertain whether the provisions of this Covenant are being observed. For the avoidance of doubt, this right of access to the Land does not apply to the facilities for cultural purposes on the Land, without the Owner's consent;"

19. Despite clause 3.1:

- a. the Owner may authorise the taking or removal of plant materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, except from rare or threatened species unless Ministerial consent is obtained, and in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised;
- b. the Owner may take seed or cuttings of plant species from the Land, except from rare or threatened species unless Ministerial consent is obtained, for propagation purposes and planting within the Land but shall ensure that any impact on the Conservation and Reserve Values is minimised. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

20. The Owner may plant native species for the purpose of kai, after first consulting the Minister and having received advice from employees of the Director General on the biological effect of the species, provided that:

- a. the species sourced outside the ecological district will not have a detrimental biological effect on existing locally endemic species, in particular being likely to result in hybridisation or be a pest weed threat; and
- b. The plant material does not include ecological plant pests, no soil is transported on to the island, all vegetated material has been treated or checked to ensure that it is free of invertebrates and plant pathogens, and the requirements of paragraph 13 have otherwise been met.

21. Clause 3.2.6 (Fences) is deleted because there are no boundary fences on the Land.

22. The Owner may undertake cultural activities on the Land, subject to:

- a. consultation with the Minister of Conservation (or the Minister's delegate); and
- b. any adverse effect on the Conservation and Reserve Values being no more than minor.

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2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT

GRANT OF CONSERVATION COVENANT

Under section 27 of the
Conservation Act 1987
and section 77 of the
Reserves Act 1977

to

MINISTER OF CONSERVATION

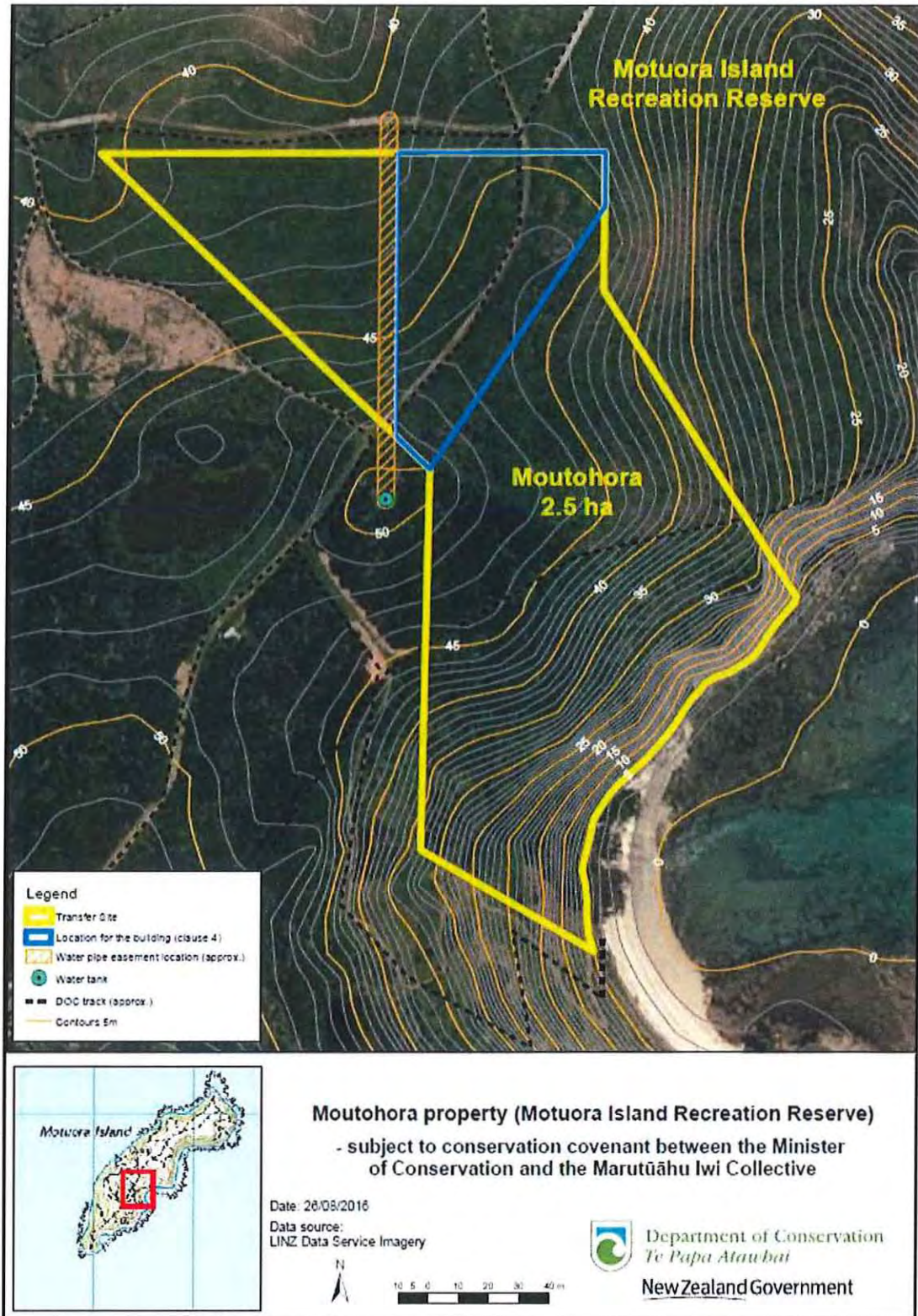
Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

Legal Services
Department of Conservation

DOCUMENTS

2.2: MOUTOHORA (MOTUORA) CONSERVATION COVENANT



DOCUMENTS

**2.3 TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO
PARK EASEMENT**



DOCUMENTS

2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

MARUTŪĀHU RŌPŪ LIMITED PARTNERSHIP

Grantee

AUCKLAND COUNCIL

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way and Right to Park	Marked "B" on SO 502702	Section 1 SO 502702	In Gross

DOCUMENTS

2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

*Delete phrases in [] and insert memorandum number as required;
continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

[Memorandum number —, registered under section 155A of the Land Transfer Act 1952]

[the provisions set out in Annexure Schedule 1]

Covenant provisions

*Delete phrases in [] and insert Memorandum number as require;
continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

[Memorandum number —, registered under section 155A of the Land Transfer Act 1952]

[Annexure Schedule —]

DOCUMENTS

2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

Annexure Schedule

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Continue in additional Annexure Schedule, if required.

1 Definitions and Interpretation

In this Easement Instrument, unless the context requires otherwise:

Easement Facility means the carparks delineated on the surface of the Servient Land as parking spaces;

Easement Instrument means this easement instrument;

Servient Land means that part of the Servient Tenement on which the Easement Facility is placed as described in Schedule A of this Easement Instrument;

Grantee means the Auckland Council as regulatory and territorial authority of the district where the Servient Land is situated and includes its successors, officers, and agents;

Grantor means the registered proprietor or registered proprietors of the Servient Land and its/their successors in title;

Permitted Use is free carparking for the general public;

Rights include the right, liberty and privilege to:

- (a) go, pass and repass with or without vehicles and motor vehicles over across and along the Servient Land for the purpose of accessing, maintaining or repairing the Easement Facility;
- (b) stop, leave and park vehicles on the Easement Facility; and
- (c) undertake Work on and to the Easement Facility;

Working Day shall be deemed to commence at 8.00am and to terminate at 8.00pm on any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Waitangi Day, the day on which Anzac Day and Waitangi Day are observed and the Provincial Anniversary Day as observed at the place where the Servient Land is situated; and
- (b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year.

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2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

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Work means:

- (a) constructing, laying, equipping, maintaining, inspecting, repairing, altering, renewing, replacing (with or without something substantially similar), removing, adding to or upgrading the:
 - (i) paved surfaces; and
 - (ii) any lighting, fencing, signage and other infrastructure in place as at the date of this Easement Instrument.

2 Grant of Easement

2.1 **Grant:** Subject to clauses 2.2 and 2.3, the Grantor grants and the Grantee accepts the grant of this easement in gross for the Easement Facility to be used for the Permitted Use together with the right to exercise the Rights, together with its tenants, servants, agents, workmen, licensees and invitees, for all time on the basis that no power is implied for the Grantor to determine this easement in gross for any breach of its provisions (express or implied) or for any other cause, the intention being that this easement in gross shall subsist until surrendered.

2.2 The Grantor and Grantee acknowledge that:

- (a) the Servient Land (excluding the Easement Facility) may be used at any time to access the car parks adjacent to and east of the Servient Land which are situated on the public road known as Gladstone Road ("the Adjacent Parks"); and
- (b) if the entranceway to the Servient Land is open, the Grantee shall ensure that the exit way from the Adjacent Parks onto public road is open and accessible from the Servient Land.

2.3 At any time that is not during a Working Day, the Grantor may reserve the Easement Facility for its own exclusive use. The Grantor may indicate the reservation of exclusive use by placing signs or other indicators on the Easement Facility during the relevant periods. The Grantor shall use reasonable endeavours to provide at least 24 hours prior notice to the Grantee of any periods of exclusive use pursuant to this clause 2.3.

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2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

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3 Grantee's Obligations

3.1 **Obligations:** The Grantee is responsible for arranging the maintenance, repair and replacement of the Easement Facility and for the associated costs so as to keep the Easement Facility in good order and to prevent it from becoming a danger or nuisance.

3.2 **Undertaking Work:** The Grantee must:

- (a) ensure that all Work that is carried out for the maintenance, repair or replacement of the Easement Facility is performed in a safe, proper and workmanlike manner, as well as in compliance with all applicable statutory and regulatory requirements (including, without limitation, any health and safety legislation and requirements); and
- (b) cause as little damage or disturbance as possible is caused to the Servient Land and immediately make good any damage done to the Servient Land by restoring the surface of the Servient Land as nearly as possible to its former condition.

4 Grantor's Obligations

4.1 **Obligations:** The Grantor shall not (without the prior written consent of the Grantee):

- (a) place or allow anything to be placed any further fences, driveways or other erections on the Easement Facility other than fences, driveways and erections in place as at the date of this instrument and replacements for those fences, driveways and erections; or
- (b) allow any further tree or shrub to grow on the Easement Facility other than trees and shrubs planted on the Easement Facility as at the date of this instrument and replacements for those trees and shrubs; or
- (c) permit to be done any act on the Easement Facility that interferes with or affects the Permitted Use or the exercise by the Grantee of the Rights, in particular and without limiting the generality of this clause 4.1(c) the Grantor shall keep the access route to the Easement Facility clear at all times; or
- (d) interfere with or allow an interference with the Easement Facility or allow any damage to be done to the Easement Facility; or

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2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

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- (e) grant any rights over the Easement Facility to any party other than the Grantee; or
- (f) impose any charges or fees on the Grantee with respect to the Easement Facility or on the general public for using the Easement Facility for the Permitted Use.

5 Right of entry

- 5.1 **Access:** The Grantee may enter upon the Servient Land with all necessary tools, vehicles, and equipment, remain on the Servient Land for a reasonable time for to complete the necessary Work, and leave any vehicles or equipment on the Servient Land for a reasonable time if the Work is proceeding.
- 5.2 **Notice:** The Grantor acknowledges that it agrees to the Grantee entering onto the Servient Land to undertake Work without the provision of notice.

6 Default by Grantor and Grantee

- 6.1 **Defaults:** If the Grantor or the Grantee does not meet the obligations specified in this Easement Instrument:
 - (a) the party in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiry of 7 Working Days from service of the notice of default, the other party may meet the obligation;
 - (b) if, at the end of the expiry 7 Working Day period, the party in default has not met the obligation, the other party may meet the obligation;
 - (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation;
 - (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

7 Disputes

- 7.1 **Dispute Resolution:** If a dispute in relation to this Easement Instrument or the Easement Facility arises between the parties:

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2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

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- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 Working Days of the written particulars being given (or any longer period agreed by the parties):
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society (being the New Zealand Law Society that has its headquarters closest to the Servient Land).

8 Miscellaneous provisions

- 8.1 **Implied rights and powers:** The rights and powers implied in certain easements pursuant to section 90D of the Land Transfer Act 1952 (and currently set out in Schedule 4 of the Land Transfer Regulations 2002) are, as between Grantor and Grantee, substituted and replaced by the terms set out in this Easement Instrument.
- 8.2 **No substitution of other rights:** The easements created by this Easement Instrument are not in substitution for; and their creation is without prejudice to any statutory rights, powers and limitations on liability of the Grantor from time to time in respect of the Servient Land.
- 8.3 **Termination and modification of rights:** The Grantor must not surrender, merge, modify or extinguish the easements created by this Easement Instrument without the prior written consent of the Grantee. There is no power for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any provisions of this Easement Instrument or for any reason, it being the intention of the Grantor and Grantee that the easement in this Easement Instrument will continue forever unless surrendered.
- 8.4 **Legal Costs:** The Grantee will bear the legal costs and disbursements in respect of the preparation and registration of this Easement Instrument, and any consent or other matters arising in relation to it.

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2.3: TAURARUA PROPERTY A RIGHT OF WAY AND RIGHT TO PARK EASEMENT

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8.5 **Unenforceable terms:** If any part of this Easement Instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this Easement Instrument.

8.6 **Capacity of the Council:** The Grantor acknowledges that the Council is also bound by this Instrument in its regulatory capacity.

DOCUMENTS SCHEDULE

**2.4 TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE
EASEMENT**

DOCUMENTS

2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE EASEMENT

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

[TAONGA O MARUTŪĀHU TRUSTEE LIMITED]

Grantee

AUCKLAND COUNCIL

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to maintain sculpture	Marked "A" on SO 502702	Section 1 SO 502702	In Gross

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2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE EASEMENT

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

*Delete phrases in [] and insert memorandum number as required;
continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers are hereby **varied** by:

[Memorandum number —, registered under section 155A of the Land Transfer Act 1952]

the provisions set out in Annexure Schedule 2.

Covenant provisions

*Delete phrases in [] and insert Memorandum number as require;
continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

[Memorandum number —, registered under section 155A of the Land Transfer Act 1952]

[Annexure Schedule —]

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2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE

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Background

- A. The Grantor is the registered proprietor of that land contained in computer freehold register created under section [] of the [] Claims Settlement Act [].
- B. The parties acknowledge and agree the Grantee owns the structure known as [], located on the Servient Land.
- C. The Grantor has agreed to grant to the Grantee an easement right to place and maintain the structure on the Servient Land on the terms and conditions set out in this Instrument.
- D. The parties have entered into this Instrument to record the arrangements between them.

Grant of Right to Maintain and Access the Structure

- 1 The Grantor grants to the Grantee as an easement a right to maintain the existing structure on the Servient Land on the terms and conditions set out in this Instrument until such time as the structure is removed by the Grantee.
- 2 The Grantee also has the right to enter onto the Servient Land on foot or with or without vehicles, plant and equipment at any time, to exercise any of the rights granted under this Instrument, including inspecting, maintaining or removing the structure.
- 3 For the avoidance of doubt, the Grantee shall not have the right to renew or replace the structure.

Obligations of the Grantee

- 4 In exercising its rights under this Instrument the Grantee shall cause as little damage or disturbance as possible and will complete all works on the Servient Land promptly and in a proper workmanlike manner and shall at its cost restore the Servient Land as nearly as reasonably possible to its former condition prior to the Grantee's use pursuant to this Instrument.
- 5 The Grantee will ensure at all times, in the exercise of its rights as set out in this Instrument, that it will not obstruct or hamper the Grantor in its normal or reasonable use of the Servient Tenement.

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2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE EASEMENT

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- 6 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove or otherwise dispose of any vegetation on the Servient Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written consent of the Grantor.
- 7 The Grantee shall, at its cost, repair and maintain the structure so that it is in good and substantial order and repair at all times and to the state which it was in at the commencement of this Instrument.
- 8 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Instrument.

