

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

DATE:

VENDOR: Palmerston North City Council

PURCHASER:

and/or nominee

The vendor is registered under the GST Act in respect of the transaction and/or will be so registered at settlement:

Yes/~~No~~

If "Yes", Schedule 1 must be completed by the parties.

Purchase price allocation (PPA) is relevant to the parties for income tax and/or GST purposes:

Vendor Yes/~~No~~

If both parties answer "Yes", use of the PPA addendum for this agreement is recommended.

Purchaser/Purchaser's Nominee Yes/~~No~~

PROPERTY

Address: Tamakuku Terrace, Whakarongo, Palmerston North

Estate: FREEHOLD

~~LEASEHOLD~~

~~STRATUM IN FREEHOLD~~

~~STRATUM IN LEASEHOLD~~

~~CROSS-LEASE (FREEHOLD)~~

~~CROSS-LEASE (LEASEHOLD)~~

If none of the above are deleted, the estate being sold is the first option of freehold.

Legal Description:

Area (more or less):

Lot/Flat/Unit:

DP:

Record of Title (unique identifier):

as described in clause 21.1 of the Further Terms of Sale

PAYMENT OF PURCHASE PRICE

Purchase price: \$

Plus GST (if any) OR Inclusive of GST (if any)

If neither is deleted, the purchase price includes GST (if any).

GST date (refer clause 13.0):

Deposit (refer clause 2.0): \$ as specified in clause 27 of the Further Terms of Sale

Balance of purchase price to be paid or satisfied as follows:

(1) By payment in cleared funds on the settlement date which is: _____

OR

(2) In the manner described in the Further Terms of Sale.

Interest rate for late settlement: 15

% p.a.

CONDITIONS (refer clause 9.0)

Finance required (clause 9.1):

Yes/No

OIA consent required (clause 9.6):

Yes/No

Finance date:

OIA date (clause 9.8):

LIM required (clause 9.3):

Yes/No

Land Act consent required (clause 9.7):

Yes/No

Building report required (clause 9.4):

Yes/No

Land Act date (clause 9.8):

Toxicology report required (clause 9.5):

Yes/No

TENANCIES

Yes/No

Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

It is agreed that the vendor sells and the purchaser purchases the property, and any chattels listed, on the terms and conditions of this agreement.

Release date: 8 February 2022

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- ~~(2) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.~~
- (3) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (8) "Cleared funds" means an electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines.
- (9) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (10) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (11) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (12) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (13) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (14) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- ~~(15) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.~~
- (16) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (17) "LINZ" means Land Information New Zealand.
- (18) "Local authority" means a territorial authority or a regional council.
- (19) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (20) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the New Zealand Law Society Property Law Section Guidelines, issued by the New Zealand Law Society.
- (21) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (22) "Property" means the property described in this agreement.
- (23) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (24) "Purchase price allocation" means an allocation of the purchase price, and (if applicable) any other consideration for the property and the chattels included in the sale, to the property, chattels or any part thereof that affects a person's tax position under the Income Tax Act 2007 and/or the GST Act.
- (25) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (26) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under clause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (27) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- ~~(28) "Rules" means body corporate operational rules under the Unit Titles Act.~~
- (29) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (30) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under clause 3.8.
- (31) "Settlement date" means the date specified as such in this agreement.
- (32) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (33) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (34) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (35) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.

~~(36) "Unit title" means a unit title under the Unit Titles Act.~~

~~(37) "Unit Titles Act" means the Unit Titles Act 2010.~~

(38) "Working day" means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
- (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of clause 9.3(2) the 15th day of January) in the following year, both days inclusive; and
- (d) the day observed as the anniversary of any province in which the property is situated.

A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

1.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:

- (1) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
- (2) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.3 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for clause 1.3(2).

1.4 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by email; or
 - (iv) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in clause 1.4(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of email:
 - (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
 - (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 - (iii) if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
 - (d) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
 - (e) in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

1.5 Interpretation and Execution

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- (6) Reference to a party's lawyer includes reference to a conveyancing practitioner (as defined in the Lawyers and Conveyancers Act 2006), engaged by that party, provided that all actions of that conveyancing practitioner (including without limitation any actions in respect of any undertaking or in respect of settlement) must strictly accord with the PLS Guidelines.

