

# Agreement relating to matters concerning the New Plymouth District Council (Waitara Lands) Act 2018

New Plymouth District Council

Te Kōwhatu Tū Moana Trust

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**AGREEMENT RELATING TO MATTERS CONCERNING THE NEW PLYMOUTH DISTRICT COUNCIL (WAITARA LANDS) ACT 2018**

Date: 9 March 2019

**PARTIES**

**New Plymouth District Council** (the *Council*)

**Te Kōwhatu Tū Moana Trust** (*Te Kōwhatu Tū Moana*)

**BACKGROUND**

- A The Council is a territorial authority having interests, roles, rights and responsibilities in the Waitara area.
- B Te Kōwhatu Tū Moana is a charitable trust incorporated under the Charitable Trusts Act 1957 (2723472) and represents the Otaraua and Manukorihi hapū.
- C The New Plymouth District Council (Waitara Lands) Act 2018 (the *Act*) provides for the Council and Te Kōwhatu Tū Moana (as registered owner of Vested Land and other transferred land that remains or becomes a reserve) to enter an agreement for the administration and management of reserve land and to prepare and review the management plan for that land.
- D The Council and Te Kōwhatu Tū Moana therefore wish to record various matters they have agreed between them in respect of matters concerning the Act.

**IT IS AGREED** by the Parties:

**1 DEFINITIONS AND CONSTRUCTION**

**1.1 Defined terms**

In this Agreement, unless the context requires otherwise, capitalised terms used but not defined have the meanings given to them in the Act. In addition:

*Agreement* means this Agreement, including the Background, Schedules and any Appendices to it, and includes any supplementary agreement executed by the Parties;

*Business Day* means any day other than Saturday, Sunday and statutory holidays in New Plymouth and Waitara, New Zealand;

*Commencement Date* means the date on which the second of the Parties to sign this Agreement completes its execution;

*Existing Council Property* has the meaning given to it in clause 3.1(b);

*Parties* means the Parties to this Agreement and *Party* has a corresponding meaning;

*Third Party Property* has the meaning given to it in clause 3.1(a).

## 1.2 **Construction**

In the construction of this Agreement, unless the context requires otherwise:

- (a) *Background and Schedules*: The Background and Schedules form part of this Agreement;
- (b) *Clauses, Schedules and Appendices*: References to clauses, Schedules and Appendices are to clauses, Schedules and Appendices of this Agreement;
- (c) *Genders*: Words importing one gender shall include the others;
- (d) *Headings*: Headings appear as a matter of convenience and shall not affect the construction of this Agreement;
- (e) *Parties*: References to either Party to this Agreement include the successors and any permitted assigns of that Party;
- (f) *Person*: A reference to a person includes a corporation sole, and also a body of persons, whether corporate or unincorporate;
- (g) *Singular and Plural*: Words importing the singular or plural number include the plural and singular number respectively; and
- (h) *Statutes and Regulations*: A reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment.

## 2 **TERM AND SCOPE OF AGREEMENT**

### 2.1 **Term**

The term of this Agreement shall commence on the Commencement Date and shall expire upon the date agreed in writing between the Parties.

### 2.2 **Te Kōwhatu Tū Moana**

For the avoidance of doubt, Te Kōwhatu Tū Moana is the entity of the same name referred to in the Act.

### 3 PURCHASE OF LAND

#### 3.1 Purchase of land

Section 51 of the Act provides that the Council may, at the request of Te Kōwhatu Tū Moana and subject to complying with its obligations under the Act and any other enactment:

- (a) fund the purchase for Te Kōwhatu Tū Moana of any interest in land in or adjacent to Waitara owned by a person other than the Council (a *Third Party Property*); or
- (b) fund the transfer to Te Kōwhatu Tū Moana of any interest in land owned by the Council in or adjacent to Waitara and no longer required by the Council (an *Existing Council Property*). The parties have agreed that the properties listed in Schedule 1 are in this category.

#### 3.2 Purchase of Third Party Properties

- (a) Either the Council or Te Kōwhatu Tū Moana may at any time give written notice to the other Party that it has identified a property that it considers is suitable for purchase as a Third Party Property.
- (b) The Party providing the notice under clause 3.2(a) must provide to the other Party, at the same time as that notice:
  - (i) the legal description of the Third Party Property, including any encumbrances or interests affecting it and the reference for any record of title for the Third Party Property;
  - (ii) the street address of the Third Party Property (if relevant); and
  - (iii) the terms and conditions on which the Third Party Property is available for purchase.
- (c) If, following notice under clause 3.2(b) (or in conjunction with such notice if it has been given to the Council by Te Kōwhatu Tū Moana), Te Kōwhatu Tū Moana provides a further written notice to the Council that it elects (in its sole discretion) to purchase the Third Party Property and requests financial assistance from the Council to enable it to do so, the Council will use its best endeavours to enter into an agreement with Te Kōwhatu Tū Moana whereby the Council provides sufficient funds to Te Kōwhatu Tū Moana to enable it to purchase the Third Party Property, in accordance with section 51 of the Act and clause 4.