Grantor not to interfere with Grantee's Rights

- 9 The Grantor shall not at any time, do, permit or suffer to be done any act whereby the rights granted to the Grantee under this Instrument may be interfered with.

Default

- 10 If either party fails (Defaulting Party) to perform or join with the other party (Other Party) in performing any obligation under this Instrument, the following provisions will apply:
- (a) the Other Party may serve a written notice on the Defaulting Party (Default Notice) specifying the default and requiring the Defaulting Party to perform or to join in performing the obligation and stating that, after the expiry of one month from service of the Default Notice, the other party may perform the obligation;
 - (b) if after the expiry of one month from service of the Default Notice, the Defaulting Party has not performed or joined in performing the obligation, the Other Party may:
 - (i) perform the obligation; and
 - (ii) for that purpose enter on to the Servient Land;
 - (c) the Defaulting Party must pay to the other party the costs of:

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2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE EASEMENT

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Continue in additional Annexure Schedule, if required.

- (i) the Default Notice; and
- (ii) the Other Party in performing the obligation of the Defaulting Party, within one month of receiving written notice of the Other Party's costs; and
- (d) the Other Party may recover any money payable under clause 8(c) from the Defaulting Party as a liquidated debt.

Dispute Resolution

- 11 In the event of any dispute arising between the parties in respect of or In connection with this Instrument, the parties shall, without prejudice to any other right or entitlement they may have under this Instrument or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- 12 In the event the dispute is not resolved within twenty-eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any successor legislation. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

Notices

- 13 All notices and communications under this Instrument shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.

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2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE EASEMENT

Annexure Schedule 2

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No Power to Terminate

- 14 There is no implied power in this Instrument for the Grantor to terminate the easement rights due to the Grantee breaching any term of this Instrument for any other reason, it being the intention of the parties that the easement rights will continue unless surrendered or the structure removed. If the structure is removed, the Grantee will promptly do all things required to surrender this Instrument.

Definitions and Interpretation

- 15 In this Instrument unless the context otherwise requires:

"**Grantee**" means the Auckland Council and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns.

"**Grantor**" means **TAONGA O MARUTŪĀHU TRUSTEE LIMITED** and includes any other owners from time to time of the Servient Land.

"**Instrument**" means this instrument.

"**Servient Land**" means that part of the Servient Tenement over which the structure is to be placed as described in Schedule A of this Instrument.

"**structure**" means that structure known as "Signals" and includes the concrete slab on which it sits.

- 16 In the interpretation of this Instrument, unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Instrument;
- (b) references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

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2.4: TAURARUA PROPERTY A RIGHT TO MAINTAIN SCULPTURE EASEMENT

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Continue in additional Annexure Schedule, if required.

Signed by)
[to be completed])

Director

Director

The Common Seal of the)
AUCKLAND COUNCIL was affixed in the)
presence of:)

Name:
Mayor

Name:
District Secretary

DOCUMENTS

2.5 PART 6-10 HOMESTEAD DRIVE EASEMENT

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Approved by Registrar-General of Land under No. 2007/6225

Easement instrument to grant easement or profit à prendre, or create land covenant
Sections 90A and 90F, Land Transfer Act 1952

Land registration district

North Auckland



BARCODE

Grantor

Surname(s) must be underlined or in CAPITALS.

[Marunāāhu Rōpū Limited Partnership]

[name of Grantor to be inserted, surnames in capitals]

Grantee

Surname(s) must be underlined or in CAPITALS.

[The Trustees of the Ngāi Tai ki Tamaki Trust] [names of trustees to be inserted, surnames in capitals]

Grant* of easement or profit à prendre or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this _____ day of _____ 20____

Attestation

See Annexure Schedule 2	Signed in my presence by the Grantor
	_____ <i>Signature of witness</i> Witness to complete in BLOCK letters (unless legibly printed) Witness name Occupation Address
Signature [common seal] of Grantor	

See Annexure Schedule 2	Signed in my presence by the Grantee
	_____ <i>Signature of witness</i> Witness to complete in BLOCK letters (unless legibly printed) Witness name Occupation Address
Signature [common seal] of Grantee	

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Approved by Registrar-General of Land under No. 2007/6225
Annexure Schedule 1



Easement instrument Dated Page of pages

Schedule A (Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of way	Marked A on SO 486686	Section 2 SO 486686	Section 1 SO 486686
Right of way and right to park vehicles	Marked B on SO 486686	Section 2 SO 486686	Section 1 SO 486686
Pedestrian right of way	Marked C on SO 486686	Section 2 SO 486686	Section 1 SO 486686

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

~~Delete phrases in [] and insert memorandum number as required.
 Continue in additional Annexure Schedule if required.~~

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.
 The implied rights and powers are ~~varied~~ ~~negated~~ ~~added to~~ or ~~substituted~~ by:
~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]:
 [the provisions set out in Annexure Schedule 2].~~

~~Covenant provisions -
 Delete phrases in [] and insert memorandum number as required.
 Continue in additional Annexure Schedule if required.~~

~~The provisions applying to the specified covenants are those set out in:
 [Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]
 [Annexure Schedule 2].~~

All signing parties and either their witnesses or solicitors must sign or initial in this box

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated []

Page 1 of 9 Pages

Continue in additional Annexure Schedule, if required

1 DEFINITIONS AND INTERPRETATION

- 1.1 *Dominant Land* means the land described as the dominant tenement in Schedule A of this Easement.
- 1.2 *Easement* means this Easement Instrument.
- 1.3 *Easement Area A* means that part of the Easement Land marked A on the Plan.
- 1.4 *Easement Area B* means that part of the Easement Land marked B on the Plan.
- 1.5 *Easement Area C* means that part of the Easement Land marked C on the Plan.
- 1.6 *Easement Land* means Easement Area A, Easement Area B and Easement Area C.
- 1.7 *Grantee* means the registered proprietor of the Dominant Land and includes their agents, employees, contractors, tenants, licensees, and other invitees of the Grantee.
- 1.8 *Grantor* means the registered proprietor of the Servient Land and includes their agents, employees, contractors, tenants, licensees, and other invitees of the Grantor.
- 1.9 *pedestrian right of way* means the pedestrian right of way easement over Easement Area C created by this Easement.
- 1.10 *Plan* means SO 486686.
- 1.11 *right of way* means the right of way easement over Easement Area A created by this Easement.
- 1.12 *right of way and right to park vehicles* means the right of way and right to park vehicles easement over Easement Area B created by this Easement.
- 1.13 *Servient Land* means the land described as the servient tenement in Schedule A of this Easement.
- 1.14 *working day* has the meaning given to it in the Interpretation Act 1999.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

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Pages

Continue in additional Annexure Schedule, if required

2 INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and the plural includes the singular.
- (c) A gender includes all genders.
- (d) A person includes an individual and a corporation.
- (e) A reference to any party to this Easement includes its successors and assigns.
- (f) A reference to a right or obligation of any party comprising two or more people confers that right, or imposes that obligation, on each of them individually and both (or all) of them together.
- (g) A reference to legislation includes an amendment of or substitution for it and a regulation or statutory instrument issued under it.
- (h) Unless stated otherwise, one word or provision does not limit the effect of another.
- (i) Reference to the whole includes part.
- (j) All obligations are taken to be required to be performed properly and punctually.
- (k) Anything to be done on a Saturday, Sunday or a public holiday may be done on the next working day.
- (l) Every obligation by a party is taken to include an obligation by that party to ensure that each of its employees and others under its control comply with that obligation.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.



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DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

Page 3 of 9 Pages

Continue in additional Annexure Schedule, if required

3 RIGHT OF WAY

- 3.1 The Grantor grants to the Grantee the right of way, in common with the Grantor and other persons to whom the Grantor may grant similar rights, to go over and along Easement Area A at all times on the terms set out in this Easement.
- 3.2 The right of way includes the right to go over and along Easement Area A on foot or with any kind of vehicle, machinery, or implement.
- 3.3 The right of way includes the following rights:
 - (a) to use any existing driveway or to establish a driveway on Easement Area A;
 - (b) to repair and maintain that driveway; and
 - (c) to have Easement Area A kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of Easement Area A.

4 RIGHT OF WAY AND RIGHT TO PARK VEHICLES

- 4.1 The Grantor grants to the Grantee the right of way and right to park vehicles, in common with the Grantor and other persons to whom the Grantor may grant similar rights, to go over and along Easement Area B and to park vehicles on Easement Area B at all times on the terms set out in this Easement.
- 4.2 The right of way and right to park vehicles allows the Grantee to:
 - (a) go over and along those parts of Easement Area B that are not to be used for parking vehicles on foot or with any kind of vehicle, machinery, or implement; and
 - (b) park vehicles on those parts of Easement Area B that are to be used for parking vehicles.
- 4.3 The right of way and the right to park vehicles includes the following rights:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

3

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

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Pages

Continue in additional Annexure Schedule, if required

- (a) to use any existing car parking area or to establish a car parking area on Easement Area B;
- (b) to repair and maintain that car parking area; and
- (c) to have those parts of Easement Area B that are not to be used for parking vehicles kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of Easement Area B.

5 PEDESTRIAN RIGHT OF WAY

- 5.1 The Grantor grants to the Grantee the pedestrian right of way, in common with the Grantor and other persons to whom the Grantor may grant similar rights, to go over and along Easement Area C at all times on foot on the terms set out in this Easement.
- 5.2 The pedestrian right of way includes the right to go over and along Easement Area C on foot or with any kind of machinery or implement.
- 5.3 The Grantee must not bring onto Easement Area C any kind of vehicle or animal.
- 5.4 The pedestrian right of way includes the following rights:
 - (a) to use any existing track or to establish a track on Easement Area C;
 - (b) to repair and maintain that track; and
 - (c) to have Easement Area C kept clear at all times of obstructions (whether caused by deposit of materials, or unreasonable impediment) to the use and enjoyment of Easement Area C.

6 REPAIR, MAINTENANCE AND COSTS

- 6.1 The Grantor and the Grantee are responsible equally for the repair and maintenance of the Easement Land, and for the associated costs, for the purposes of:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

Page 5

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Continue in additional Annexure Schedule, if required

- (a) keeping the Easement Land in good order; and
 - (b) preventing the Easement Land from becoming a danger or nuisance.
- 6.2 The Grantor or Grantee must promptly carry out at that party's sole cost any repair and maintenance of the Easement Land that is attributable solely to any act or omission of that party.
- 6.3 However, if the repair and maintenance of the Easement Land is only partly attributable to an act or omission by the Grantor or the Grantee:
- (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
 - (b) the balance of those costs is payable in accordance with clause 6.1.
- 6.4 The party or parties responsible for the repair or maintenance of the Easement Land under this clause 6 must, at its or their own cost, meet any associated requirements of the relevant local authority.
- 7 GENERAL RIGHTS**
- 7.1 The Grantor may, from time to time, at its cost, install on Easement Area B directional signs to allow adequate manoeuvring of vehicles over Easement Area B and unimpeded access over those parts of Easement Area B that are not to be used for parking vehicles and the Grantee must comply with any directional signs.
- 7.2 The Grantor may, from time to time, at its cost, install on Easement Area C directional signs to prescribe that Easement Area C is for pedestrian use only.
- 7.3 The Grantee will not park or stop on Easement Area A, Easement Area C, or on any part of Easement Area B not to be used for parking vehicles, at any time.
- 7.4 The Grantor may take whatever measures reasonably necessary for the safety of persons or property on the Easement Land, including without limitation, the right for the Grantor to erect signs and/or notices, at the Grantor's cost, warning of any danger or hazard and the Grantee must comply with these measures.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated []

Page 6 of 9 Pages

Continue in additional Annexure Schedule, if required

7.5 Despite clause 7.4, the Grantee acknowledges that the gradient of parts of the Easement Land is steep. The Grantee will exercise its rights under the Easement and in relation to the Easement Land at its own risk and will be solely responsible to ensure it takes all reasonable steps to use the Easement Land in a safe manner. The Grantee further acknowledges that the Grantor will not be responsible to the Grantee for any costs, loss or damages incurred by the Grantee as a result of the Grantee exercising its rights under this Easement.

7.6 The Grantee must not do and must not allow to be done on the Dominant Land or the Servient Land anything that may:

- (a) interfere with or restrict the rights of the Grantor or any lawful user of the Easement Land; or
- (b) interfere with the Grantor's enjoyment of the Servient Land.

7.7 The Grantor must not do and must not allow to be done on the Servient Land anything that may interfere with or restrict the rights of the Grantee.

8 RIGHTS OF ENTRY

8.1 For the purpose of performing any duty or in the exercise of any rights under this Easement, the Grantee may:

- (a) enter upon the Servient Land by a reasonable route and with all necessary tools, vehicles, and equipment; and
- (b) remain on the Servient Land for a reasonable time for the sole purpose of completing the necessary work; and
- (c) leave any vehicle or equipment on the Servient Land for a reasonable time if work is proceeding.

8.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Servient Land or to the Grantor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

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Pages

Continue in additional Annexure Schedule, if required

- 8.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.
- 8.4 The Grantee must ensure that all work is completed promptly.
- 8.5 The Grantee must immediately make good any damage done to the Servient Land by restoring the surface of the land as nearly as possible to its former condition.
- 8.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Servient Land.

9 **DEFAULT**

- (a) If any party (*Defaulting Party*) neglects or refuses to perform or join with the other party (*Other Party*) in performing any obligation under this Easement the following provisions will apply:
 - (b) the Other Party may serve on the Defaulting Party a written notice (*Default Notice*) requiring the Defaulting Party to perform or join in performing such obligation and stating that, after the expiry of 10 working days from the service of the Default Notice the Other Party may perform such obligation;
 - (c) if at the expiry of the Default Notice the Defaulting Party still neglects or refuses to perform or join in performing the obligation the Other Party may:
 - (i) perform such obligation; and
 - (ii) for that purpose enter the Servient Land and carry out work;
 - (d) the Defaulting Party must pay the Other Party the costs of the Default Notice and the specified proportion of costs incurred in performing the obligation; and
 - (e) the Other Party may recover from the Defaulting Party as a liquidated debt any money payable pursuant to this clause 9.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

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Continue in additional Annexure Schedule, if required

10 DISPUTES

If a dispute in relation to this Easement arises between the parties:

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party;
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties):
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

11 NOTICES

All notices and communications under this Easement will be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to the address that either party notifies to the other from time to time.

12 GENERAL

This Easement will continue forever unless surrendered by the Grantee. Accordingly, the Grantor has no power to terminate this Easement or any of the Grantee's rights under this Easement for any reason.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

2.5: PART 6-10 HOMESTEAD DRIVE EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

Page 9 of 9 Pages

Continue in additional Annexure Schedule, if required

ATTESTATIONS

SIGNED by [Grantor name to be inserted] as Grantor by:

[Full name of director]

[Full name of director]

[Signature]

[Signature]

[Note: attestation and method of execution to be confirmed when Grantor is confirmed]

SIGNED by the following signatories as Grantee in the presence of:

[Full name of signatory]

[Full name of signatory] etc

Witness signature

[Note: all trustees will need to be listed and sign this Easement]

Full name

Occupation

Address

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

3 LEASES FOR LEASEBACK PROPERTIES



DOCUMENTS

3.1 MINISTRY OF EDUCATION LEASE



DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Agreed Marutūāhu Iwi collective lease - 11 November 2014

MINISTRY OF EDUCATION
TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[]

Affected instrument Identifier
and type (if applicable)

All/part

Area/Description of part or stratum

[]	[]	[]
-----	-----	-----

Lessor

[]

Lessee

HER MAJESTY THE QUEEN for education purposes

Estate or Interest

Insert "fee simple"; "leasehold in lease number " etc.