2.0 Deposit

as specified in clause 27 of the Further Terms of Sale.

- 2.1 The purchaser shall pay the deposit to the vendor ~~or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.~~
- 2.2 ~~If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.~~
- 2.3 The deposit shall be in part payment of the purchase price. in accordance with clause 27.5 of the Further Terms
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder ~~until~~ of Sale or until:
- ~~(1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and~~
 - ~~(2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and~~
 - ~~(3) where the property is a unit title:

 - ~~(a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act, and~~
 - ~~(b) an additional disclosure statement under section 148 of the Unit Titles Act (if requested by the purchaser within the time prescribed in section 148(2)),~~~~

have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act to postpone the settlement date until after the disclosure statements have been provided; or
 - (4) this agreement is:
 - (a) cancelled pursuant to:
 - ~~(i) clause 6.2(3)(c); or~~
 - (ii) sections 36 or 37 of the Contract and Commercial Law Act 2017; or
 - (b) avoided pursuant to clause 9.10(5); or
 - ~~(5) where the property is a unit title and the purchaser, having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act, has cancelled this agreement pursuant to that section, or has elected not to cancel by giving notice to the vendor, or by completing settlement of the purchase.~~
- 2.5 ~~Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to clause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing after the effect of the same is explained to the purchaser by the agent or by the purchaser's lawyer or conveyancer.~~

3.0 Possession and Settlement**Possession**

- 3.1 ~~Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall yield the property on the settlement date.~~
- 3.2 ~~If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice.~~
- ~~(1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and~~
 - ~~(2) to re-enter the property no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, the chattels and the fixtures.~~
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4 ~~On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.~~

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) certify and sign the transfer instrument.
- 3.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.

- 3.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under clause 3.12 or 3.13, or for any deduction allowed to the purchaser under clause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to clause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to clause 10.8);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in clause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in clause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, ~~including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.~~
- 3.9 All obligations under clause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement in accordance with the PLS Guidelines. Where the purchaser considers it is necessary or desirable to tender settlement, this may be effected (in addition to any other valid form of tender) by the purchaser's lawyer providing to the vendor's lawyer a written undertaking that:
- (1) the purchaser is ready, willing, and able to settle;
 - (2) the purchaser's lawyer has certified and signed the transfer instrument and any other instruments in the Landonline Workspace for the transaction that must be signed on behalf of the purchaser; and
 - (3) the purchaser's lawyer holds in their trust account in cleared funds the amount that the purchaser must pay on settlement.

Last-Minute Settlement

- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last-minute settlement"), the purchaser shall pay the vendor:
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last-minute settlement; and
 - (2) if the day following the last-minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this clause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
 - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to clause 3.12(1).
 - (3) If the parties are unable to agree upon any amount payable under this clause 3.12, either party may make a claim under clause 10.0.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.13 (1) For the purposes of this clause 3.13:
- (a) the default period means:
 - (i) in clause 3.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in clause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in clause 3.13(5), the period from the settlement date until the date when settlement occurs; and
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and

- (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
- (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 3.13(2)(b) during the default period. A purchaser in possession under this clause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of clause 3.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of clause 3.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- ~~(5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 3.13(2)(b) during the default period.~~
- (6) The provisions of this clause 3.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) If the parties are unable to agree upon any amount payable under this clause 3.13, either party may make a claim under clause 10.0.

Deferment of Settlement and Possession

~~3.14 If~~

- ~~(1) this is an agreement for the sale by a commercial on-seller of a household unit, and~~
 - ~~(2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,~~
- ~~then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).~~

3.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.

~~3.16 If~~

- ~~(1) the property is a unit title,~~
- ~~(2) the settlement date is deferred pursuant to either clause 3.14 or clause 3.15, and~~
- ~~(3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in clause 8.2(3),~~
~~then the vendor may extend the settlement date.~~
 - ~~(a) where there is a deferment of the settlement date pursuant to clause 3.14, to the tenth working day after the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice, or~~
 - ~~(b) where there is a deferment of the settlement date pursuant to clause 3.15, to the tenth working day after the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.~~

~~New Title Provision~~

~~3.17 (1) Where~~

- ~~(a) the transfer of the property is to be registered against a new title yet to be issued, and~~
 - ~~(b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,~~
~~then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day after the later of the date on which:~~
 - ~~(i) the vendor has given the purchaser notice that a search copy is obtainable, or~~
 - ~~(ii) the requisitions procedure under clause 6.0 is complete.~~
- ~~(2) Clause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.~~

4.0 Residential Land Withholding Tax

4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:

- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and

- (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
- (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
- (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - (b) any costs payable by the vendor under clause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.