#### 3.3 Purchase of Existing Properties

- (a) The Council may at any time give Te Kōwhatu Tū Moana written notice of its intention to offer to sell an Existing Council Property to Te Kōwhatu Tū Moana.

- (b) The Council shall provide to Te Kōwhatu Tū Moana, at the same time as the notice under clause 3.3(a):
- (i) the legal description of the Existing Council Property, including any encumbrances or interests affecting it and the reference for any record of title for the Existing Council Property;
  - (ii) the street address of the Existing Council Property (if relevant);
  - (iii) all other material information the Council has in respect of the Existing Council Property including information that, to the best of its knowledge, is in its records; and
  - (iv) the terms and conditions upon which the Council proposes to sell the Existing Council Property to Te Kōwhatu Tū Moana, (including the terms of any financing to be provided pursuant to clause 4 ), other than as to transfer value, which shall be determined in accordance with the provisions below.
- (c) Te Kōwhatu Tū Moana may, if it so elects (in its sole discretion), give the Council a written notice of interest (a *Notice of Interest*) in purchasing the Existing Council Property on the terms and conditions proposed by the Council (or upon such other written terms and conditions as are agreed between the Council and Te Kōwhatu Tū Moana), such Notice of Interest to be given to the Council within 15 Business Days of the date of the Council's notice to Te Kōwhatu Tū Moana pursuant to clause 3.3(b).
- (d) Upon receipt of a Notice of Interest pursuant to clause 3.3(c) by the Council, the transfer value of the Existing Council Property shall be determined in accordance with the procedures set out in Schedule 2, unless the Parties agree otherwise.
- (e) If, following that transfer value determination, Te Kōwhatu Tū Moana elects (in its sole discretion) to purchase the Existing Council Property at that transfer value, it must provide written notice to the Council and:
- (i) the Parties will be treated as having entered into and will document accordingly an agreement for the sale and purchase of the Existing Council Property at that transfer value (plus GST if any) upon the terms and conditions agreed between them pursuant to this clause 3.3 and, if the Council has agreed to provide financial assistance to Te Kōwhatu Tū Moana to enable it to finance the acquisition of the Existing Council Property in accordance with section 51 of the Act and clause 4, the terms and conditions of that financing arrangement; and
  - (ii) upon settlement, the Council must transfer the Existing Council Property to Te Kōwhatu Tū Moana.

## 4 FINANCING OF PURCHASE OF LAND

### 4.1 Acknowledgement

The Parties acknowledge and agree that:

- (a) Te Kōwhatu Tū Moana may wish to acquire land in or adjacent to Waitara pursuant to various provisions in the Act and this Agreement;
- (b) while it is expected that over time the Hapū Land Fund will enable Te Kōwhatu Tū Moana to acquire land without funding assistance from the Council, the Council recognises that it is possible that land that Te Kōwhatu Tū Moana wishes to acquire may become available for purchase at a time when the Hapū Land Fund has insufficient funds to purchase the land without financial assistance, and that ordinary bank financing may not be available or suitable;
- (c) the Council recognises that such an outcome would defeat the spirit and intent of the Act;
- (d) accordingly the Council has undertaken to provide financial assistance to Te Kōwhatu Tū Moana to acquire property as reflected in section 51 of the Act; and
- (e) the purpose of this clause 4 is to provide further detail as to how that financing may be provided.

### 4.2 Request for financing

- (a) Te Kōwhatu Tū Moana may, at any time prior to its acquisition of any Third Party Property or Existing Council Property whether pursuant to the provisions of the Act, this Agreement or otherwise, request that the Council provide financial assistance in the purchase of the property in accordance with section 51 of the Act.
- (b) In respect of a proposed acquisition of any Third Party Property, Te Kōwhatu Tū Moana must:
  - (i) take all reasonable endeavours to ensure that the Council has reasonable time (taking into account, without limitation, the proposed unconditional date and/or settlement date of the proposed purchase) to consider the request for financing and (if so agreed) document and give effect to the financing and security arrangements with Te Kōwhatu Tū Moana; and
  - (ii) provide to the Council such information as the Council reasonably requests in relation to the proposed purchase to enable the Council to properly consider the request for financing.
- (c) Te Kōwhatu Tū Moana acknowledges that requests for financial assistance might be declined under section 51(4) of the Act; and that if a request is granted there will be an impact on the Hapu Land Fund by virtue of section 51(3) of the Act.