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F *continued*

Attestation

Signature of the Lessor	Signed in my presence by the Lessor
<hr/>	<hr/>
[]	<i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:
<hr/>	<hr/>
[]	<i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:
<hr/>	<hr/>
[]	<i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:
<hr/>	<hr/>
[]	<i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F *continued*

<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F *continued*

<p>Signature of the Lessee</p> <p>_____</p> <p>Signed for and on behalf of HER MAJESTY THE QUEEN as Lessee by [] (acting pursuant to a written delegation given to him/her by the Secretary for Education) in the presence of:</p>	<p>Signed in my presence by the Lessee</p> <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address</p>
--	--

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Lessee

* The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased.

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F *continued*

Annexure Schedule

Page [] of [] Pages

Insert instrument type

Lease Instrument

BACKGROUND

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between **[insert name of claimant group]** and the Crown, under which the parties agreed to transfer the Land to **[insert name of post-settlement governance entity]** and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

SCHEDULE A

ITEM 1 THE LAND

[insert full legal description - note that improvements are excluded].

ITEM 2 START DATE

[insert start date].

ITEM 3 ANNUAL RENT

[\$insert agreed rent] plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

ITEM 4 TERM OF LEASE

21 Years.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F *continued*

Annexure Schedule

Page [] of [] Pages

Insert instrument type

Lease Instrument

ITEM 5 LESSEE OUTGOINGS

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

ITEM 6 PERMITTED USE

The Permitted Use referred to in clause 9.

ITEM 7 RIGHT OF RENEWAL

Perpetual rights of renewal of 21 years each with the first renewal date being the 21st anniversary of the Start Date, and then each subsequent renewal date being each 21st anniversary after that date.

ITEM 8 RENT REVIEW DATES

The 7th anniversary of the Start Date and each subsequent 7th anniversary after that date.

ITEM 8A UNDERLYING ZONING

[Insert underlying zoning applied to the Land in the Draft Auckland Unitary Plan publicly notified 15 March 2013]

ITEM 9 LESSEE'S IMPROVEMENTS

As defined in clause 1.9 and including the following existing improvements: ***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F continued

Annexure Schedule

Page [] of [] Pages

Insert instrument type

Lease Instrument

[]

The above information is taken from the Lessee's records as at []. A site inspection was not undertaken to compile this information.

ITEM 10 CLAUSE 16.5 NOTICE

To: [Post-Settlement Governance Entity] ("the Lessor")
And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")
From: [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 16.5 of the Lease; and
- (ii) It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and
- (iii) It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary; and
- (iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE

[]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F continued

Annexure Schedule

Page [] of [] Pages

Insert instrument type

Lease Instrument

ITEM 11 CLAUSE 16.6 NOTICE

To: [Post-Settlement Governance Entity] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")

From [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that before it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee's Improvement is fixed to the Land it:

- (i) will not claim any security interest in any Lessee's Improvement (as defined in the Lease) at any time; and
- (ii) acknowledges that any Lessee's Improvements remain the Lessee's property at all times.

SCHEDULE

[]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

3.1: MINISTRY OF EDUCATION LEASE

Form F *continued*

Annexure Schedule

Page [] of [] Pages

Insert instrument type

Lease Instrument

SCHEDULE B

1 Definitions

1.1 The term "Lessor" includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term "Lessee" includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 "Business Day" means a day that is not:

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of [Auckland] [and] Wellington.

1.4 "Crown" has the meaning given in section 2(1) of the Public Finance Act 1989.

1.5 "Crown Body" means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and

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- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
 - (c) the New Zealand Railways Corporation; and
 - (d) a company or body that is wholly owned or controlled by one or more of the following:
 - (i) the Crown;
 - (ii) a Crown entity;
 - (iii) a State enterprise; and
 - (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.

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2 Payment of Annual Rent

- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

3 Rent Review

When a party initiates the rent review process as set out in clause 3.5:

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6% of the lesser of:
 - (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
 - (b) the Nominal Value being:
 - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
 - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.3A If, in the relevant district or unitary plan, the zoning for the Land is Specialised (as defined in clause 3.3B), the zoning for the Land for the purposes of clause 3.3 will be deemed to be the Alternative Zoning (as defined in clause 3.3B).
- 3.3B For the purposes of clauses 3.3B and 3.3C:

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- (a) "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).
- (b) "Alternative Zoning" means the most probable zoning which provides for the highest and best use of the Land as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):
 - (i) the underlying zoning for the Land (if any);
 - (ii) the zoning for the Land immediately prior to its Specialised zoning;
 - (iii) the zoning of land adjacent to or in the immediate vicinity of the Land (or both) if there is a uniform neighbouring zone;
 - (iv) if the Land is within the Auckland Council area, the underlying zoning applied to the Land in the Draft Auckland Unitary Plan publicly notified 15 March 2013, as set out in Item 8A of Schedule A; and
 - (v) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the Land.

3.3C If, during the rent review process, the registered valuers do not agree on the Alternative Zoning, the process set out in clause 3.5 will apply (with necessary modifications) to the determination of the Alternative Zoning, where applicable, at the same time that the Annual Rent is determined under clause 3.5.

3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:

- (a) at the start date of every new Term; and

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- (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.

3.5 The rent review process will be as follows:

- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
- (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
- (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
- (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
- (e) The parties must try to agree on a new Annual Rent.

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- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
 - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
 - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.

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- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

4 Payment of Lessee Outgoings

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

5 Valuation Roll

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

6 Utility Charges

6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.

6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.

6.3 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

7 Goods and Services Tax

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

8 Interest

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

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9 Permitted Use of Land

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

10 Designation

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

11 Compliance with Law

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

12 Hazards

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

13 Damage or Destruction

13.1 Total Destruction

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days' notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

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13.2 **Partial Destruction**

- (a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.
- (b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:
 - (i) the repair and reinstatement of the Land have been completed; and
 - (ii) the Lessee can lawfully occupy the Land.
- (c) If:
 - (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
 - (ii) any necessary council consents shall not be obtainable,then the term will terminate with effect from the date that either such fact is established.

13.3 **Natural Disaster or Civil Defence Emergency**

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:

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- (i) such inability ceases; or
 - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
- (i) the relevant clause has applied for a period of 6 months or more; or
 - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

14 **Contamination**

14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.

14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.

14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

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15 **Easements**

- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.
- 15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

16 **Lessee's Improvements**

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.

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- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.
- 17 **Rubbish Removal**
- The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.
- 18 **Signs**
- The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.

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19 **Insurance**

- 19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.
- 19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

20 **Fencing**

- 20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.
- 20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

21 **Quiet Enjoyment**

- 21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.
- 21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

22 **Assignment**

- 22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:
- (a) any Department or Crown Body; or
 - (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

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- 22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).
- 22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.
- 22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.
- 23 **Subletting**
- The Lessee may without the Lessor's consent sublet to:
- (a) any Department or Crown Body; or
 - (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).
- 24 **Occupancy by School Board of Trustees**
- 24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.
- 24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.
- 24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

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25 **Lessee Break Option**

The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

26 **Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

27 **Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or
- (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

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27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

28 **Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.

29 **Right of First Refusal for Lessor's Interest**

29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.

29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

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29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

[29A] **Single point of contact**

29A.1 If the Land is held by two or more separate entities as tenants-in-common, those entities must nominate:

- (a) one bank account for payment of rent under this lease (and provide details of that bank account to the Lessee); and
- (b) one representative (*Lessor's Nominee*) that the Lessee can deal with in relation to any matter arising under this Lease.]

30 **Exclusion of Implied Provisions**

30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

- (a) Clause 11 – Power to inspect premises.

31 **Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

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32 **Disputes**

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

33 **Service of Notices**

33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education
Ministry of Education
PO Box 1666
WELLINGTON 6011

33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

[insert contact details]

33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

34 **Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

35 **Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

3.2 NORTH SHORE HOUSING BLOCKS LEASE

[The North Shore Housing blocks lease is subject to the terms and conditions being agreed in accordance with the process for that agreed between the Minister for Treaty of Waitangi Negotiations and the Marutūāhu Iwi. The North Shore Housing blocks lease will be inserted into the signing version of this deed and this note will be removed.]

3.3 TAMAKI LEADERSHIP CENTRE PROPERTY LEASE

[The Tamaki Leadership Centre property lease is subject to the terms and conditions being agreed in accordance with the process for that agreed between the Minister for Treaty of Waitangi Negotiations and the Marutūāhu Iwi. The Tamaki Leadership Centre property lease will be inserted into the signing version of this deed and this note will be removed.]

3.4 CALLIOPE ROAD LEASE

[The Calliope Road lease is subject to the terms and conditions being agreed in accordance with the process for that agreed between the Minister for Treaty of Waitangi Negotiations and the Marutūāhu Iwi. The Calliope Road lease will be inserted into the signing version of this deed and this note will be removed.]

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3.5 TORPEDO BAY PROPERTY LEASE

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3.5: TORPEDO BAY PROPERTY LEASE

SCHEDULE A

ITEM 1 THE LAND

All the land specified and described in Schedule C.

ITEM 2 THE COMMENCEMENT DATE

The commencement date of this Lease shall be the day of 20[].

ITEM 3 ANNUAL RENTAL

The annual rental payable at the Commencement Date is \$157,000 plus GST payable by equal instalments in advance on the first day of each and every month commencing on the Commencement Date and monthly thereafter during the continuance of the Term.

ITEM 4 TERM OF LEASE

4.1 Initial Term

21 years from the Commencement Date.

4.2 Renewal Terms

The Lessee shall have six rights of renewal for further terms of 21 years each provided however the Lessee may during any Renewal Term terminate its interest under this Lease on the giving of 36 months' prior written notice to the Lessor at any time during the Renewal Term.

4.3 Expiry Date

[]

ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes and/or other charges levied against the Lessor in respect of its ownership and interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

5.4 All costs associated with the repair, maintenance or replacement of any fencing on the Land, subject however to clause 2.10(a) of Schedule B.

ITEM 6 PERMITTED USE

For the general purposes of the New Zealand Defence Force or designation for defence purposes issued by the Minister of Defence applying to the Land, and/or for any other use of the Crown or Crown body in its discretion and for such other use or uses as are permitted under the Resource Management Act 1991 to be carried out on the Land.

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3.5: TORPEDO BAY PROPERTY LEASE

ITEM 7 RENT REVIEW DATES

7.1 CPI Rent Review Date

On the seventh and fourteenth anniversary of the Commencement Date, and on the seventh and fourteenth anniversary of the commencement date of each Renewal Term.

7.2 Market Rent Review Date

On the commencement date of each Renewal Term.

ITEM 8 LESSOR'S IMPROVEMENTS

Nil.

ITEM 9 LESSEE'S IMPROVEMENTS

Lessee's Improvements shall mean all improvements on the Land of any kind whatsoever as at the Commencement Date of this Lease and any time after that, including buildings, infrastructure in relation to services, sealed yards, paths, landscape structures, fences, roads and tunnels and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease. The Lessee's Improvements include in particular, as at the Commencement Date, those buildings listed in Schedule D attached.

ITEM 10 CLAUSE 3.06(b) CHARGEHOLDER'S NOTICE

To: [The Lessor]

(hereafter called "**the Lessor**")

And to: [The Lessee]

(hereafter called "**the Lessee**")

From: [Mortgagee/Chargeholder] (hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of this Lease including in particular clause 3.06(b) and (c) of the Lease of the Land and that in particular it agrees that despite any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (a) will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (b) will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease; and
- (c) agrees that this acknowledgement is irrevocable.

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3.5: TORPEDO BAY PROPERTY LEASE

ITEM 11 ADDRESS FOR SERVICE

Lessor: [MARUTŪĀHU/ NGĀI TAI KI TĀMAKI]

AUCKLAND

Attn: General Manager

Facsimile:

Lessee: CHIEF OF DEFENCE FORCE New Zealand Defence Force Defence House
2/12 Aitken Street
WELLINGTON

Facsimile: (04) 496-0006

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3.5: TORPEDO BAY PROPERTY LEASE

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

(a) The expression "**the Lessor**" shall include and bind:

- (i) the persons executing this lease as Lessor; and
- (ii) any Lessor for the time being under it; and
- (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.

(b) The expression "**the Lessee**" shall include and bind:

- (i) the person executing this lease as Lessee;
- (ii) all the Lessees for the time being under it; and
- (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "**the Lessee**" shall where the context requires include the Lessee's agents, personnel, contractors and invitees and any person on the Land under the control or direction of the Lessee.

(c) Words importing the singular or plural number shall include the plural or singular number respectively.

1.02 "**contaminated land**" has the same meaning given to that term under section 1 of the Resource Management Act.

1.03 "**CPI**" means the Consumer Price Index (All Groups) as published by Statistics New Zealand (or any other successor organisation) on a quarterly basis. If that index ceases to be published on a quarterly basis or if the basis of calculation of the index is fundamentally changed then CPI will mean the nearest equivalent index on which the parties agree or failing agreement as may be determined by an independent expert with the appropriate qualifications and expertise appointed by the President for the time being (or his or her nominee) of the New Zealand Institute of Chartered Accountants (or any successor organisation).

1.04 "**Crown Body**" means—

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004);

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3.5: TORPEDO BAY PROPERTY LEASE

- (b) a State enterprise (as defined by section 2 of the State-Owned Enterprises Act 1986);
 - (c) the New Zealand Railways Corporation;
 - (d) a company or body that is wholly owned or controlled by 1 or more of the following:
 - (i) the Crown;
 - (ii) a Crown entity;
 - (iii) a State enterprise;
 - (iv) the New Zealand Railways Corporation; and
 - (e) a subsidiary of, or company related to, a company or body referred to in paragraph (d).
- 1.05** "**Existing Tenancies**" means all existing leases, licences and other occupancy agreements in respect of the Land, which are current as at the commencement date of this Lease (if any) and which are described in Schedule G.
- 1.06** "**Goods and Services Tax**" or "**GST**" means tax levied in accordance with the Goods and Services Tax Act 1985 ("**GST Act**") or any tax in the nature of a Goods and Services Tax.
- 1.07** "**Government Work**" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown including any Crown entity as defined in the Crown Entities Act 2004 or any Minister of the Crown for any public purpose.
- 1.08** "**Initial Term**" means the initial term of the Lease which commences on the Commencement Date and expires 21 years from the Commencement Date.
- 1.09** "**Lease**" means, unless the context otherwise requires, this lease and any new lease or Renewal Term granted in renewal of it.
- 1.10** "**Lease Split**" has the meaning given in clause 3.04(b)(ii).
- 1.11** "**Lessee's Improvements**" means all improvements on the Land as are specified in Item 9 of Schedule A.
- 1.12** "**Lessee's Outgoings**" means all outgoings which the Lessee is obliged to pay specified in Item 5 of Schedule A.
- 1.13** "**Other Interests**" means [].

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3.5: TORPEDO BAY PROPERTY LEASE

- 1.14 "Remediate" means the investigation, clean-up, removal, abatement, disposal, control, containment, encapsulation or other treatment of contaminated land.
- 1.15 "Renewal Term" means each renewal term of 21 years each.
- 1.16 "Term" means the Initial Term and any Renewal Term.
- 1.17 "Working Day" means any day other than a Saturday or Sunday, or statutory holiday, or anniversary holiday in Wellington or Auckland.
- 1.18 The terms "Land", "Commencement Date", "Annual Rental", "Permitted Use", "CPI Rent Review Date" and "Market Rent Review Date" shall have the meanings ascribed to them in Schedule A.
- 1.19 The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof and "subletting" and "sublease" shall be construed accordingly.
- 1.20 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.21 A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.22 Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.
- 1.23 Any reference in this Schedule B to any clause of this document shall be a reference to that clause within Schedule B, unless the context otherwise states i.e. refers specifically to an item or clause referred to in Schedule A of this document.
- [1.24 Where any clause in this Lease which will apply if the Crown ceases to be the Lessee in occupation under this Lease requires a modification to any item in Schedule A the provisions of the relevant clause shall take precedence and the item in Schedule A shall be modified accordingly.]