4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under clause 4.1(1), then the purchaser may:

- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
- (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this clause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.

4.3 If pursuant to clause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:

- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
- (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.

4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to clause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.

4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:

- (1) the costs payable by the vendor under clause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
- (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

5.0 Risk and insurance

5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.

5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:

- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
- (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
- (3) if the property is zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
- (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in clause 10.8 for when an amount of compensation is disputed.

5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.

6.2 (1) The purchaser is deemed to have accepted the vendor's title ~~except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:~~ ~~and may not make any objections or requisitions as to title.~~

- ~~(a) the tenth working day after the date of this agreement; or~~
- ~~(b) the settlement date.~~

- (2) ~~Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.~~
- (3) ~~If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply.~~
- (a) ~~the vendor shall notify the purchaser (“a vendor’s notice”) of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser’s notice,~~
- (b) ~~if the vendor does not give a vendor’s notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement,~~
- (c) ~~if the purchaser does not on or before the fifth working day after service of a vendor’s notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.~~

6.3 ~~In the event of cancellation under clause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.~~

- 6.4 (1) ~~If the title to the property being sold is a cross-lease title or a unit title and there are:~~
- (a) ~~in the case of a cross-lease title:~~
- (i) ~~alterations to the external dimensions of any leased structure; or~~
- (ii) ~~buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted use covenant,~~
- (b) ~~in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be).~~ ~~then the purchaser may requisition the title under clause 6.2 requiring the vendor.~~
- (c) ~~in the case of a cross-lease title, to deposit a new plan depicting the buildings or structures and register a new cross-lease or cross-leases (as the case may be) and any other ancillary dealings in order to convey good title, or~~
- (d) ~~in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.~~
- (2) ~~The words “alterations to the external dimensions of any leased structure” shall only mean alterations which are attached to the leased structure and enclosed.~~

6.5 ~~The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land, and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.~~

7.0 Vendor’s warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
- (a) from any local or government authority or other statutory body; or
- (b) under the Resource Management Act 1991; or
- (c) from any tenant of the property; or
- (d) from any other party; or
- (2) ~~given any consent or waiver,~~ which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 ~~The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.~~
- 7.3 ~~The vendor warrants and undertakes that at settlement:~~
- (1) ~~The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure to do so shall only create a right of compensation.~~
- (2) ~~All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.~~
- (3) ~~There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.~~
- (4) ~~Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.~~
- (5) ~~Where the vendor has done or caused or permitted to be done on the property any works:~~
- (a) ~~any permit, resource consent, or building consent required by law was obtained, and~~
- (b) ~~to the vendor’s knowledge, the works were completed in compliance with those permits or consents, and~~
- (c) ~~where appropriate, a code compliance certificate was issued for those works.~~
- (6) ~~Where under the Building Act, any building on the property sold requires a compliance schedule:~~
- (a) ~~the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building,~~
- (b) ~~the building has a current building warrant of fitness, and~~

- ~~(c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.~~
- ~~(7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.~~
- ~~(8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement.~~
- ~~(a) from any local or government authority or other statutory body, or~~
- ~~(b) under the Resource Management Act 1991, or~~
- ~~(c) from any tenant of the property, or~~
- ~~(d) from any other party,~~
- ~~has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.~~
- ~~7.4 If the property is or includes part only of a building, the warranty and undertaking in clause 7.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule.~~
- ~~(1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building,~~
- ~~(2) the building has a current building warrant of fitness, and~~
- ~~(3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.~~
- ~~7.5 The vendor warrants and undertakes that on or immediately after settlement:~~
- ~~(1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.~~
- ~~(2) Any outgoing included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.~~
- ~~(3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.~~
- ~~(4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.~~