#### 4.3 **Terms of financing**

- (a) Any financial assistance which the Council agrees to make available under clauses 3.2, 3.3 or 4.2 shall:
  - (i) be limited in recourse to the funds (or an amount equal to the funds) from time to time that are or that ought to be in the Hapū Land Fund;
  - (ii) at the Council's discretion, be secured by any mortgage, charge or lien over any property or asset (including moneys in the Hapū Land Fund);
  - (iii) have such repayment date or repayment schedule as Te Kōwhatu Tū Moana and the Council may agree (each acting reasonably and taking into account the income reasonably expected to be made available to the Hapū Land Fund in subsequent years); and
  - (iv) otherwise be made available in accordance with the provisions of sections 44 and 51 of the Act.
- (b) The holding costs referred to in section 51(2)(b) of the Act are any administration costs charged at the appropriate rate for the Council staff time, the costs of transfer to Te Kōwhatu Tū Moana, and interest on the sums expended by the Council, calculated (but not compounded) monthly at the Council's average borrowing rate.
- (c) In clause 4.3(b) "sums expended by the Council" includes the transfer value of any Existing Council Property that has been transferred to Te Kōwhatu Tū Moana under clause 3.3(3)(ii).

#### 4.4 **Fee simple estate**

- (a) If a lessee requests that Te Kōwhatu Tū Moana become the owner of the fee simple estate of their leasehold interest in any Waitara Endowment Land then Te Kōwhatu Tū Moana may request the Council to exercise its discretion under section 51 of the Act to fund the purchase of the fee simple estate by Te Kōwhatu Tū Moana.
- (b) In making a request under clause 4.4(a), Te Kōwhatu Tū Moana will acknowledge explicitly that unless it purchases the lessee's interest or makes an appropriate arrangement with the lessee, the lessee will retain the right to purchase the freehold interest from Te Kōwhatu Tū Moana.
- (c) Where the purchase of the fee simple estate in the Waitara Endowment Land pursuant to a request under clause 4.4 is concerned:
  - (i) the purchase price will be the unimproved land value established by a valuer; and
  - (ii) the Council will have to follow due process under section 26 of the Act and cannot pre-determine the outcome of that process.

## 5 RESERVES

### 5.1 Agreement required

- (a) The Parties acknowledge that section 20 of the Act requires an agreement to provide for:
  - (i) the Council to engage with Te Kōwhatu Tū Moana regarding all significant proposed decisions regarding the management and administration of the Reserve Land; and
  - (ii) Te Kōwhatu Tū Moana to initiate proposals for the management and administration of Reserve Land.
- (b) To avoid doubt, the Parties agree that this clause 5 constitutes the agreement required by section 20 of the Act

### 5.2 Undertakings

- (a) The Council will, in good faith, engage with and strongly consider the views of Te Kōwhatu Tū Moana with respect to any proposed activity that has significant implications for Reserve Land vested under the Act, including (but not limited to) the grant of any rights or powers related to the following matters, in advance of, and in addition to, any public notification and consultation requirements specified in the Reserves Act 1977 or otherwise:
  - (A) preservation of flora and fauna and the natural environment;
  - (B) use of a reserve for temporary or permanent personal accommodation;
  - (C) new grants of rights of way;
  - (D) new use of reserve for communication stations;
  - (E) the taking of specimens of flora or fauna or rock mineral or soil from a reserve for scientific or educational purposes;
  - (F) taking or killing of fauna including the use of firearms, traps, nets or other like objects within reserve;
  - (G) introduction of indigenous flora or fauna or exotic fauna;
  - (H) erection of new buildings or structures;
  - (I) grant of leases or licences;
  - (J) new farming or grazing rights;
  - (K) afforestation and other planting;