PART II - LESSEE'S COVENANTS

2.00 LESSEE'S COVENANTS

2.01 PAYMENT OF ANNUAL RENT

The Lessee shall pay the annual rent without deduction in the manner and at the times provided in Item 3 of Schedule A. All payments of rent during the Term shall be paid by direct bank payment or as the Lessor may direct.

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3.5: TORPEDO BAY PROPERTY LEASE

2.02 PAYMENT OF LESSEE OUTGOINGS

- (a) The Lessee shall pay the Lessee's Outgoings in respect of the Land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the Term shall subsist until the end or earlier termination of this Lease.
- (c) If required by an Authority, the Lessee shall install and maintain at the Lessee's costs any meter or other measuring device necessary for the proper charging of the services, utilities or amenities supplied to or used by the Lessee on the Land.

2.03 USE OF LAND

The Lessee:

- (a) may use the Land for the Permitted Use described in Item 6 of Schedule A, subject to clause 2.04; and
- (b) acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor regarding use of the Land.

2.04 COMPLIANCE WITH LAW

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land (including any obligations imposed on the Lessor under any statute, regulation or bylaw in respect of activities or events occurring or not occurring on the Land and notwithstanding anything expressed or implied in this Lease) or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

2.05 AVOIDANCE OF DANGER

The Lessee shall:

- (a) take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard, provided however any goods associated with defence purposes stored or used on the Land, shall not be regarded as being in breach of this clause;
- (b) promptly remedy any danger or hazard that may arise on the Land, provided however this shall not extend to any danger or hazard that has arisen through storms, adverse weather, seismic, volcanic, geothermal, or similar activity, or any other act of god;

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3.5: TORPEDO BAY PROPERTY LEASE

- (c) at all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with;
- (d) comply with any obligations imposed on the Lessee under this Lease or by statute, regulation, bylaw or other laws relating to the use or occupation of the Land; and
- (e) remediate, as soon as possible but in any event no later than the expiry of this Lease in any manner considered appropriate by the Crown but to the standard required for recreational land use, any land that became contaminated land during the Term of this Lease.

2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS AND GROUNDS

The Lessee shall be responsible, at the Lessee's own expense, for maintaining the Lessee's Improvements on the Land in such order, condition and repair during the continuance of this Lease as the Lessee requires having regard to the Lessee's use of the Lessee's Improvements.

2.07 NO LESSOR MAINTENANCE

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land unless the Lessor, or anyone under the Lessor's control, has caused any damage to the Lessee's Improvements in which case the Lessor shall remedy such damage.

2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS

- (a) The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the reasonable satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.
- (b) The Lessee shall also take steps to keep the grounds comprised in the Land in reasonable order.

2.09 INSURANCE

The Lessee may elect at its own discretion as to whether it will insure any Lessee's Improvements on the Land, and if so against such risks as it also elects, to the intent that the Lessee may choose at its option to fully or partly self-insure, and whether to reinstate or not any damaged or destroyed Lessee's Improvements, subject to the Lessee's obligations contained in clause 2.15(c).

2.10 SUNDRY ACKNOWLEDGEMENTS

The Lessee and Lessor acknowledge:

- (a) that the Lessor shall not be liable to erect or maintain any dividing or boundary fence, however the Lessor will as the owner of an adjoining block (subject to the Lessor's rights under the Fencing Act 1978) contribute a one half share of costs towards the cost of the erection or replacement and maintenance of any dividing or boundary fence or portion thereof either now or in the future, between the Land including any separate block of land within the Land, and any adjoining land which is or becomes the property of the Lessor;

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- (b) that subject to clause 2.10(a), the Lessee may at its own cost and expense in all things fence any of the internal and/or external boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

2.11 GST

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST (if any) payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST (if any) in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment (if any) shall be payable on demand, upon the provision in each case of a valid GST invoice for such payment.

2.12 NO INDEMNITY

For clarity, the Lessee does not provide any indemnity to the Lessor in regard to any matter under this Lease.

2.13 LESSEE'S ACKNOWLEDGEMENT

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused or contributed to by the act or omission of the Lessor or persons acting under the control of the Lessor.

2.14 RATING ROLL

The name of the Lessee shall be entered into the rating information database and the district valuation roll as the ratepayer in respect of the Land unless there is/are (a) sublease(s) from the Lessee for a term (including renewals) of not less than 10 years imposing an equivalent obligation upon such registered sublessees as is provided for in section 11 of the Local Government (Rating) Act 2002. The Lessee shall duly and punctually pay all rates payable by the Lessee in respect of the Land at the time when the same become due and payable.

2.15 REPAIR, REINSTATEMENT, OR REBUILDING OF IMPROVEMENTS

- (a) In the event any of the Lessee's Improvements are destroyed or damaged, then the Lessee shall have an absolute discretion as to the extent to which and whether at all, and when it will or may repair, reinstate or rebuild (as the case may be) any of the Lessee's Improvements on the Land.
- (b) Should the Lessee elect to reinstate and/or rebuild then it shall obtain all formal consents required for that purpose, and carry out all associated work in compliance with the relevant consents.
- (c) If the Lessee elects not to repair, reinstate or rebuild (as the case may be) any of the Lessee's Improvements then the Lessee will prior to expiry of the Lease:
- (i) remove from the Land any substantially damaged or destroyed part of the Lessee's Improvements;
 - (ii) remove from the surface of the Land all debris from any demolition; and

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- (iii) cap services (where these have not been removed).

PART III - LESSOR'S COVENANTS

3.00 LESSOR'S COVENANTS

3.01 RENEWED TERM

- (a) The Lessee may, at any time at least 36 calendar months before the end of the term, give the Lessor written notice to renew the term of the Lease.
- (b) The Lessor will grant a Renewal Term for this Lease from the date following the expiry date of the term as follows:
 - (i) the annual rental for the initial rent review period shall be determined in accordance with clause 4.05(b) to (h);
 - (ii) subject to the provisions of the preceding subclause, the Renewal Term of the Lease shall be upon and subject to the covenants and agreements expressed and implied in this Lease except that the term of this Lease plus any further terms shall expire on or before the Final Expiry Date;
 - (iii) the annual rent shall be subject to review during the Renewal Term of the Lease at intervals of seven years as from and including the commencement date of the Renewal Term as provided for in clause 4.05(a).
- (c) Time is not of the essence for the purposes of clause 3.01(a) unless –
 - (i) the Lessee does not give a notice by the date determined under clause 3.01(a); and
 - (ii) the Lessor gives written notice to the Lessee that the Lessee has three further calendar months to give a notice to renew the term,in which case, time becomes of the essence in relation to the giving of the notice within that three month period.
- (d) Nothing in clause 3.01(c) prevents the Lessee from applying to a court under section 261 of the Property Law Act 2007.

3.02 QUIET ENJOYMENT

The Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor (except as permitted under this Lease).

3.03 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS AND REDEVELOPMENT

The Lessee may construct further Lessee's Improvements, and/or make alterations or additions to Lessee's Improvements (including relocation of Lessee's Improvements) to the intent that the Lessee shall have an absolute discretion regarding any construction alterations or additions made to, and/or relocation of the Lessee's Improvements and shall not be required to obtain consent from the Lessor in respect of these matters provided such works are in furtherance of using the Land for the Permitted Use. This clause shall only apply as long as the Crown or a Crown body remains the Lessee under

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3.5: TORPEDO BAY PROPERTY LEASE

this Lease. If neither the Crown nor a Crown body is the Lessee under this Lease then this clause shall be amended to provide that the Lessee may not construct further improvements or make any alterations or additions to the Lessee's Improvements without the consent of the Lessor first had and obtained on each occasion which consent is not be unreasonably or arbitrarily withheld.

3.04 REDEVELOPMENT

- (a) The Lessee may at its cost redevelop the Land at the time and in the manner it determines in its sole discretion ("**Redevelopment**"), provided that any Redevelopment:
- (i) does not materially adversely affect the value of the Lessor's estate in the Land or results in a disposal or other alienation of the fee simple estate in the Land; and
 - (ii) does not include any works on the Land likely to cause any subsidence, sinkage or damage to the Land, or the land or property of another person, but "damage" does not include lawful excavation.
- (b) Subject to clause 3.04(a) a Redevelopment may include, but is not limited to:
- (i) a subdivision of the Crown leasehold estate in the Land;
 - (ii) the grant or receipt of any easements in respect of the interest created by this Lease or any lease in substitution for this Lease;
 - (iii) the installation of infrastructure on the Land relating to the supply of services;
 - (iv) uplifting the designation referred to in clause 3.08;
 - (v) a request for a district plan change under the Resource Management Act 1991; and
 - (vi) ground works including excavation.
- (c) The Lessee will carry out any Redevelopment:
- (i) in accordance with the requirements of the territorial authority or any other authority or corporation having jurisdiction;
 - (ii) strictly in compliance with the provisions of any resource consent, building consent and/or designation; and
 - (iii) to a good and workmanlike standard, and in accordance with sound construction and engineering practice.
- (d) The Lessor will:
- (i) cooperate with the Lessee and provide assistance;
 - (ii) lend its name to any application or action as the registered proprietor of the fee simple estate of the Land;
 - (iii) sign any documentation; and

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(iv) do all other things,

if reasonably required by the Lessee to carry out a Redevelopment, and the Lessee will pay the Lessor's reasonable costs.

- (e) The Lessee will not pay any more rental than it would have otherwise paid under this Lease as if the Redevelopment had not been carried out, to the intent that the Lessor will not get the benefit of any increase in rental as a consequence of any Redevelopment. No account will be taken of any Redevelopment in assessing the market value of the Land under clause 4.05(b).
- (f) The provisions of this clause 3.04 will apply only where the Crown or a Crown body is the Lessee under this Lease.
- (g) For so long as the Lessor is an entity representing [Marutūāhu or Ngāi Tai ki Tāmaki], nothing in this clause 3.04 prevents the Lessor from participating in any statutory, regulatory or other process to determine whether or not a Redevelopment may proceed or proceed subject to certain conditions, if the participation relates to matters of cultural, historical and spiritual significance to [Marutūāhu Iwi/Ngāi Tai ki Tāmaki].

3.05 LESSOR'S IMPROVEMENTS

For clarity the parties record that there are no Lessor's improvements.

3.06 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
 - (i) despite any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease, and irrespective of how such Lessee's Improvements are annexed to the Land;
 - (ii) the Lessee has a discretion as to whether or not the Lessee's Improvements are to be insured by the Lessee in its own name; and
 - (iii) when any Lessee's improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee but subject in any event to the Lessee's obligations under clause 2.06 and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Lessor at any time during the Lease propose to grant any mortgage or charge over the Land then, prior to doing so, it shall first do the following:
 - (i) advise the Lessee in writing of its intention to mortgage or charge its interests in the Land as soon as it takes steps to arrange such mortgage or charge; and
 - (ii) have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 10, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor,

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3.5: TORPEDO BAY PROPERTY LEASE

provided that the Lessor shall not be required to comply with this clause 3.06(b) if the Lease has been registered.

- (c) The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee makes good any damage to the Land, which arises due to such demolition or removal.
- (d) The Lessee will, provided it has done the following, be regarded as having complied with its obligations under clause 3.06(c):
 - (i) removed from the surface of the Land all debris from any demolition;
 - (ii) capped services (where these have not been removed); and
 - (iii) cut off any Lessee Improvements which have been removed at the ground level.

3.07 GROUND WORKS

- (a) Clause 3.07(b) applies only where neither the Crown nor a Crown body is the Lessee under this Lease.
- (b) The Lessee shall not:
 - (i) make any excavation of the Land (other than in association with any maintenance of, alterations and additions to, the Lessee's Improvements under clause 3.03 of this Lease) where such excavation would require a resource consent without first obtaining the Lessor's written approval which shall not be unreasonably withheld;
 - (ii) knowingly conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
 - (iii) remove any boundary-fence on any external perimeter of any separate block of land comprised within the Land or retaining works except where this is necessary or conducive to the conduct of and/or consistent with the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference; or
 - (iv) make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of and/or consistent with the Permitted Use and the Lessor has first been given not less than twenty (20) working days' notice in writing of the proposed installation, alteration or interference,

without, in each case, the Lessor's prior written approval, although this will not be required where the works are reasonably necessary or conducive to the conduct of and/or consistent with the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions. No notice or consent shall be required however where any such work of the type contemplated in this clause is required in the event of an emergency.

- (c) Neither the Crown nor a Crown body shall knowingly conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person, but "damage" does not include lawful excavation.

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3.5: TORPEDO BAY PROPERTY LEASE

3.08 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for defence purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the Lessee giving any notice to terminate this Lease, should the Lessee elect to so terminate, then the following shall apply. The Lessee shall take all necessary steps to cause the designation to be uplifted as soon as possible following the expiry of the Lease. The Lessor will provide the Lessee with all reasonably practical and commercially prudent assistance to cause the designation to be uplifted.

3.09 PROVISION OF CERTAIN NOTICES TO THE LESSEE

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

3.10 RECLASSIFICATION OF LAND

- (a) The Lessor shall not take any steps to reclassify the Land from General Land under the Te Ture Whenua Maori Act 1993 or any other legislation which could result in the Land being treated other than as ordinary freehold land not owned by Maori. The Lessor further warrants and undertakes that it will take all necessary steps to oppose any attempt by any other person to reclassify the Land from General Land under that Act or under any other legislation which could result in the Land being treated other than as ordinary freehold land not owned by Maori.
- (b) The Lessor shall indemnify and keep the Lessee indemnified from and against any action claim, demand, loss (including loss of profit or fall in value of the Lessee's leasehold interest in the Land under this lease) damage, cost, expense or liability whatsoever which the Lessee may suffer, incur, or become liable for in the event that the Land is reclassified as anything other than General Land under the Te Ture Whenua Maori Act 1993 (or consequent upon such reclassification) or in the event that the security of tenure of the Lessee's leasehold interest in the Land granted at the Commencement Date pursuant to this Lease is similarly undermined, impaired, prejudiced or otherwise affected during the Term.

3.11 BENEFITS TO LAND NOT TO BE RESTRICTED OR CANCELLED

- (a) The Lessor shall not cancel, surrender or modify any easements or other like rights or interests whether registered or not which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee which consent may not be arbitrarily or unreasonably withheld.
- (b) The Lessee may as of right however grant or receive the benefit of any easements or other like rights or interest whether registered or not against and/or in respect of the Lessee's leasehold interest in this Lease provided however the nature of the rights so granted do not materially adversely affect the value of the Lessor's estate in the Land.

3.12 REVERSE SENSITIVITY

- (a) The Lessor in its capacity as owner of the fee simple estate in the Land will not in any way inhibit the Lessee from carrying out any lawful works or activities on the

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Land pursuant to the current defence purposes designation or to any other designation, or pursuant to any rights under the Resource Management Act 1991 or otherwise.

- (b) The Lessor in its capacity as owner of the fee simple estate in the Land will not bring proceedings for nuisance arising from the carrying out of any lawful works or activities referred to in clause 3.12(a), and will make no complaint or submission or rejection relating to those works or activities or to the effects of the use of the Land.
- (c) The Lessor will not in its capacity as owner of the fee simple estate in the Land:
 - (i) make or lodge; nor
 - (ii) be party to; nor
 - (iii) finance nor contribute to the cost of,

any submission, application, proceeding (either under the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict continuation of the current or future lawful uses of the Land including without limitation any action to require the Lessee to modify the current or future uses carried out within the Land.
- (d) For so long as the Lessor is an entity representing [Marutūāhu or Ngāi Tai ki Tāmaki], nothing in clauses 3.12(a) to (c) prevents the Lessor from participating in any statutory, regulatory or other process in relation to the works or activities, if the participation relates to matters of cultural, historical and spiritual significance to [Marutūāhu or Ngāi Tai ki Tāmaki].
- (e) The covenants on the part of the Lessor under clause 3.12(a) to (c) are to continue to apply until such time as:
 - (i) the Crown ceases to be the owner of the leasehold interest in the Land; or
 - (ii) the Crown otherwise agrees to discharge the covenants.
- (f) If the Lessee surrenders or assigns its leasehold estate in any part of the Land ("**surrendered part**") but continues to hold a leasehold estate in the balance of it ("**retained part**") then the Lessor must do all things necessary, at the cost of the Lessee, to register a covenant against the fee simple estate in the surrendered part in favour of the leasehold estate in the retained part which has the effect of ensuring the covenants in clause 3.12(a) to (e) bind the owner from time to time of the fee simple estate in the surrendered part.