~~8.0 Unit title and cross-lease provisions~~

~~Unit Titles~~

- ~~8.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.~~
- ~~8.2 If the property is a unit title, the vendor warrants and undertakes as follows.~~
- ~~(1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.~~
- ~~(2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.~~
- ~~(3) Not less than five working days before the settlement date, the vendor will provide.~~
- ~~(a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act, and~~
- ~~(b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.~~
- ~~(4) There are no other amounts owing by the vendor under any provision of the Unit Titles Act.~~
- ~~(5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.~~
- ~~(6) No order or declaration has been made by any Court against the body corporate or the vendor under any provision of the Unit Titles Act.~~
- ~~(7) The vendor has no knowledge or notice of any fact which might result in.~~
- ~~(a) the vendor or the purchaser incurring any other liability under any provision of the Unit Titles Act, or~~
- ~~(b) any proceedings being instituted by or against the body corporate, or~~
- ~~(c) any order or declaration being sought against the body corporate or the vendor under any provision of the Unit Titles Act.~~
- ~~(8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.~~
- ~~(9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.~~
- ~~(10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for.~~
- ~~(a) the transfer of the whole or any part of the common property,~~
- ~~(b) the addition of any land to the common property,~~
- ~~(c) the cancellation of the unit plan,~~

- ~~(d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan, or~~
~~(e) any change to utility interest or ownership interest for any unit on the unit plan, which has not been disclosed in writing to the purchaser.~~

~~(11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.~~

~~8.3 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of clause 8.2(3), then in addition to the purchaser's rights under sections 149 and 150 of the Unit Titles Act, the purchaser may:~~

- ~~(1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser, or~~
~~(2) elect that settlement shall still take place on the settlement date.~~

~~8.4 If the property is a unit title, each party specifies that:~~

- ~~(1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act, and~~
~~(2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.~~

~~8.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Unit Titles Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to clause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.~~

~~8.6 Unauthorised Structures – Cross Leases and Unit Titles~~

~~(1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:~~

- ~~(a) in the case of a cross-lease title, any required lessors' consent, or~~
~~(b) in the case of a unit title, any required body corporate consent,~~
~~the purchaser may demand within the period expiring on the earlier of:~~
~~(i) the tenth working day after the date of this agreement, or~~
~~(ii) the settlement date;~~

~~that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.~~

~~(2) Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in clauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under clause 8.6(1) being deemed to be an objection and requisition.~~

9.0 Conditions and mortgage terms

9.1 Finance condition

- (1) If the purchaser has identified that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date shown on the front page of this agreement.
- (2) If the purchaser avoids this agreement for failing to arrange finance in terms of clause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.

9.2 Mortgage terms

- (1) Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.

9.3 LIM condition

- (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
- (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
- (c) this agreement is conditional upon the purchaser approving that LIM, provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of clause 9.10(5) shall apply.

- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.

9.4 Building report condition

- (1) If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the fifteenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment.
- (2) The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods and it must be in writing.
- (3) Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report.
- (4) The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent.
- (5) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.

9.5 Toxicology report condition

- (1) If the purchaser has indicated on the front page of this agreement that a toxicology report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the fifteenth working day after the date of this agreement, a toxicology report on the property that is satisfactory to the purchaser, on the basis of an objective assessment.
- (2) The purpose of the toxicology report shall be to detect whether the property has been contaminated by the preparation, manufacture or use of drugs including, but not limited to, methamphetamine.
- (3) The report must be prepared in good faith by a suitably-qualified inspector using accepted principles and methods and it must be in writing.
- (4) Subject to the rights of any tenants of the property, the vendor shall allow the inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of carrying out the testing and preparation of the report.
- (5) The inspector may not carry out any invasive testing in the course of the inspection without the vendor's prior written consent.
- (6) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to clause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the inspector's report.

9.6 OIA consent condition

- (1) If the purchaser has indicated on the front page of this agreement that OIA consent is required, this agreement is conditional upon OIA consent being obtained on or before the OIA date shown on the front page of this agreement on terms and conditions that are satisfactory to the purchaser, acting reasonably, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA consent.