- (L) the making of bylaws that specifically apply to the Reserve Land; and
  - (M) any proposal, by any person, to invoke Public Works Act 1981 powers to take any part of, or interest in, any Reserve Land.
- (b) Recognising that interests of other parties may be affected and statutory deadlines might be involved, Te Kōwhatu Tū Moana will promptly respond to any engagement by the Council under clause 5.2(a).
- (c) With respect to change of classification or purpose or a revocation of reserve status of any of the Reserve Land under section 24 of the Reserves Act 1977 and/or section 18 of the Act the Parties agree that:
- (A) neither the Council nor Te Kōwhatu Tū Moana will seek revocation of the reserve status of, or any change as to classification or purpose of, any part of the Reserve Land without the prior agreement of the other Party; and
  - (B) in the event of revocation of reserve status occurring, Te Kōwhatu Tū Moana will pay the Council the current market value of the subject Reserve Land as at and immediately after the date of revocation.
- (d) Clause 5.2(c) (B) does not apply if, on or prior to the date on which the applicable Reserve Land vested in or transferred to Te Kōwhatu Tū Moana, Te Kōwhatu Tū Moana has paid (or agreed to pay in accordance with section 51 of the Act and clause 4) to the Council the market value of that Reserve Land in accordance with clause 5.2(e).
- (e) Notwithstanding anything in section 11 of the Act, Te Kōwhatu Tū Moana may elect by prior written notice to the Council that, at the time it accepts the transfer of a Council option property (being Reserve Land) to it otherwise than in accordance with section 11 of the Act, it shall pay to the Council the current market value of that property, determined as at the applicable date of vesting or transfer as if the reservation of the Reserve Land as a reserve subject to the Reserves Act 1977 had been revoked at that time.
- (f) The Parties agree that:
- (i) unless otherwise expressly agreed in writing, all existing uses of Reserve Land vested under the Act at the Commencement Date will continue (in accordance with any existing rights granted, if applicable);
  - (ii) the Council will remain the administering body of the reserves vested under the Act (with the exception of Pukekohe Domain in accordance with section 18(3) of the Act), and as such, the intention of the Council and Te Kōwhatu Tū Moana is that the Council will continue to administer the Reserve Land vested under the Act and carry out day to day management of the reserves (at its cost) subject to:

- (A) any obligations set out in the Act, or in any other Act, including (but not limited to) fiduciary and financial prudence obligations which the Parties acknowledge may affect funding;
- (B) any Reserves Management Plan (*RMP*) that applies to any particular reserve;
- (C) the obligation of the Council to act with the consent of Te Kōwhatu Tū Moana with respect to matters that are not contained in a RMP and/or that permanently affect the land;
- (D) the obligation of the Council to notify and engage with Te Kōwhatu Tū Moana with respect to any proposed changes to levels of service, administration and management on reserves vested under this Act.

### 5.3 **Preparation and review of Reserve Management Plans**

- (a) The Council and Te Kōwhatu Tū Moana:
  - (i) acknowledge that section 20(3)(a) of the Act requires them to jointly prepare and review RMP's for Reserve Land vested under the Act under section 41 of the Reserves Act 1977 as if they jointly were the administering body for the Reserve Land; and
  - (ii) agree to work together in good faith to comply with this obligation as a priority when the Act comes into force.
- (b) The Council and Te Kōwhatu Tū Moana agree that the RMP's will provide for and preserve existing uses, while acknowledging any future proposed uses for the reserves vested under this Act that reflect the aspirations of Te Kōwhatu Tū Moana and their mana whenua over, and ownership of, the Reserve Land.

### 5.4 **Pukekohe Domain**

- (a) The Parties acknowledge that section 18(3) of the Act requires that the administration of Pukekohe Domain must be undertaken jointly by the Council and Te Kōwhatu Tū Moana on terms and conditions agreed between them. The Council and Te Kōwhatu Tū Moana will co-operate in good faith to develop a forum within which the joint administration of Pukekohe Domain can be agreed and achieved.
- (b) The Council must provide, at its expense, ordinary operational and maintenance services in respect of Pukekohe Domain at the level provided at the Commencement Date. Further expenses and development of Pukekohe Domain will be the responsibility of the party initiating the expense or development, unless the parties agree otherwise.

## 5.5 Ranfurly Park

- (a) The Parties acknowledge that:
- (i) section 12 of the Act provides a process for Ranfurly Park and Ranfurly Park Property A land (as Council Purchase Property and Council Option Property respectively) to be transferred to Te Kōwhatu Tū Moana;
  - (ii) section 16 of the Act provides a process for Ranfurly Park Property B land (Crown Purchase Property) to be transferred to Te Kōwhatu Tū Moana;
  - (iii) at the Commencement Date, there is an existing lease over part of Ranfurly Park in favour of Waitara Pony Club Incorporated dated 28 September 2012 and incorporating a Deed of Surrender and Variation dated 2 September 2016 (the *Lease*) and the leased land includes Ranfurly Park land, Ranfurly Park Property A land and Ranfurly Park Property B land.
- (b) Subject to clause 5.5(c) Te Kōwhatu Tū Moana agrees that, if there is a transfer of Ranfurly Park, Ranfurly Park Property A land and/or Ranfurly Park Property B land under sections 12 or 16 of the Act to Te Kōwhatu Tū Moana during the term of the Lease (including renewals) so that Te Kōwhatu Tū Moana becomes Landlord under the Lease, it will not exercise the Landlord's right to terminate in clause 10.10 of the Lease without the prior written approval of the Council.
- (c) The Parties agree that, if during the term of the Lease (including renewals) Te Kōwhatu Tū Moana acquires ownership of part only of the land subject to the Lease under sections 12 or 16 of the Act with the remainder of the land subject to the Lease remaining owned by or vested in the Council or Crown, the Council will continue to act as landlord and exercise the rights and obligations of landlord under the Lease on behalf of itself and Te Kōwhatu Tū Moana. To avoid doubt, if Te Kōwhatu Tū Moana acquires all of the Ranfurly Park, Ranfurly Park Property A land and/or Ranfurly Park Property B land it will become the landlord under the Lease, subject to clause 5.5(b).
- (d) In exercising its rights and obligations as landlord in accordance with the terms of the Lease and clause 5.5(c) the Council will engage with Te Kōwhatu Tū Moana regarding all significant proposed decisions regarding the management and administration of the Lease.