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PART IV – MUTUAL COVENANTS

4.00 MUTUAL COVENANTS

4.01 LESSOR TRANSFER

The Lessor shall be permitted to transfer its interests under this Lease at any time during the Initial Term or Renewal Term of this Lease subject, however, to the following. The Lessor covenants for the benefit of the Lessee that it will ensure that the Lessor's interests in the Land are transferred subject to this Lease, to the intent that any transferee shall be bound by this Lease.

4.02 ASSIGNMENT AND SUBLETTING

- (a) Subject to clause 4.20, the Lessee shall be permitted as of right to:
- (i) assign its interest under the Lease to a Crown body; and
 - (ii) grant any sublease, licence or any other occupancy right in respect of any part or parts of the Land for such uses as the Lessee permits for a term, including any renewals, of no more than 35 years.
- (b) Subject to clause 4.20, the Lessee may assign its interest under this Lease to any other person with the prior written approval of the Lessor.

4.03 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Subject to clause 4.03(c), should the Lessee default in the observance or performance of any of the Lessee's obligations under this Lease, and should the Lessor have first served not less than twenty-one (21) Working Days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor acting reasonably, in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) Any notice served under the provisions of clause 4.03(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.
- (c) The Lessor in entering upon the Land pursuant to its rights under clause 4.03(a) shall do so at its own risk and shall only enter upon the Land at such times as the Lessee has approved and subject to compliance with any reasonable conditions imposed by the Lessee, including in particular those in relation to security.

4.04 LESSEE'S IMPROVEMENTS

The parties acknowledge that:

- (a) The Lessee may, prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed prior to the expiration or

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sooner determination of the Lease or within such further time as the parties may agree, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee.

- (b) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land as a consequence of such removal as provided in clause 3.06(d) and 2.15.
- (c) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease despite any rule of law or equity to the contrary.
- (d) In any review (if any) of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental.
- (e) Despite the generality of the provisions of clause 4.04(a), the Lessee shall not upon expiry of the Lease, remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor.
- (f) For the avoidance of doubt, nothing in this Lease shall obligate the Lessee to remove the property referred to in this clause 4.04(e), should the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease.
- (g) All Lessee's Improvements remaining upon the Land after the termination date or such further period as the parties may agree, shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor, subject to any alternate agreement which the parties may have reached in relation to any particular Lessee's Improvement.

4.05 RENT REVIEW

- (a) The annual rental payable from each CPI Rent Review Date shall be the greater of:
 - (i) the annual rental payable by the Lessee immediately prior to that CPI Rent Review Date; and
 - (ii) the annual rental payable by the Lessee immediately prior to that CPI Rent Review Date, adjusted by the same percentage as the cumulative percentage change in the CPI during the period which corresponds as nearly as possible to the period from the last CPI Rent Review Date (or if there is no previous CPI Rent Review Date, the commencement date of this Lease) to the relevant CPI Rent Review Date.
- (b) The annual rental shall be reviewed by the Lessor on the Market Rent Review Dates.
- (c) The annual rental shall on each review under clause 4.05(b) be calculated as such amount as is equivalent to 6.25% of the market value of the Land as at the relevant Market Rent Review Date, in each case.

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- (d) The market value of the Land as at the relevant Market Rent Review Date shall be reviewed for the purposes of applying the percentage amount referred to in clause 4.05(c) to determine the revised annual rental as follows:
- (i) the Lessor shall commence a review by not earlier than three (3) months prior to a Market Rent Review Date or at any time up to six months after any Market Rent review Date by giving written notice to the Lessee specifying the then current market value for the Land considered by the Lessor to be the current market value for the Land as at the relevant review date. That notice shall also state that the Lessee is required under the provisions of the Lease to respond in writing within 28 days of receipt of the Lessor's notice;
 - (ii) if, by written notice to the Lessor within twenty-eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the then current market value of the Land is as aforesaid, then the current market value of the Land shall be determined in accordance with the provisions of clause 4.05(d)(vii);
 - (iii) the current market value of the Land so determined or accepted shall be the current market value of the Land for the purposes of establishing the revised annual rental in accordance with clause 4.05(c) from the Market Rent Review Date or the date of the Lessor's notice if such notice is given later than six (6) months after the review date;
 - (iv) pending the determination of the current market value of the Land and consequential revised annual rental having regard to the percentage referred to in clause 4.05(c), the Lessee shall pay a rental amount which is halfway between that specified in the Lessor's notice (provided that the rental is substantiated by a registered valuer's report, and the rental payable immediately prior to the relevant review date. Upon determination of the new rental, an appropriate adjustment shall be made;
 - (v) the rent review shall be recorded in a variation of this Lease, the cost of which shall be shared equally between the parties;
 - (vi) in assessing the market value for the Land:
 - (aa) no account shall be taken of the Lessee's Improvements or this Lease to the intent that the Land is assumed to be vacant land without any improvements; and
 - (bb) no account shall be taken of the Permitted Use to the intent that the Land will be valued on the basis that it is available to be utilised for its highest and best use permitted under the District Plan, but disregarding any designation for defence use or other Crown or Crown body use;
 - (vii) immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the current market value of the Land (and consequential revised market rent having regard to clause 4.05(c)) but if agreement is not reached within twenty-eight (28) days then the current market value of the Land as at the relevant review date, may be determined by one party giving written notice to the other requiring the current market value for the Land to be determined by arbitration.
- (e) In the event of either party requiring determination by arbitration under clause 4.05(d)(vii), then the following shall apply:

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- (i) The parties must not later than five working days after the date of the recipient party having received the other party's written notice under the preceding clause agree upon and jointly upon one person to act as the valuation arbitrator for the purposes of the arbitration. If the parties do not jointly appoint a valuation arbitrator within this time, then either party may request that the Arbitrators and Mediators Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
- (ii) The valuation arbitrator must be suitably qualified and experienced in determining disputes about the market value in rental of properties similar to the Land and is appointed when he or she confirms his or her willingness to act.
- (iii) The valuation arbitrator must no later than [7] working days after the date the matter is referred to the valuation arbitrator's determination (the arbitration commencement date) do the following:
 - (aa) give notice to the parties of the arbitration hearing, which must be held at a date, time and venue determined by the valuation arbitrator after consulting with the parties, but not in any event be any later than [30] working days after the arbitration commencement date; and
 - (bb) establish the procedure for the arbitration hearing, including providing each party with the right to examine and re-examine or cross-examine as applicable, each party's valuer, and any other person giving evidence.
- (iv) Each party must, not later than 5pm on that day that is 10 working days before the arbitration hearing, give to the valuation arbitrator, the other party and the other party's valuer, its valuation report, submission, and any sales or expert advice that it will present at the hearing. Each party must attend the arbitration hearing with its respective valuers, and may have its solicitors attend.
- (v) The valuation arbitrator must have regard to the requirements of natural justice at the arbitration hearing and provide his or her determination of the market value of the Land for the purposes of determining the rental in accordance with the formula under the Lease, no later than [20] working days after the arbitration hearing.
- (vi) An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.
- (f) The market value of the Land for the purposes of determining the relevant rental under the rent review provisions of the Lease, shall be that which is agreed under clause 4.05(d) above or determined by the valuation arbitrator under clause 4.05(e)(iii) as the case may be.
- (g) In relation to the determination of the market value of the Land, each party must pay its own costs and half the costs of a valuation arbitration, or in the case of the latter, meet such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator.
- (h) For the purposes of this clause 4.05, the market value of the Land will be assessed on a GST exclusive basis. For the avoidance of doubt, nothing in this subclause (h) limits the Lessor's ability to charge GST in addition to the rental, in accordance with clause 2.11 where applicable.

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- (i) For the purposes of this clause 4.05, "**Land**" means the land described in Item 1 of Schedule A but reduced –
 - (a) as if a marginal strip of land 1140m² in area as shown on the plan attached as Schedule H had been reserved from the Land under section 24 of the Conservation Act 1987 on or before the Commencement Date; and
 - (b) by the area of the embankment areas of 405m² shown on that plan.

4.06 LESSOR'S REMEDIES FOR BREACH

- (a) Should the Lessee for a period exceeding 10 working days, breach any covenant, express or implied, on the Lessee's part in this Lease, then subject to the Lessor having served, in accordance with section 353 of the Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007, it will be lawful for the Lessor to re-enter the Land and/or terminate the Lease.
- (b) Clause 4.06(c) to (e) apply instead of clause 4.06(a) for so long as the Crown is the Lessee under this Lease.
- (c) Should the Lessee either default in the payment of any rental at any time during the Renewal Term for a period exceeding thirty days or more, or otherwise breach any covenant on the Lessee's part in this Lease expressed or implied, then the following shall apply:
 - (i) before exercising any Lessor remedies (but expressly excluding re-entry or termination which shall not be permitted) the Lessor shall serve a notice (called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged; and
 - (ii) the Lessor's remedies shall specifically exclude re-entry and termination to the intent that this remedy not be available to the Lessor during the Term of this Lease.
- (d) The Default Notice despite anything to the contrary contained in clause 4.07(c) above shall specify that:
 - (i) the Lessee must within 30 days of receipt of such notice take reasonable steps towards remedying the default specified; and
 - (ii) that should the Lessee not remedy the default specified within this time (insofar as it is reasonably possible to remedy such breach within that time), the Lessor shall then be at liberty to exercise its remedies for such default but subject to clause 4.07(c)(ii).
- (e) The Lessor acknowledges that it shall not exercise its remedies as provided for under this clause 4.07, unless and until the provisions of clause 4.07(c) and (d) have been satisfied in full and further that any such remedy exercised contrary to the provisions of clause 4.07(c) shall be null and void ab initio.

4.07 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the Lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

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4.08 DIFFERENCES AND DISPUTES

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clause 4.09 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(d)(ii).

4.09 SERVICE OF NOTICES

- (a) Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served, emailed or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 11 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.
- (b) If either party does not have a current address for service, then service in terms of this clause may be effected on that party:
 - (i) in any manner mentioned in part 7 of the Property Law Act 2007; or
 - (ii) by registered post addressed to the registered office or principal place of business of the party intended to be served;

and any notice or other document given or served by the method mentioned in paragraph (i) shall be deemed to have been given or served and received by the other party two days after the date of posting.

4.10 REGISTRATION OF LEASE

Either party may at any time during the Lease, require by giving written notice to the other party, that this Lease be registered. In such case the parties shall take all necessary steps to achieve and complete this and costs in respect of the same shall be met by the party requiring registration.

4.11 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's reasonable costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee or mandated by this Lease), or the obtaining of any consents or approvals associated with this Lease.

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- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper legal enforcement or proper attempted legal enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

4.12 INTEREST

If the Lessee during the term shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 10 working days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 10 working days from the date such demand (accompanied by a valid invoice) is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of [4%] per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

4.13 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

the covenant to pay rental or other money payable by the Lessee under this Lease;

(b) ***Use of Land:***

compliance with the Permitted Use.

4.14 WAIVER

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

4.15 RENT MORATORIUM

If any moratorium or other law, act or regulation that (despite clause 4.05 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, then the following shall apply. The review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended, to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date with such reviewed rental becoming payable from the date the moratorium is lifted or law, act or regulation is repealed or amended. Any subsequent rent review shall take place on the next following review date as specified in Item 7 of Schedule A.

4.16 CONSENTS AND APPROVALS

Where the Lessee is required to obtain any consent or approval of the Lessor under this Lease then the following shall apply:

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- (a) the Lessor will be entitled to grant or refuse its consent or approval in its absolute discretion (unless the consent or approval is sought in relation to assigning, subletting or changing the permitted use in which circumstances the Lessor will not unreasonably or arbitrarily withhold its consent or approval, or unless the Lease expressly provides otherwise); and
- (b) the Lessor will respond promptly to any request made by the Lessee for any such consent.

4.17 LESSEES SECURITY REQUIREMENTS

The Lessor will in exercising any right it has under this Lease, comply at all times with any security requirements of the Lessee as advised to the Lessor from time to time by the Lessee.

4.18 REDUCTION OF RENT IN EVENT OF SIGNIFICANT DAMAGE TO LAND

In the event of any catastrophic, or significant damage to the Land which arises at any time during the term, through any act of God which is incapable of being remedied by the Lessor and renders the Land (or any part of it) unusable by the Lessee then rental payable by the Lessee shall abate in proportion to the loss of use of the Land by the Lessee.

4.19 CONCURRENT LEASE AND OTHER INTERESTS

- (a) The parties acknowledge that parts of the Land may be subject to the Existing Tenancies and Other Interests at the Commencement Date, and agree that should that be the case, then:
 - (i) the Lessee takes this Lease subject to any Existing Tenancies and Other Interests;
 - (ii) the Lessee has the right to receive rent and other payments due from the lessees, licensees and occupiers under the Existing Tenancies and Other Interests;
 - (iii) the Lessee has the right to enforce the covenants under the Existing Tenancies and Other Interests (but without having any obligation to do so);
 - (iv) the Lessee will not be liable for any breach of this Lease that is caused by any act or default of any occupier of any part of the Land under the Existing Tenancies or Other Interests;
 - (v) the Lessor must not do or omit to do anything, or require the Lessee to do or to omit to do anything that will cause the Lessee to be in breach of the Lessee's obligations under any Existing Tenancies or Other Interests;
 - (vi) the Lessee will have no liability to the Lessor for any loss, damage or any other cost that arises from the act or omission of any occupier under any Existing Tenancies or Other Interests; and
 - (vii) the Lessee may in all respects and despite any other provision in this Lease, deal with the Existing Tenancies and Other Interests without reference to the Lessor, including surrendering, extending or cancelling any Existing Tenancies or Other Interests.

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4.20 PRE-EMPTIVE RIGHT

- (a) The following subclauses of this clause 4.20 will only apply in the event that the Lessee proposes to assign the Lessee's interest in this Lease or sublet all the Land for a period of 14 years or more. The Lessor shall have no pre-emptive right in the event of the Lessee wishing to transfer or assign or sublet its interest as Lessee under this Lease to a Crown Body.
- (b) If at any time before the expiration or earlier termination of the Term or any renewed or extended term the Lessee wishes to deal with the Lessee's interest in this Lease as provided in clause 4.20(a) (including any assignment by way of sale of the Lessee's Improvements) ("**Lessee's Interest**") the Lessee must immediately give written notice to the Lessor ("**Lessee's Notice**").
- (c) The Lessor may (but shall not be obliged to), for 30 days following the date of receipt of the Lessee's Notice (time being of the essence), give the Lessee a written notice of interest in the Lessee surrendering to the Lessor the residue of its term under the Lease ("**Surrender of Lease**").
- (d) If the Lessor gives a notice of interest under subclause (c), then the value of the Surrender of Lease must be agreed or determined in accordance with Schedule E.
- (e) If subclause (d) applies, then the Lessor may for 30 days after the value of the Surrender of Lease has been agreed or determined (time being of the essence) give the Lessee written notice that it requires the Surrender of Lease.
- (f) If the Lessor serves a notice in accordance with subclause (e), then the provisions in Schedule F will apply.
- (g) If the Lessor does not serve a notice in accordance with subclauses (c) or (e) then (subject to clause 4.20(i) below) the Lessee may, within [two] years of the Lessee's Notice ("**Assignment Period**"), assign or otherwise deal with its interest as provided in clause 4.20(a) to any other person without triggering the pre-emptive right contained in this clause 4.20. The provisions of clause 4.02 of this Lease will apply to any such assignment.
- (h) If the Lessee wishes to assign or otherwise deal with the Lessee's Interest after the Assignment Period, then the Lessee must notify the Lessor and subclauses (b) to (g) will apply.
- (i) The Lessee may not during the Assignment Period offer to assign or otherwise deal with its interest under the Lease as described in clause 4.20(a) on terms which are more favourable than those under which the Lease or part of it might have been dealt with had the Lessor issued a notice in accordance with clause 4.20(e).