~~9.7 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date shown on the front page of this agreement.~~

~~9.8 If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or that date 65 working days after the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or that date 20 working days after the date of this agreement, whichever is the sooner.~~

9.9 Resource Management Act condition

- (1) If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

9.10 Operation of conditions

If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:

- (1) The condition shall be a condition subsequent.
- (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
- (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
- (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
- (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
- (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

10.0 Claims for compensation

- 10.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, ~~but that obligation is subject to the provisions of this clause 10.0.~~

- ~~10.2~~ The provisions of this clause apply if:
- ~~(1)~~ the purchaser (acting reasonably) claims a right to compensation for:
 - ~~(a)~~ a breach of any term of this agreement;
 - ~~(b)~~ a misrepresentation;
 - ~~(c)~~ a breach of section 9 or section 14 of the Fair Trading Act 1986;
 - ~~(d)~~ an equitable set-off; or
 - ~~(2)~~ there is a dispute between the parties regarding any amounts payable:
 - ~~(a)~~ under clause 3.12 or clause 3.13; or
 - ~~(b)~~ under clause 5.2.
- ~~10.3~~ To make a claim under this clause 10.0:
- ~~(1)~~ the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date, time being of the essence (except for claims made after the settlement date for amounts payable under clause 3.12 or clause 3.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts), and
 - ~~(2)~~ the notice must:
 - ~~(a)~~ state the particular breach of the terms of this agreement, or the claim under clause 3.12, clause 3.13 or clause 5.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
 - ~~(b)~~ state a genuine pre-estimate of the loss suffered by the claimant; and
 - ~~(c)~~ be particularised and quantified to the extent reasonably possible as at the date of the notice; and
 - ~~(3)~~ the claimant must not have made a prior claim under this clause 10.0 (to the intent that a claimant may make a claim under this clause 10.0 on only one occasion, though such claim may address one or more of the elements in clause 10.2):
- ~~10.4~~ If the claimant is unable to give notice under clause 10.3 in respect of claims under clause 10.2(1) or clause 10.2(2)(b) by the settlement date by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under clause 11.1, time being of the essence.
- ~~10.5~~ If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- ~~10.6~~ If the purchaser makes a claim for compensation under clause 10.2(1) but the vendor disputes that the purchaser has a valid or reasonably arguable claim, then:
- ~~(1)~~ the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under clause 10.3, time being of the essence; and
 - ~~(2)~~ the purchaser's right to make the claim (on the basis that such claim is valid or reasonably arguable) shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society. The appointee's costs shall be met by the party against whom the determination is made or otherwise as determined by the appointee.
- ~~10.7~~ If the purchaser makes a claim for compensation under clause 10.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 10.6, the vendor is deemed to have accepted that the purchaser has a valid or reasonably arguable claim.
- ~~10.8~~ If it is accepted, or determined under clause 10.6, that the purchaser has a right to claim compensation under clause 10.2(1) but the amount of compensation claimed is disputed, or if the claim is made under clause 10.2(2) and the amount of compensation claimed is disputed, then:
- ~~(1)~~ an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - ~~(2)~~ if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the Auckland District Law Society;
 - ~~(3)~~ the interim amount must be a reasonable sum having regard to the circumstances, except that:
 - ~~(a)~~ where the claim is under clause 3.13 the interim amount shall be the lower of the amount claimed, or an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date;
 - ~~(b)~~ neither party shall be entitled or required to undertake any discovery process, except to the extent this is deemed necessary by the appointee under clause 10.8(4) for the purposes of determining that the requirements of clauses 10.3(2)(b)-(c) have been met.
 - ~~(4)~~ if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under clause 5.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally by the parties, or otherwise as determined by the appointee. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society;
 - ~~(5)~~ the amount of the claim determined to be payable shall not be limited by the interim amount;
 - ~~(6)~~ the stakeholder shall lodge the interim amount on an interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - ~~(7)~~ the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount; and
 - ~~(8)~~ apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.

- ~~10.9 Where a determination has to be made under clause 10.6(2) or clause 10.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these clauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations. However, the settlement date will only be deferred under this clause 10.9 if, prior to such deferral, the purchaser's lawyer provides written confirmation to the vendor's lawyer that but for the resolution of the claim for compensation, the purchaser is ready, willing and able to complete settlement.~~
- ~~10.10 The procedures prescribed in clauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of this agreement.~~
- ~~10.11 A determination under clause 10.6 that the purchaser does not have a valid or reasonably arguable claim for compensation under clause 10.2(1) shall not prevent the purchaser from pursuing that claim following settlement.~~
- ~~10.12 Where a determination is made by a person appointed under either clause 10.6 or clause 10.8, that person:~~
- ~~(1) shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination, and~~
 - ~~(2) may make an order that one party must meet the reasonable legal costs of the other party.~~