## 6 CO-GOVERNANCE OF COUNCIL TRANSFER PROPERTY

### 6.1 Acknowledgement

The Parties acknowledge that Part 2, Subpart 3 of the Act authorises the Council to transfer the fee simple estate in Council Transfer Property to Te Kōwhatu Tū Moana in accordance with a Council Agreement.

## 6.2 Council acknowledgements and undertakings regarding co-governance in advance of transfer

- (a) The Council acknowledges that while Te Kōwhatu Tū Moana may not be ready to instigate a transfer in accordance with Part 2, Subpart 3 of the Act immediately upon the Commencement Date, it is a right and proper acknowledgement of Te Kōwhatu Tū Moana's mana whenua over the Council Transfer Property and future legal ownership of it, for Te Kōwhatu Tū Moana to have a significant role in management of the Council Transfer Property pending its transfer under the Act.
- (b) Subject to clause 13.2 the Council undertakes, from the Commencement Date to the date of transfer of any particular Council Transfer Property to Te Kōwhatu Tū Moana in accordance with section 12 of the Act that it will:
  - (i) engage with Te Kōwhatu Tū Moana regarding all significant proposed decisions regarding the management and administration of the Council Transfer Property; and
  - (ii) comply with its obligations in clause 5 (to the extent applicable) with respect to the Council Transfer Property;
  - (iii) engage with Te Kōwhatu Tū Moana regarding all significant proposed decisions regarding the management and administration of the Council Transfer Property;

as if the Council Transfer Property had already transferred to Te Kōwhatu Tū Moana and been declared and classified as reserve in accordance with section 13 of the Act

## 7 NAMING OF ROADS AND COUNCIL ASSETS

### 7.1 Acknowledgement regarding recognition of history of area

The Council and Te Kōwhatu Tū Moana agree that greater recognition of the history of the Waitara hapū should be evident in the names used in Waitara, including without limitation names of roads, reserves and Council-owned assets.

### 7.2 Proposal may be made for renaming

Te Kōwhatu Tū Moana may present proposals to rename roads and Council-owned assets in Waitara (other than reserves, to which the provisions of the RMP process referred to in clause 5 applies and pursuant to which name changes must be made).

### 7.3 Council to consult and consider change

- (a) The Council undertakes to:
  - (i) consult specifically with affected residents with regards to proposed name changes and otherwise consult and engage as required by the Local Government Act 2002 and its *Significance and Engagement Policy*; and

- (ii) subject to completion of all necessary statutory decision making obligations and in accordance with the rules of natural justice, consider any proposed name change in good faith.
- (b) The Parties acknowledge that any application for a name change that can demonstrate wider community benefit (for example, by reducing existing confusion caused by road names), and/or has the support of affected residents, may be more likely to be successful.
- (c) Te Kōwhatu Tū Moana acknowledges that, as name changes involves a public process, a particular outcome cannot be guaranteed by the Council.

#### 7.4 **Road naming policy**

- (a) The Council and Te Kōwhatu Tū Moana acknowledge and agree that:
  - (i) new road names will be allocated in accordance with the Council's road naming policy, *Road Naming and Numbering Policy* in force at the time a new road name is proposed, and which may change from time to time (*Policy*). The current Policy gives priority to names that reflect cultural or historical significance to tangata whenua and the Council will consult with Te Kōwhatu Tū Moana in accordance with the Policy with respect to any new road names, and will strongly consider the views of Te Kōwhatu Tū Moana with respect to any new road names proposed by it; and
  - (ii) subject to completion of all necessary statutory decision making obligations and in accordance with the rules of natural justice, the Council undertakes to consider any new road name proposed by Te Kōwhatu Tū Moana in good faith.
- (b) The Council will consult with and strongly consider the views of Te Kōwhatu Tū Moana before making any change to the Policy.