4.21 ARTEFACTS AND HERITAGE COVENANT

- (a) Artefacts of naval historical interest, and, all other articles of value or antiquity, structures and other remains of naval historical interest ("**Artefacts**") shall, as between the Lessor and Lessee, be deemed to be the property of the Lessee.
- (b) Clause 4.21(a), as it applies to taonga tuturu, is subject to part 2 of the Protected Objects Act 1975.
- (c) The Lessee may, without the consent of the Lessor, -

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- (i) apply for an authority under the Historic Places Act 1993 to destroy, damage, or modify any archaeological site on the Land;
- (ii) destroy, damage or modify any archaeological site on the Land, or remove any Artefact from the Land, provided that the Lessee:
 - (aa) complies with:
 - (1) any authority granted under the Historic Places Act 1993;
 - (2) all other applicable statutes, ordinances, regulations, bylaws and codes; and
 - (3) the requirements of the territorial authority or any other authority or corporation having jurisdiction; and
 - (bb) makes good any damage to the Land caused by such removal, damage, destruction or modification.
- (d) The Lessee may negotiate and agree with Heritage New Zealand Pouhere Taonga for the execution of a heritage covenant under the Heritage New Zealand Pouhere Taonga Act 2014:
 - (i) to provide for the protection, conservation, and maintenance of any historic place or historic area on the Land; and
 - (ii) on such terms and conditions as the Lessee thinks fit, including provision for public access.
- (e) The Lessor will:
 - (i) consent to any heritage covenant in the form proposed by the Lessee;
 - (ii) sign any documentation; and
 - (iii) do all other things reasonably required by the Lessee to enter into the heritage covenant.
- (f) For so long as the Lessor is an entity representing Marutūāhu Iwi or Ngāi Tai ki Tāmaki, nothing in this clause 4.21 prevents the Lessor from participating in any process under the Protected Objects Act 1973 or Heritage New Zealand Pouhere Taonga Act 2014 in relation to Artefacts or the entering into a heritage covenant if the participation relates to matters of cultural, historical or spiritual significance to [Marutūāhu Iwi/Ngāi Tai ki Tāmaki].

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SCHEDULE C

The Land

[0.5851 hectares, approximately, being the land comprised in SO 485026]

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SCHEDULE D

[List of buildings included in the Lessee's Improvements to be attached here]

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SCHEDULE E

VALUATION PROCESS FOR LESSEE'S INTEREST IN LEASE

1 LESSEE'S INTEREST IN LEASE

- 1.1 If the Lessor gives the Lessee a written notice of interest in the Lessee surrendering to the Lessor the residue of its term under the Lease under clause 4.20 (c), then the value of the Surrender of Lease will be determined in accordance with this valuation process.

2 APPOINTMENT OF VALUERS AND ARBITRATOR

- 2.1 No later than 10 Working Days after the date when the Lessor gives the Lessee Notice under clause 4.20(c), the Lessor and the Lessee must each:
- 2.1.1 appoint a Registered Valuer and instruct him or her to assess the Value of the [Lessee's interest in the Lease], in accordance with this valuation process and on the terms set out in the letter of instructions following this schedule; and
 - 2.1.2 notify each other of the identity of the Registered Valuer.
- 2.2 The Lessor and the Lessee must endeavour to agree on and appoint a person who is suitably qualified and experienced in determining disputes about the value of assets similar to the Lessee's interest in the Lease no later than 15 Working Days after the date the Lessor gives the Lessee the Notice of Interest.
- 2.3 If no appointment has been made under paragraph 2.2 by that date, the Lessee must request that the President of the New Zealand Institute of Valuers make the appointment.
- 2.4 An appointment of an Arbitrator is made once the appointee has confirmed that he or she will conduct an arbitration, if requested by the Lessee, in accordance with this valuation process.

3 VALUATION REPORTS

- 3.1 Both the Lessor's Valuer and the Lessee's Valuer must prepare a Valuation Report that includes their respective assessments of the Value on the Valuation Date.
- 3.2 The Lessor and the Lessee must each deliver a copy of its Valuation Report to the other by no later than the Valuation Exchange Date.
- 3.3 Both Valuation Reports must:
- 3.3.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with this valuation process;
 - 3.3.2 include an executive summary containing:
 - (a) a summary of the valuation along with key valuation assumptions and parameters;
 - (b) a summary of any key issues affecting the value; and
 - 3.3.3 attach appendices setting out:

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3.5: TORPEDO BAY PROPERTY LEASE

- (a) a statement of valuation policies; and
- (b) relevant market and sales and leasing information.

4 SINGLE VALUATION REPORT MAY DETERMINE SURRENDER OF LEASE VALUE

- 4.1 If only one Valuation Report is delivered by a Party by the Valuation Exchange Date then the assessment of Value in that report will be, the Surrender of Lease Value.

5 NEGOTIATIONS TO AGREE VALUE

- 5.1 If each Party has provided a Valuation Report to the other by no later than the Valuation Exchange Date, the Lessor and the Lessee must endeavour to agree on, and record in writing, the Value. The amount agreed as the Value is the Surrender of Lease Value.
- 5.2 Where the Value is not determined or agreed within 20 Working Days after the Valuation Exchange Date, the determination of the Surrender of Lease Value must be referred to an Arbitrator in accordance with paragraph 6.

6 DETERMINATION OF MARKET VALUE

- 6.1 Within 5 Working Days of paragraph 5.2 applying, the Lessee must refer the dispute to the Arbitrator (the "Arbitration Commencement Date").
 - 6.2 The Arbitrator must promptly give notice of a meeting to be attended by the Lessor and the Lessee and their respective Registered Valuers, at a venue and time to be decided by the Arbitrator after consultation with the Parties and having regard to their obligations under paragraph 6.3 but not later than 30 Working Days after the Arbitration Commencement Date.
 - 6.3 The Lessor and Lessee must by no later than 5.00pm on the day which is 5 Working Days prior to the date of the meeting give to the Arbitrator and to each other their Valuation Reports and any submission or expert evidence based on that information which the Lessor or Lessee intend to present at the meeting.
 - 6.4 At the meeting, the Arbitrator must:
 - 6.4.1 establish a procedure and give each Party the right to examine, cross examine and re-examine the Registered Valuers and other experts appointed by the other Party in relation to the information provided to the Arbitrator; and
 - 6.4.2 have regard to the requirements of natural justice in the conduct of the meeting.
 - 6.5 The Arbitrator shall hold the meeting and give his or her determination of the Value no later than 50 Working Days after the Arbitration Commencement Date.
 - 6.6 The determination of the Arbitrator is final and binding on the Lessor and the Lessee.
- #### 7 GENERAL PROVISIONS
- 7.1 Each party will bear its own costs in connection with this valuation process.
 - 7.2 The costs of the Arbitrator and the costs of the hire of a venue for the meeting referred to in paragraph 6.2 will be borne by the parties equally.

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3.5: TORPEDO BAY PROPERTY LEASE

- 7.3 Despite paragraphs 7.1 and 7.2, the Arbitrator may award costs against the Lessor or Lessee where the Arbitrator considers that it would be just to do so on account of unreasonable conduct.
- 7.4 The Lessor and the Lessee each acknowledge that they are required to use reasonable endeavours to ensure the processes set out in this valuation process operate in the manner, and within the timeframes, specified in this valuation process.
- 7.5 If the processes set out in this valuation process are delayed through any event (such as the death or incapacity or unwillingness or inability to act of any Registered Valuer or the Arbitrator), the Lessor and the Lessee shall use reasonable endeavours and co-operate with each other to minimise the delay.

8 NOTICES

- 8.1 The provisions of this paragraph apply to notices under this valuation process.
- 8.2 The Party giving the Notice must sign it.
- 8.3 A Notice to a Party must be in writing addressed to that party at that Party's address or facsimile number.
- 8.4 Until any other address or facsimile number of a Party is given by Notice to the other Party, they are as follows:

[MARUTŪĀHU / NGĀI TAI KI
TĀMAKI PSGE]

CHIEF OF DEFENCE FORCE

[]

[New Zealand Defence Force
Defence House]

- 8.5 Delivery of a Notice may be made:
- 8.5.1 by hand; or
- 8.5.2 by post with pre-paid postage.
- 8.6 A Notice delivered:
- 8.6.1 by hand will be treated as having been received at the time of delivery;
- 8.6.2 by pre-paid post will be treated as having been received on the day of transmission.
- 8.7 If a Notice is treated as having been received on a day that is not a Working Day, or after 5pm on a Working Day, that Notice will (despite paragraph 8.6) be treated as having been received the next Working Day.

9 DEFINITIONS

In this valuation process, unless the context otherwise requires:

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3.5: TORPEDO BAY PROPERTY LEASE

Arbitration Commencement Date means the date the Lessee makes the referral to arbitration referred to in paragraph 6.1;

Arbitrator means a person appointed under paragraphs 2.2 or 2.3;

Lessee's Valuation Report means the valuation report prepared by the Lessee's Valuer in accordance with the valuation process;

Lessee's Valuer means a Registered Valuer appointed by the Lessee to take part in this valuation process;

Lessor's Valuation Report means the valuation report prepared by the Lessor's Valuer in accordance with this valuation process;

Lessor's Valuer means a Registered Valuer appointed by the Lessor to take part in this valuation process;

Notice means a notice in writing given under paragraph 8, and **Notifying** has a corresponding meaning;

Party means the Lessor and Lessee;

Registered Valuer means a valuer registered with the Valuers' Registration Board of New Zealand and with experience in the valuation of assets similar to the Lessee's interest in the Lease;

Surrender of Lease Value, means the Value for the Lessee's interest in the Lease determined or agreed under this valuation process;

Valuation Date means 20 Working Days after the Lessee's Notice;

Valuation Exchange Date means 40 Working Days after the date when the Lessor gives the Lessee notice under clause 4.20(c);

Valuation Reports means the valuation reports prepared for the Lessor and the Lessee in accordance with this valuation process;

Value is the amount, exclusive of GST, for which the Lessee's interest in the Lease, might be expected to realise on the Valuation Date between a willing buyer and a willing seller, in an arm's length transaction, after proper marketing, if the parties to the transaction had each acted knowledgeably, prudently and without compulsion; and

Working Day means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Auckland.

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3.5: TORPEDO BAY PROPERTY LEASE

LETTER OF INSTRUCTIONS

[Valuer's name]

[Address]

Valuation instructions

INTRODUCTION

Marutūāhu Iwi/Ngāi Tāi ki Tāmaki and the Crown have entered into a lease of Torpedo Bay dated [] (Lease).

A copy of the Lease is attached.

The Surrender of Lease Value (as defined in Schedule E to the Lease) is to be determined by establishing the market value of the Lessee's interest in the Land and improvements on the Land.

DEFINITIONS

Terms defined in the Lease (including Schedule E) are used in these instructions and have the same meaning.

VALUATION REQUIRED

You are required to undertake the above valuation as at [] (the valuation date).

[New Zealand Defence Force] [Marutūāhu Iwi/Ngāi Tāi ki Tāmaki] [~~delete one~~] will require another registered valuer to assess the market value of the property at the valuation date.

VALUATION PROCESS

You must –

- (a) before inspecting any of the properties, attempt to agree with the other valuer –
 - (i) the valuation methods applicable;
 - (ii) the comparable sales to be used in determining the value; and
 - (iii) joint instructions to a technical advisor e.g. procurement of planning, engineering and subdivision cost advice may be required. The technical advisor's engagement will be direct with the Crown and Marutūāhu Iwi/ Ngāi Tāi ki Tāmaki but it will be up to the valuers to confirm scope and deliverables having regard to reasonable valuation requirements;
- (b) inspect the properties together with the other valuer within 10 business days of the date of the appointment;
- (c) attempt to resolve by the following day any matters or issues arising from your inspections;
- (d) by not later than [] –

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3.5: TORPEDO BAY PROPERTY LEASE

- (i) prepare a draft valuation report; and
- (ii) provide a copy of that report to us;
- (e) by not later than [] –
 - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
 - (ii) exchange a copy of your final valuation report to both parties and the valuer instructed by the other party; and
- (f) assist the parties to agree value and participate in the dispute resolution and arbitration process set out in Schedule E to the Lease.

You should proceed with (b)-(f) despite a failure to agree on any of the matters referred to in (a) above.

REQUIREMENTS FOR YOUR MARKET VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

- (a) the Lessee's interest in the Land is a current asset and is available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of that interest have been met; and
- (c) the Lessee's interest in the Land shall be sold with vacant possession.

Your valuation is –

- (a) to assess market value of the Lessee's interest in the Land on the basis of market value as defined in the International Valuation Standards contained in the current edition of the Australia and New Zealand Valuation and Property Standards;
- (b) to take into account –
 - (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date;
 - (ii) [any disclosure information]; and
 - (iii) not to take into account a claim in relation to any of the properties by Marutūāhu Iwi/ Ngāi Tāi ki Tāmaki.

REQUIREMENTS FOR YOUR VALUATION REPORT

A full valuation report in accordance with the relevant Australia and New Zealand Valuation and Property Standards is required.

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3.5: TORPEDO BAY PROPERTY LEASE

Please include:

- an executive summary containing:
 - a summary of the valuation along with key valuation parameters;
 - a summary of key issues affecting value;
- your assessment of the Surrender of Lease Value;
- details of your assessment of the highest and best use of the Land;
- comment on the rationale of likely purchasers of the Lessee's interest in the Land;
- full details of the approaches to value and a clear identification of the key variables which in your opinion have a material impact on the valuation;
- a description of improvements and an assessment of their value;
- relevant market, sales, rental and lease information and comments on its specific relevance to the subject properties; and
- a statement of valuation methodology and policies.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than –

- (a) [], to prepare and deliver to us a draft valuation report;
- (b) [], to review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us and exchange a copy of your final valuation report to both parties and the valuer instructed by the other party;
- (c) [], to –
 - (i) prepare a written report containing analysis of both valuers reports to assist the parties to agree a market value for the property; and
 - (ii) give your analysis to both parties and the valuer instructed by the other party;
- (d) [], to meet the other valuer to discuss the above analysis and provide a joint recommendation to the Crown and Marutūāhu Iwi/ Ngāi Tāi ki Tāmaki.

OPEN AND TRANSPARENT VALUATION

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith. In particular, you must copy any questions you have (including to the current owner and the independent technical advisor referred to above) or receive with regard to the valuation, together with the responses, to the settling group and the land holding agency.

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3.5: TORPEDO BAY PROPERTY LEASE

CONFLICTS

If you are aware, or become aware, of a conflict in undertaking a valuation for the {insert} you will advise the writer immediately.

FEES

The commercial terms of your engagement will be in accordance with your offer of service dated {insert}.

PERSONNEL

{insert} is engaged on the basis that {insert} will be the principal valuer who is directly involved in the preparation of the valuation reports and will be available to assist with negotiations and/or formal determination of value if required.

COMMUNICATIONS

Your engagement will be direct with {insert}. However all communication and correspondence with respect to the valuation is to be addressed through {insert}, and similarly all instructions of the {insert} will be issued by {insert} unless otherwise advised.

Thank you for your assistance. If further information is required please contact me.