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service in all material respects ready, able, and willing to proceed to settle in accordance with this agreement, or is not so ready, willing, and able to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to clause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
 - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
- (3) The vendor may give a settlement notice with a notice under this clause.
- (4) For the purposes of this clause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to clause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
 - (a) sue the purchaser for specific performance; or
 - (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
 - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
 - (ii) sue the purchaser for damages.
 - (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 - (3) The damages claimable by the vendor under clause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale;
 - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
 - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
 - (4) Any surplus money arising from a resale shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
 - (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.

- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

12.0 Non-merger

- 12.1 The obligations and warranties of the parties in this agreement shall not merge with:
- (1) the giving and taking of possession;
 - (2) settlement;
 - (3) the transfer of title to the property;
 - (4) delivery of the chattels (if any); or
 - (5) registration of the transfer of title to the property.

13.0 Goods and Services Tax and Purchase Price Allocation

- 13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement, then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 - ~~(2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;~~
 - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST;
 - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to clause 3.8(1).
- 13.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 13.3
- (1) Without prejudice to the vendor's rights and remedies under clause 13.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 - (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 11.1.
 - (3) The vendor may give a settlement notice under clause 11.1 with a notice under this clause.
- 13.4 Each party warrants that their response to the statement on the front page regarding purchase price allocation being relevant to the vendor or purchaser/purchaser's nominee for income tax and/or GST purposes is correct.

14.0 Zero-rating

- 14.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 14.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 14.5
- (1) If any of the particulars stated by the purchaser in Schedule 1:
 - (a) are incomplete; or
 - (b) alter between the date of this agreement and settlement,the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
 - (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.
 - (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement, if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- ~~14.6 If~~
- ~~(1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement, and~~
 - ~~(2) that part is still being so used at the time of the supply under this agreement,~~
- ~~then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.~~

~~14.7~~ If

- ~~(1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and~~
- ~~(2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement; then the references in clauses 14.3 and 14.4 to “the property” shall be deemed to mean the remainder of the property excluding that part and the references to “the supply under this agreement” shall be deemed to mean the supply under this agreement of that remainder.~~

14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of clause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:

- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and
- (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with clause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest rate for late settlement on the amount unpaid from the date of service of the vendor’s demand until payment).

~~15.0~~ Supply of a Going Concern

~~15.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated in this agreement.~~

- ~~(1) each party warrants that it is a registered person or will be so by the date of the supply;~~
- ~~(2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;~~
- ~~(3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and~~
- ~~(4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.~~

~~15.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 13.0 of this agreement shall apply.~~

16.0 Limitation of Liability

- 16.1 If a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an “independent trustee” and clauses 16.2 and 16.3 will apply.
- 16.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.
- 16.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee’s act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 16.2 does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust had the indemnity not been lost.

17.0 Counterparts

- 17.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.
- 17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

18.0 Agency

- 18.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor has appointed as the vendor’s agent according to an executed agency agreement.
- 18.2 The scope of the authority of the agent under clause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser’s offer or counteroffer on the vendor’s behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 18.3 The vendor shall be liable to pay the agent’s charges including GST in accordance with the executed agency agreement.

19.0 Collection of Sales Information

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to the Real Estate Institute of New Zealand Incorporated (REINZ).
- 19.2 This information will be stored on a secure password protected network under REINZ’s control and may include (amongst other things) the sale price and the address of the property, but will not include the parties’ names or other personal information under the Privacy Act 2020.
- 19.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.