#### 7.5 **Naming of new Council assets**

- (a) Te Kōwhatu Tū Moana may present proposals to name new Council-owned assets in Waitara (other than assets located on reserves, to which the provisions of the RMP process referred to in clause 5 applies and pursuant to which names will be allocated).
- (b) The Council undertakes to:
  - (i) consult specifically with affected residents with regards to proposed new names for Council-owned assets in Waitara and otherwise consult and engage as required by the Local Government Act 2002 and its *Significance and Engagement Policy*; and
  - (ii) subject to completion of all necessary statutory decision making obligations and in accordance with the rules of natural justice, consider any proposed name change in good faith.

- (c) The Parties acknowledge that any application for a name change that can demonstrate wider community benefit and/or has the support of affected residents, may be more likely to be successful.
- (d) Te Kōwhatu Tū Moana acknowledges that, as the naming of a Council-owned asset involves a public process, a particular outcome cannot be guaranteed by the Council.

## **8 EASEMENTS OVER WEST BEACH AND CLIFTON PARK**

### **8.1 Acknowledgements**

- (a) The Parties acknowledge that section 8 of the Act provides for West Beach and Clifton Park (as part of the Vested Land) to be vested in Te Kōwhatu Tū Moana and classified as recreation reserve.
- (b) Te Kōwhatu Tū Moana acknowledges that there are or may be existing public rights of access and infrastructure services (vested in the Council and various third parties) located on, over and/or under West Beach and Clifton Park at the Commencement Date, some of which are not subject to registered easements or interests and including but not limited to those easements affecting West Beach and Clifton Park shown on SO Plan 496323.

### **8.2 Te Kōwhatu Tū Moana agreement**

Te Kōwhatu Tū Moana agrees, on and from the Commencement Date, to the Council securing the grant of suitable easements or interests in accordance with its powers and obligations as administering body under section 18 of the Act, to protect and preserve any such rights of access and infrastructure services, provided that such easements or interests are granted on terms that are acceptable to Te Kōwhatu Tū Moana (acting reasonably).

## **9 APPLICATION OF POLICIES AND CHARGES**

### **9.1 Council agreement**

The Council will assess any application by Te Kōwhatu Tū Moana for rates remissions, development contribution concessions and waiver of fees and charges that relate to any land purchased by, transferred to, or vested in Te Kōwhatu Tū Moana under the Act and/or this Agreement, in accordance with its relevant policies that apply from time to time, which it will apply in good faith. The Council will consult with and strongly consider the views of Te Kōwhatu Tū Moana when developing or amending relevant policies.

## **10 WAITARA GOLF CLUB LAND**

### **10.1 Acknowledgements**

- (a) The Parties acknowledge that section 10 of the Act provides for Te Kōwhatu Tū Moana to notify the Council in writing of its interest in purchasing the Waitara Golf Club Land (as it forms one of the Council Purchase Properties).



- (b) Te Kōwhatu Tū Moana acknowledges that, at the Commencement Date the Waitara Golf Club Land is partially surrounded by and contains a number of unformed legal roads.

## 10.2 Unformed roads

- (a) In the event that Te Kōwhatu Tū Moana provides notice to the Council in accordance with section 10 of the Act that it is interested in purchasing the Waitara Golf Club Land, it must also notify the Council whether, and to what extent it would prefer the unformed legal roads to be stopped, or to remain vested in the Council as legal road.
- (b) Despite clause 10.2(a) and subject to clause 13.2 Te Kōwhatu Tū Moana acknowledges and agrees that a road stopping proposal must be carried out in accordance with relevant statutory obligations and while the Council can initiate a road stopping procedure, it cannot predetermine the outcome of a road stopping and there is no mandatory obligation on the Council to complete a road stopping.

## 11 CURRENT MARKET VALUE

### 11.1 Valuation process for section 26(4)

- (a) The Parties acknowledge that section 26 of the Act provides a process for the Council to sell the fee simple estate in any Waitara Endowment Land to a person other than the lessee and section 26(4) requires the Council to first offer to sell the fee simple estate to Te Kōwhatu Tū Moana at the current market value of the land.
- (b) The Parties agree that, for the purposes of section 26(4) the current market value of the land will be determined in accordance with the procedures set out in Schedule 2, unless the Parties agree otherwise.