Yours faithfully

[Name of signatory]

[Position]

[Settling group/Land holding agency][delete one]



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3.5: TORPEDO BAY PROPERTY LEASE

SCHEDULE F

TERMS OF SURRENDER

1 DEFINITIONS

1.1 In this schedule, unless the context otherwise requires:

1.1.1 the definitions in Schedule A and clause 2 of Schedule B apply; and

1.1.2 the following definitions apply:

Election Date means the date the Lessee receives a notice from the Lessor requiring a surrender of the Lease in accordance with clause 4.18(e) of Schedule B;

Lessee's Interest has the meaning given to it in clause 4.18(b) of Schedule B;

Surrender Amount means the value of the surrender of the lease agreed or determined in accordance with clause 4.18(d) of Schedule B;

Surrender Date means the date that is 20 business days after the Election Date; and

Surrender Period means the period from the Election Date to the Surrender Date.

2 SURRENDER

2.1 In consideration of the Lessor paying the Surrender Amount to the Lessee on the Surrender Date the Lessee surrenders and assigns the Lessee's Interest to the Lessor as and from the Surrender Date, to the intent that the term created by the Lease will merge and be extinguished in the freehold of the Land on the Surrender Date.

2.2 The surrender of the Lessee's Interest will not prejudice:

2.2.1 the respective rights, powers and remedies of each of the parties to the Lease in respect of any breach or non-observance of any covenant, condition or agreement of the Lease occurring prior to the Surrender Date;

2.2.2 any encumbrances affecting or benefiting the Lessee's Interest provided the same have been disclosed to the Lessor prior to the Election Date (as varied under paragraph 6.1.4(a)); or

2.2.3 any additional encumbrances affecting or benefiting the Lessee's Interest entered into by the Lessee under paragraph 6.1.4(b).

3 POSSESSION

3.1 Subject to clause 8.1 of this Schedule, possession of the Land and the Lessee's Improvements must, on the Surrender Date:

3.1.1 be given by the Lessee; and

3.1.2 taken by the Lessor; and

3.1.3 be vacant possession subject only to any encumbrances referred to in paragraphs 2.2.2 and 2.2.3 that prevent vacant possession being given and taken.

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3.5: TORPEDO BAY PROPERTY LEASE

4 SETTLEMENT

- 4.1 The Lessee must provide the Lessor with the following in relation to the Lessee's Interest on the Surrender Date:
- 4.1.1 evidence of a registrable surrender of lease instrument; and
 - 4.1.2 all contracts and other documents (but not public notices such as proclamations and Gazette notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the Lessee's Interest after the Surrender Date.
- 4.2 The Lessee must, on the Surrender Date, provide the Lessor with any key or electronic opener to a gate or door on, and any security code to an alarm for, the Land and Lessee's Improvements that are held by the Lessee unless to provide it would be inconsistent with the Encumbrances.

5 APPORTIONMENT OF OUTGOINGS AND INCOMINGS

- 5.1 If, as at the Surrender Date the Lessee has:
- 5.1.1 pre-paid any Outgoings in respect of any period falling after the Surrender Date, the Lessor must pay the amount of the excess to the Lessee; or
 - 5.1.2 received any incomings (including by way of example any monies the Lessee has received under any Existing Obligations) the Lessee has received in respect of any period falling after the Surrender Date, the Lessee must pay the amount of the excess to the Lessor.
- 5.2 An amount payable under paragraph 5.1 in relation to the Lessee's Interest must be paid on the Surrender Date.
- 5.3 The Lessee must, before the Surrender Date, provide the Lessor with a written statement calculating the amount payable by the Lessee or the Lessor under paragraph 5.1.

6 OBLIGATIONS AND RIGHTS DURING THE SURRENDER PERIOD

- 6.1 The Lessee must, during the Surrender Period:
- 6.1.1 ensure the Lessee's Interest is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and
 - 6.1.2 pay the Outgoings as they fall due; and
 - 6.1.3 ensure the Lessee's obligations under the Building Act 2004 are complied with in respect of any works carried out on the Land during the period;
 - (a) by the Lessee; or
 - (b) with the Lessee's written authority; and
 - 6.1.4 obtain the prior written consent of the Lessor before:

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3.5: TORPEDO BAY PROPERTY LEASE

- (a) materially varying a disclosed encumbrance affecting or benefiting the Lessee's Interest;
- (b) entering into an encumbrance affecting or benefiting the Lessee's Interest; or
- (c) procuring a consent, providing a waiver, or giving an approval, that materially affects the Lessee's Interest, under the Resource Management Act 1991 or any other legislation; and

6.1.5 use reasonable endeavours to obtain permission for the Lessor to enter and inspect the Land and the Lessee's Improvements under paragraph 6.2.2 if the Lessor is prevented from doing so by the terms of an encumbrance referred to in paragraphs 2.2.2 or 2.2.3.

6.2 The Lessor, during the Surrender Period:

6.2.1 must not unreasonably withhold or delay any consent sought under paragraph 6.1.4; and

6.2.2 may enter and inspect the Land and Lessee's Improvements on one occasion:

- (a) after giving reasonable notice; and
- (b) subject to the terms of the encumbrances referred to in paragraphs 2.2.2 or 2.2.3; and
- (c) must comply with all reasonable conditions imposed by the Lessee in relation to entering and inspecting the Land and the Lessee's Improvements.

7 DAMAGE AND DESTRUCTION

7.1 Paragraphs 7.2 to 7.4 apply if, before the Surrender Date:

7.1.1 the Lessee's Interest is destroyed or damaged; and

7.1.2 the destruction or damage has not been made good.

7.2 Where this paragraph applies:

7.2.1 the parties must complete the surrender of the Lessee's Interest in accordance with this Schedule; and

7.2.2 the Surrender Amount will be reduced by the amount by which the value of the Lessee's Interest has diminished, as at the Surrender Date, as a result of the destruction or damage.

8 LESSEE'S IMPROVEMENTS

8.1 The Lessee must comply with clause 4.04 of Schedule B, and for the purposes of that clause the Surrender Date shall be deemed to be the expiry of this Lease and the Lessee shall be required to comply with its obligations in respect of any matters which are required to be complied with by the Expiry Date, by the Surrender Date.

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3.5: TORPEDO BAY PROPERTY LEASE

9 FURTHER ASSURANCES

- 9.1 Each party must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things, that the other may reasonably require to give full force and effect to this Schedule.



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3.5: TORPEDO BAY PROPERTY LEASE

SCHEDULE G

EXISTING TENANCIES

[To be completed as at Commencement Date]

DOCUMENTS

3.5: TORPEDO BAY PROPERTY LEASE

SCHEDULE H

EXCLUDED AREAS FOR RENT REVIEW PURPOSES



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4 WAIPAPA RELATIONSHIP AGREEMENT

MEMORANDUM OF UNDERSTANDING

BETWEEN

Marutūāhu Iwi

(Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri)

AND

New Zealand Transport Agency (Waka Kotahi)

1. Purpose

The New Zealand Transport Agency (**the Transport Agency**) places great emphasis on building and maintaining relationships with iwi. The Transport Agency seeks to develop understanding, support and assistance of, and co-operation with, iwi in relation to all of its projects.

To assist it in giving effect to its obligations under sections 18H of the Land Transport Management Act 2003, and sections 6(e), 6(f), 6(g), 7(a), 8 of the Resource Management Act 1991, the Transport Agency has entered into this Memorandum of Understanding (**MoU**) with the Marutūāhu Iwi collective.

The Marutūāhu Iwi collective comprises Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri. The Marutūāhu Iwi collective redress deed dated [*insert date*] sets out Marutūāhu Iwi collective redress to be provided by the Crown to the Marutūāhu Iwi for shared interests in the Tāmaki Makaurau region.

The Marutūāhu Iwi collective redress deed provides for the Marutūāhu Iwi to receive shared redress in relation to the area known by them as Waipapa. At the time of the Treaty of Waitangi Waipapa was also known as Mechanics Bay (Beach Road and The Strand today, following the old shoreline). Waipapa holds particular importance for the Marutūāhu Iwi as a site proposed by a Crown representative for a reserve for these tribes. This was not delivered and a native hostelry for all Māori visitors to Auckland was constructed on the site instead.

The Marutūāhu Iwi collective redress deed provides for the following redress in relation to land at Waipapa administered by the Transport Agency:

- an obligation to purchase any of the Transport Agency land that becomes surplus within 35 years of settlement date (clause 4.32);
- a statutory acknowledgement over the Transport Agency land (clause 3.1.9(c)); and
- a relationship agreement between the Transport Agency and the Marutūāhu Iwi collective in respect of the Transport Agency proposal for development of the land at Waipapa (clause 3.11).

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4: WAIPAPA RELATIONSHIP AGREEMENT

The purpose of this MoU is to define the roles and responsibilities, including communication and consultation processes, between Marutūāhu Iwi and the Transport Agency with respect to the future development of the project commonly referred to as 'Grafton Gully Stage 3' (**the Project**) as described in more detail in Appendix A.

Marutūāhu Iwi will be engaged to provide cultural advice and associated effects assessments during the investigation, design and statutory approval phases of the Project. Marutūāhu Iwi will be engaged throughout the full life of the Project through to post construction.

2. Parties

New Zealand Transport Agency

The Transport Agency is a Crown Entity established under the Land Transport Management Act 2003. The Agency's statutory objective is: "to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest".

Marutūāhu Iwi

Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri have a centuries old association with Tāmaki Makaurau beginning with the arrival of the Tainui waka around the end of the first millennium AD and continuing during the ensuing years alongside other tribes. The Waipapa area holds significance as the site of a reserve proposed by a Crown representative around the time the Crown acquired significant areas of land from the Marutūāhu Iwi. The participation of the Marutūāhu Iwi in this Memorandum of Understanding does not indicate support for the Project and indeed the goal of the Marutūāhu Iwi is to secure the land at Waipapa. The Marutūāhu Iwi therefore oppose the Project to the extent that it is an impediment to the return of the land.

3. Objectives

The objectives of this Memorandum of Understanding are:

- a. To achieve a partnership which reflects the respective responsibilities of the Crown and the Transport Agency in relation to the principles of the Treaty of Waitangi through open and frank dialogue between the Marutūāhu Iwi collective and the Transport Agency; and
- b. To set out how the parties will establish and maintain a positive, co-operative and enduring relationship regarding the protection of the iwi's cultural interests in respect of the Grafton Gully Stage 3 Project, while recognising that the Marutūāhu Iwi actively seek the return of the land at Waipapa.

4. Principles

The Transport Agency and the Marutūāhu Iwi collective agree to uphold the following relationship principles when implementing this MoU:

- a. working in a spirit of co-operation;
- b. ensuring early engagement on issues arising in the Agreement area (as described in Appendix A);
- c. operating a 'no surprises' approach;

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4: WAIPAPA RELATIONSHIP AGREEMENT

- d. acknowledging that the relationship is evolving, not prescribed;
- e. respecting the independence of the parties and their individual mandates, roles and responsibilities;
- f. recognising and acknowledging the mutual respect from the parties working together by sharing their vision, knowledge and expertise; and
- g. committing to the highest level of engagement.

5. Agreement

Both parties agree to:

- a. maintain open and transparent communication;
- b. seek to resolve issues;
- c. respect the principles, consultation framework and terms of this agreement;
- d. uphold confidentiality of any information agreed to be confidential; and
- e. review this document after 12 months and then at least every two years.

6. Engagement and reporting

Both the Transport Agency and the Marutūāhu Iwi collective commit to developing an effective engagement strategy that reports regularly to each party and to the wider iwi membership.

7. Escalation of Matters

If one party considers that there has been a breach of the terms of this Agreement then that party may give written notice to the other that they are in dispute. Any dispute of any kind whatsoever arising between the parties in connection with or arising out of this Agreement shall be dealt with, in the first instance, by the [Chair of the Marutūāhu Iwi collective] and the Transport Agency's Regional Director for Auckland and Northland.

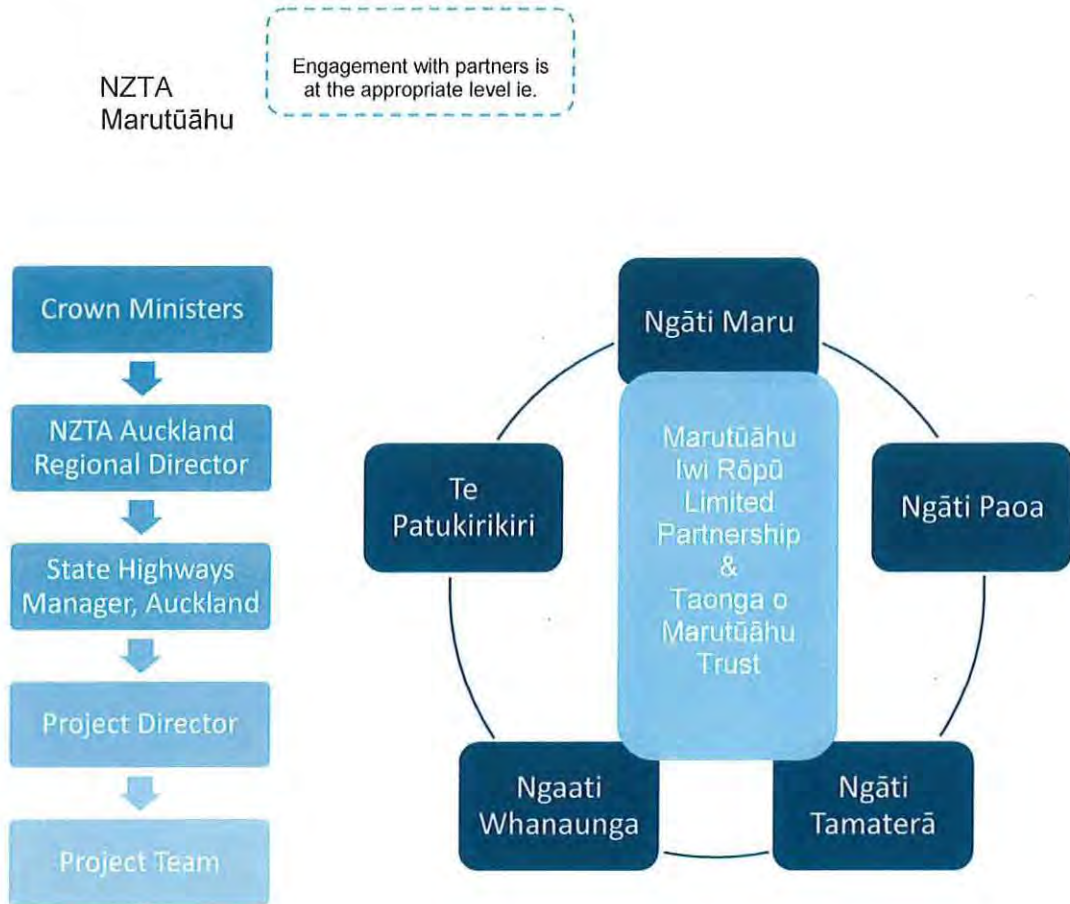
8. Review and Amendment

The Transport Agency and the Marutūāhu Iwi collective acknowledge that this Agreement is a living document which may be updated and amended by agreement in writing between the parties to take account of future developments, consistent with but not limited by section 5.



4: WAIPAPA RELATIONSHIP AGREEMENT

9. Structure



10. Consultation Process

To be determined prior to the commencement of further detailed investigation and/or design on the Project.

11. Definitions and Interpretation

The provisions of this Memorandum shall be interpreted in a manner that best furthers the purpose of this Memorandum.

Marutūāhu Iwi means the collective group comprising Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri.

Marutūāhu Iwi collective redress deed means the deed signed by the Crown and mandated signatories for and on behalf of the Marutūāhu Iwi dated [date].

Marutūāhu Iwi [Cultural Redress] Trust means Taonga o Marutūāhu Trust.

Marutūāhu Rōpū Limited Partnership means the limited partnership known by that name and registered on 21 June 2013.

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4: WAIPAPA RELATIONSHIP AGREEMENT

New Zealand Transport Agency means the agency established by section 93 of the Land Transport Management Act 2003.

Project means the Grafton Gully Stage 3 project described in Appendix 1.



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4: WAIPAPA RELATIONSHIP AGREEMENT

SIGNED on [DATE]

SIGNED for and on behalf
of the Marutūāhu Iwi collective entities by
[to be completed]

in the presence of:

WITNESS

Name:

Date:

SIGNED for and on behalf
of NZ Transport Agency by

in the presence of:

WITNESS

Name:

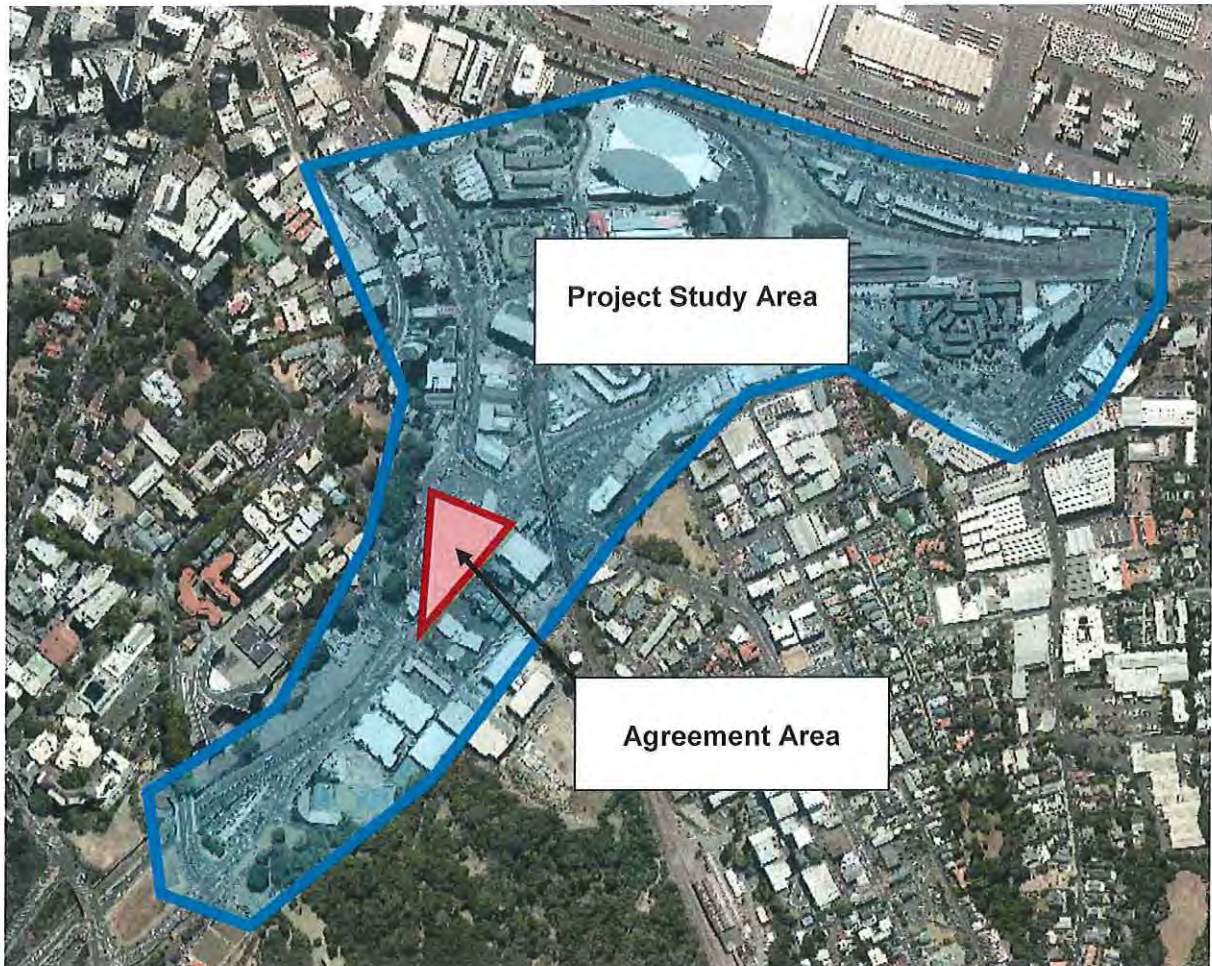
Date:



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APPENDIX A: Grafton Gully Stage 3 ("the Project")

1. Locality Diagram



2. Project Background

- 2.1. The extension of state highways 1 and 16 through Grafton Gully as part of the wider Central Motorway Improvements package of works was completed in early 2004. The goal of this project was to improve route efficiency between the state highway and the city centre and Port of Auckland by improving connections to the local road network and reducing conflict between local road and state highway traffic. Originally it was intended to extend the grade separated motorway beyond the intersection of Beach Road/Parnell Rise through the so-called Grafton Gully Stage 3 project. The Freeflow Alliance responsible for delivering the Grafton Gully project developed an initial set of plans that were used to support the designation process and associated property purchases.
- 2.2. In 2012, the Transport Agency and Auckland Transport initiated a joint study to identify the long term transport investments required to enable/support the vision put forth in the City Centre Master Plan. This included reviewing the need and timing for Grafton Gully stage 3 as originally envisioned by the Freeflow Alliance and confirming (or not) the property required to support such an initiative so as to allow the release of any unnecessary or surplus property holdings for future redevelopment.

DOCUMENTS

4: WAIPAPA RELATIONSHIP AGREEMENT

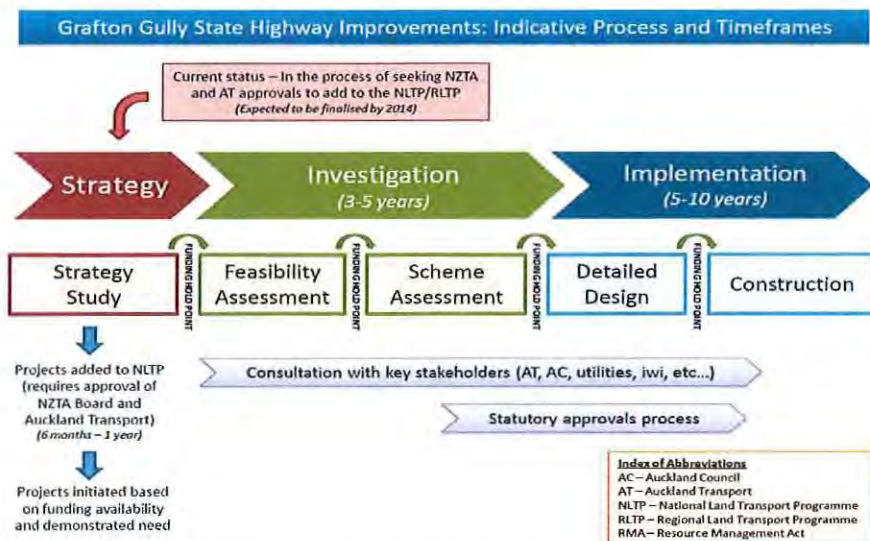
2.3. Work completed to date by the Transport Agency and Auckland Transport has confirmed a need to invest in capacity improvements along SH16, particularly along the Strand and at the intersection of Stanley St / Beach Rd / The Strand. The Transport Agency will continue to work with Auckland Transport and Auckland Council to further refine the scope of these improvements to ensure that the investment is not inconsistent with the overarching strategic objectives for the city centre and waterfront.

3. Current Project Status

- 3.1. The Auckland Transport Alignment Project (ATAP) identified an aligned strategic approach for the development of Auckland’s transport system. The strategic approach included an indicative package, which illustrates how the strategic approach could be implemented over time. It is not an “investment programme” and all transport investments need to go through business case approval and statutory processes to proceed.
- 3.2. A significant Grafton Gully improvement was included in the indicative package, and provided for improvements to access between The Strand and the Port. In formulating the indicative programme, a range of potential implementation dates were considered. Results of this testing indicated significant local impacts, with substantial increases peak throughput and improvements to speeds north of Beach Road. Given the estimated project cost and volume of traffic affected, the project was rated a medium potential for value for money in the short term, compared to other potential investments around the region. On the basis of this evidence, other project specific information and overall alignment with objectives, it was allocated to occur in the 2028-2038 decade in the indicative package and is considered a *medium term* priority.

4. Next Steps

4.1. The following diagram, which was previously shared with Marutūāhu in February 2013, sets out a high level programme which is roughly indicative of what the programme for developing the Project might look like.



Prepared February 2013 for information purposes for the Marutūāhu iwi collective. Timeframes are indicative only and will be subject to funding availability.

DOCUMENTS

5 CALLIOPE ROAD COVENANT



DOCUMENTS

5: CALLIOPE ROAD COVENANT

Easement instrument to grant easement or *profit à prendre*, or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

[North Auckland]

Grantor

Surname(s) must be underlined.

[Marutūāhu PSGE]

Grantee

Surname(s) must be underlined.

Her Majesty the Queen in right of Her Government in New Zealand acting by and through the Chief of Defence Force

Grant* of easement or *profit à prendre* or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule if required.

Purpose (nature and extent) of easement, <i>profit(s) à prendre</i> , or covenant	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Land Covenant	[insert computer freehold register details for 45-49 Calliope Road]	To be completed

Easements or *profits à prendre* rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required.

~~Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.~~

The implied rights and powers are varied/negated/added to or substituted by:

Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.

The provisions set out in the Annexure Schedule.

Covenant provisions

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.

The Annexure Schedule.

DOCUMENTS

5: CALLIOPE ROAD COVENANT

Annexure Schedule

Insert type of instrument

Land covenant

Dated

Page

1

of

2

Pages

Continue in additional Annexure Schedule, if required.

COVENANTS

The Grantor for itself and its successors in title to the Grantor's Land (or any part of it) hereby covenant, acknowledge and agree with the Grantee and its successors in title to the Grantee's Land or any part of it as a positive covenant for the benefit of the registered proprietors and users from time to time of the Grantee's Land, that the Grantor will henceforth and at all times hereafter observe and perform all the stipulations and restrictions contained in the First Schedule to the end and intent that each of the stipulations and restrictions shall, in the matter and to the extent prescribed, forever be for the benefit of, and be appurtenant to, the whole of the Grantee's Land and every part thereof.

FIRST SCHEDULE

- 1 The Grantor will allow the Grantee to carry on its lawful operations and activities on the Land without interference or restraint from the Grantor.
- 2 The Grantor in its capacity as owner of the fee simple estate in the Land will not in any way inhibit the Grantee from carrying out any lawful works or activities on the Land.
- 3 The Grantor in its capacity as owner of the fee simple estate in the Land will not bring proceedings for nuisance arising from the carrying out of any lawful works or activities referred to in clause 2, and will make no complaint or submission or rejection relating to those works or activities or to the effects of the use of the Land.
- 4 The Grantor will not in its capacity as owner of the fee simple estate in the Land:
 - (a) make or lodge; nor
 - (b) be party to; nor
 - (c) finance nor contribute to the cost of,
any submission, application, proceeding (either under the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict lawful continuation of the current or future uses of the Land including without limitation any action to require the Grantee to modify the current or future uses carried out within the Land.
- 5 The covenants on the part of the Grantor under clauses 1 to 4 are to continue to apply until such time as:
 - (a) the Crown ceases to be the owner of the leasehold interest in the Land; or
 - (b) the Crown otherwise agrees to discharge the covenants.

7

6 DEED OF COVENANT FOR TAONGA O MARUTŪĀHU TRUSTEE LIMITED

THIS DEED is made

BETWEEN

TAONGA O MARUTŪĀHU TRUSTEE LIMITED

AND

THE CROWN

BACKGROUND

- A. Under the Marutūāhu Iwi collective redress deed dated [] between Marutūāhu Iwi and the Crown (the "**Marutūāhu Iwi collective redress deed**"), the Crown agreed, subject to the terms and conditions specified in the Marutūāhu Iwi collective redress deed, to provide certain redress to an entity to be established under clause 6.6.1 of the Marutūāhu Iwi collective redress deed.
- B. Taonga o Marutūāhu Trustee Limited was established on [date] as the entity to:
- be established by Marutūāhu Iwi under clause 6.7.1 of the Marutūāhu Iwi collective redress deed; and
 - receive the redress to be provided to Taonga o Marutūāhu Trustee Limited.
- C. As required by clause 6.6.2 of the Marutūāhu Iwi collective redress deed, Taonga o Marutūāhu Trustee Limited enters into this deed with the Crown.

IT IS AGREED as follows:

1 COVENANT

- 1.1 Taonga o Marutūāhu Trustee Limited covenants with the Crown that, from the date of this deed, Taonga o Marutūāhu Trustee Limited:
- 1.1.1 is a party to the Marutūāhu Iwi collective redress deed as if it had been named as a party to that deed and had signed it;
 - 1.1.2 must comply with all the obligations of Taonga o Marutūāhu Trustee Limited under the Marutūāhu Iwi collective redress deed; and
 - 1.1.3 is bound by the terms of the Marutūāhu Iwi collective redress deed.

2 RATIFICATION AND CONFIRMATION OF ACKNOWLEDGEMENTS AND ACTIONS

- 2.1 Taonga o Marutūāhu Trustee Limited ratifies and confirms:

**7 DEED OF COVENANT FOR THE MARUTŪĀHU RŌPŪ LIMITED
PARTNERSHIP**

[Note: to be inserted prior to signing and this note will be removed]



7

8 DEED OF ACCESSION



7

DOCUMENTS

8: DEED OF ACCESSION

[INSERT NAME OF ACCEDING IWI]

and

THE CROWN

MARUTŪĀHU IWI COLLECTIVE REDRESS DEED:

DEED OF ACCESSION



7

DEED OF ACCESSION

THIS DEED is made between

[INSERT NAME OF ACCEDING IWI]

and

THE CROWN

BACKGROUND

- A. The Marutūāhu Iwi and the Crown entered into a collective redress deed dated [] (the "collective deed").
- B. [**Acceding iwi**] had not ratified the collective deed and the collective redress entities to receive the redress.
- C. [**Acceding iwi**] have, since the signing of the collective deed, by a majority of –
- [X]% ratified the collective deed and approved the signing of this deed; and
 - [X]% approved the collective redress entities receiving the redress.
- D. Each majority referred to in C above is of valid votes cast in a ballot by eligible members of [**acceding iwi**].
- E. The Crown is satisfied with the ratification and approvals.
- F. Part 7 of the collective deed provides for accession by [**acceding iwi**] to the collective deed once those ratifications and approvals have been obtained and the Crown is satisfied with them.

IT IS AGREED as follows:

1 ACCESSION

- 1.1 The acceding iwi accedes to the collective deed.

DOCUMENTS

8: DEED OF ACCESSION

1.2 [Acceding iwi] and the Crown record that this is the deed of accession for the purposes of part [7] of the collective deed.

2 INTERPRETATION

2.1 Unless the context requires otherwise:

2.1.1 **mandated signatories** means the individuals who signed this deed;

2.1.2 other terms or expressions defined in the collective deed have the same meanings in this deed; and

2.1.3 the rules of interpretation in the collective deed apply (with all appropriate changes) to this deed.

SIGNED as a deed on

SIGNED for and on behalf
of [ACCEDING IWI] by
the mandated signatories in the
presence of –

WITNESS

Name:

Occupation:

Address:



7

DOCUMENTS

8: DEED OF ACCESSION

SIGNED for and on behalf of **THE CROWN**
in right of New Zealand by
the Minister for Treaty of Waitangi
Negotiations in the presence of –

Hon Andrew James Little

WITNESS

Name:

Occupation:

Address



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