## 12 NOTICES

### 12.1 Addresses

Any notice or request to be given under this Agreement shall be in writing, addressed to the Party to whom it is to be sent, at the postal address or email address from time to time designated by that Party in writing to the other. Until a change is so notified the postal address and email address of each Party is as follows:

#### **The Council**

Physical address: 86 Liardet Street, New Plymouth  
Postal address: Private Bag 2025, New Plymouth 4342  
Email: [craig.stevenson@npdc.govt.nz](mailto:craig.stevenson@npdc.govt.nz)  
Attention: Craig Stevenson

## **Te Kōwhatu Tū Moana**

Physical address: 5 Nelson Street, Waitara  
Postal address: PO Box 155, Waitara  
Email: jamie.tuuta@xtra.co.nz  
Attention: Jamie Tuuta, Chair

### **12.2 Process**

- (a) A notice or request delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is made after 4pm on a Business Day, then the notice or request will be deemed to have been delivered on the next Business Day after the date of delivery.
- (b) A notice or request delivered by pre-paid post will be deemed to have been received on the third Business Day after posting.
- (c) A notice or request sent by email will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 4pm on a Business Day, then the notice or request will be deemed to have been received on the next Business Day after the date of transmission. This clause does not apply if the sender receives a message indicating failure of transmission or an "out of office" message from the recipient.

### **12.3 Authorised Representatives**

The initial authorised representative of each of the Parties shall be:

#### **The Council**

Name: Craig Stevenson  
Designation: Chief Executive

Physical address: 86 Liardet Street, New Plymouth  
Postal address: Private Bag 2025, New Plymouth 4342  
Email: [craig.stevenson@npdc.govt.nz](mailto:craig.stevenson@npdc.govt.nz)  
Attention: Craig Stevenson  
Telephone: (06) 759 6060

#### **Te Kōwhatu Tū Moana**

Name: Jamie Tuuta  
Designation: Chair

Physical address: 5 Nelson Street, Waitara  
Postal address: PO Box 155, Waitara  
Email: jamie.tuuta@xtra.co.nz  
Telephone: +64 27 484 3644

## 13 GENERAL

### 13.1 Binding agreement

- (a) This Agreement is binding on both Parties and may be enforced by either Party against the other, according to its tenor and as circumstances may require.
- (b) A Party may by written undertaking delivered to the other Party waive its right to enforce any obligation under this Agreement against the other Party either unconditionally or subject to conditions stated in the undertaking.

### 13.2 Statutory obligations

The obligations of the Council in this Agreement are subject to the Council complying with its statutory obligations. In particular, the Council may be required to comply with certain procedures under the Local Government Act 2002, the Local Government Act 1974, the Reserves Act 1977, the Public Works Act 1981, the Resource Management Act 1991, and other relevant legislation and binding Council policies and documents. This is likely to include (but not be limited to) consultation with the public and various stakeholders. The Council is not able to pre-determine the outcome of compliance with its statutory obligations.

### 13.3 Confidentiality

- (a) This Agreement is a public document.
- (b) The Parties acknowledge that it is in the interests of each of them in each case and generally, that the processes under this Agreement in respect of the purchase of any property, or whether or not the purchase of any property is being considered or has been approved or rejected remain strictly confidential.
- (c) Despite clause 13.3(b), any Party may, after notifying the other Party, make a public statement, or notify any affected person, that the purchase of any specific piece of land under this Agreement has not been considered for purchase, or has been considered and rejected.

### 13.4 No waiver

No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of such power or right, nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.

### 13.5 Assignment

No Party shall transfer or assign or deal in any manner with the benefit or burden of this Agreement without first obtaining the written consent of the other Party.

### 13.6 Severability

If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall

not impair the enforceability of the remaining parts of this Agreement which shall remain in full force.

**13.7 Entire Agreement**

This Agreement shall constitute the entire agreement between the Parties in respect of the matters to which it relates.

**13.8 Variation**

This Agreement may only be varied by written agreement signed by the Parties.


**13.9 Governing Law/Jurisdiction**


This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand. The Parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in relation to all disputes arising out of or in connection with this Agreement.

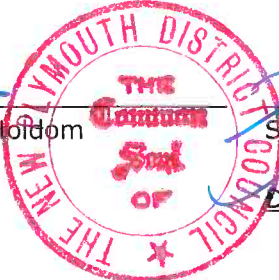
**THE COMMON SEAL** of  
**NEW PLYMOUTH DISTRICT**  
**COUNCIL** was affixed  
in the presence of:

**Neil Geoffrey Holdom**

**Colin Heath Johnston**

  
\_\_\_\_\_  
Signature of Mayor N G Holdom

  
\_\_\_\_\_  
Signature of Councillor C H Johnston



Date 9 March 2019      Date 9 March 2019


**Signed by the trustees of  
TE KŌWHATU TŪ MOANA TRUST**

**Patricia Maria Bodger:**

  
\_\_\_\_\_  
Signature of Patricia Maria Bodger


Date 9 March 2019

**Moana May Denness:**

  
\_\_\_\_\_  
Signature of Moana May Denness

Date 13 March 2019

**Alice Katene Doorbar:**

  
\_\_\_\_\_  
Signature of Alice Katene Doorbar

Date 9 March 2019

**David Elliot Doorbar:**

  
\_\_\_\_\_  
Signature of David Elliot Doorbar

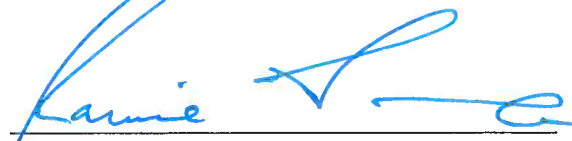
Date 9 March 2019

**Donna Maria Eriwhata:**

  
\_\_\_\_\_  
Signature of Donna Maria Eriwhata

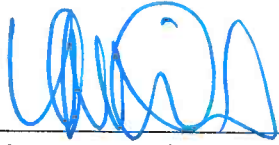
Date 9 March 2019

**Jamie Grant Daniel Tuuta:**

  
\_\_\_\_\_  
Signature of Jamie Grant Daniel Tuuta

Date 9 March 2019

**Annette Mawhaturia Louise White:**



Signature of Annette Mawhaturia Louise White

Date 9 March 2019

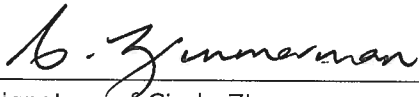
**Geoffrey Te Manu Arupe White:**



Signature of Geoffrey Te Manu Arupe White

Date 15 March 2019

**Cindy Zimmerman:**



Signature of Cindy Zimmerman

Date 9 March 2019

### SCHEDULE 1: EXISTING COUNCIL PROPERTIES

Note: Availability of the following properties for purchase by Te Kōwhatu Tū Moana in accordance with clause 3.3 of this Agreement is subject to the Council confirming clearance of statutory and other requirements that apply to the divestment of land ownership by the Council.

Legal Description	Area ha	Title	Address
Lot 2 DP 10126	0.0859	TNC3/1311	North Street
Lot 1 DP 440828	0.0984	548339	2 North Street
Lot 1 DP 10057	0.0728	554551	Norman Street
Lot 1 DP 8284	0.0536	535823	125 Browne Street
Lot 3 DP 8284	0.0536	535825	121A Browne Street
Lot 4 DP 8284	0.0536	535826	121 Browne Street
Lot 2 DP 10196	0.0680	TNC1/232	127 Cracroft Street
Lot 3 DP 10196	0.0680	TNC1/233	125 Cracroft Street
Lot 83 DP 8776	0.0630	530234	6 Jenkins Place
Lot 84 DP 8776	0.0582	533239	4 Jenkins Place
Lot 85 DP 8776	0.0620	533240	2 Jenkins Place
Lot 16 DP 451289	0.0386	575171	3A Battiscombe Tce

Lot 39 DP 11073 (municipal purposes except as to the part formerly contained in TNC2/230)	0.0643	TND1/28	37 High Street
Part Allotment 1 Deeds Plan 50 Allotment 3 Deeds Plan 50	0.0886	Freehold Part 528001 Leasehold 390315 & 771721	2 McLean Street
Lot 59-64 80-82 Part Lot 58, 86-92 DP 8776 SEC 1 SO 13320	0.8484	684449 TNK4/19 Part 535822	95 Mould Street
Part Lot 2 DP 7921	0.2356	TN216/97 TN169/17	6 Tate Road



## **SCHEDULE 2: LAND VALUATION PROCESS**

- (a) Whenever a valuation of real property or an interest in real property is required to give effect to any transaction under this Agreement, or contemplated by the Act, the parties will negotiate in good faith to:
  - (i) identify and engage a single valuer to conduct the valuation; and
  - (ii) agree the valuation instructions to be provided to the valuer including:
    - A. the identity of the property to be valued;
    - B. the date as of which the valuation is to be determined and the date by which the valuation is required to be provided; and
    - C. any interests in or over the relevant property which are to be taken into account for the purposes of the valuation including (without limitation) leasehold interests in the property and any encumbrances, caveats, covenants or other restrictions on the use of the property.
- (b) If there is no agreement as to the identity of the single valuer to be instructed, each will appoint its own valuer, with those valuers authorised to exchange valuations, and to appoint an arbitration valuer if necessary. Where separate valuers are appointed, the parties will nevertheless negotiate in good faith to agree instructions to the separate valuers, taking into account the matters described at paragraph (a)(ii) above.
- (c) Valuation reports must in all respects be on the basis as required by the Act or this Agreement (with the Act having precedence) and otherwise be in accordance with the International Valuation Standards 2017, or contain explanations where there are variations from those standards.