- 19.4 Despite the above, if REINZ does come to hold any of the vendor's or purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

20.0 COVID-19 / Pandemic Provisions

- 20.1 The parties acknowledge that the Government of New Zealand or a Minister of that Government may, as a result of public health risks arising from a Pandemic, order restrictions on personal movement pursuant to the COVID-19 Public Health Response Act 2020 (or other legislation), and the effect of such restrictions may be that personal movement within or between particular regions is unlawful for the general population of those regions.
- 20.2 Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:
- (1) The date for satisfaction of any condition that has not yet been satisfied or waived will be the later of:
 - (a) the date that is 10 working days after the restriction on personal movement in the region or district in which the property is located is removed; or
 - (b) the date for satisfaction of the condition as stated elsewhere in this agreement.
 - (2) The settlement date will be the later of:
 - (a) the date that is 10 working days after all conditions are satisfied or waived; or
 - (b) the date that is 10 working days after the date on which the restriction on personal movement in the region or district in which the property is located is removed; or
 - (c) the settlement date as stated elsewhere in this agreement.
 - (3) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.
- 20.3 Clause 20.2 applies whether such legal restriction on personal movement exists at, or is imposed after, the date of this agreement, and on each occasion such restriction is imposed.
- 20.4 Neither party will have any claim against the other for a deferral of a condition date or the settlement date under this clause 20.0.
- 20.5 For the purposes of this clause 20.0, "Pandemic" means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement.



FURTHER TERMS OF SALE

Refer to attached Further Terms of Sale



FURTHER TERMS OF SALE

The General Terms of Sale are further amended as follows:

Clauses 6.3 and 6.4 are deleted and replaced with the following:

- 6.3 *Except as otherwise expressly set forth in this agreement, no error, omission or misdescription of the Property or the title shall annul the sale and no compensation shall be made or given.*

Clause 6.5 is deleted and replaced with the following:

- 6.5 *In accordance with clause 3.9 of the Land Covenants the vendor shall be entitled to require the inclusion of a fencing covenant in any transfer of the property.*

Clause 7.3 is deleted and replaced with the following:

- 7.3 *The vendor warrants and undertakes that at the giving and taking of possession, there are no arrears of rates, water rates or charges outstanding on the Property.*

Clause 18.4 is added as follows:

- 18.4 *Notwithstanding clause 18.1, the agent is not permitted to receive notices in respect of this agreement on behalf of the vendor, including without limitation, any notice advising of satisfaction or waiver of any purchaser condition, or any notice of cancellation given by the purchaser. All such notices must be given to the vendor's solicitor in accordance with clause 1.4.*

21.0 DEFINITIONS AND INTERPRETATION

21.1 In this agreement:

Agreement means this agreement, comprising the front page, the ADLS General Terms of Sale, the Further Terms of Sale and all annexures, schedules and plans.

Balance of the Land means the balance of the Land, excluding the Property.

Consents means the full and final approval of any private plan change applications, subdivision consent applications, land use consent applications, any other resource consent applications together with any building consents to enable the subdivision and development of the relevant parts of the Land into the Property (including any EPA), approved by the Relevant Authority, necessary to give effect to the subdivision of the Property as contemplated by the Subdivision Plan or the Staged Subdivision Plan.

Deposit means ten percent (10%) of the Purchase Price payable pursuant to clause 27.

Design Guidelines means the design control guidelines issued by Palmerston North City Council from time to time applicable to the Property and the Development in general and made available at www.tamakukuterrace.nz or such other website as is nominated by Palmerston North City Council from time to time. The current version of the Design Guidelines is attached to this Agreement as Annexure 3.

Development means the vendor's proposed development and subdivision of the Land to be known as "Tamakuku Terrace" relating to part or all of the Land generally in accordance with the Subdivision Plan or any Staged Subdivision Plan.

Dispose means to sell, transfer, assign, let, mortgage, part with or share possession or share occupation, or to hold the Property on trust for any person provided that this definition shall not include a mortgage to any bank or other financial institution in the business of lending money.

District Plan means the Palmerston North City Council District Plan including any variation, amendment and/or replacement to that plan as is applicable under the RMA and/or any equivalent planning document under any successor legislation.

EPA means engineering planning approval.

GST date means the earlier of the:

- (a) settlement date; and
- (b) date that is five (5) Working Days prior to the date that the vendor is required to account to the Inland Revenue Department for the GST payable in respect of this agreement,

(time being of the essence).

Interests means the Land Covenants, and any easements, building line restrictions, restrictions generally or other encumbrances, rights, obligations, or consent notices which may be required in order to satisfy any conditions of the Consents, or the requirements of any statute, regulation

or Relevant Authority, and/or the Network Utility Operator (as defined in the RMA) or which in the sole and absolute discretion of the vendor are deemed to be necessary or desirable in respect of the Land, the Property or the Development.

Land means a freehold estate in:

- (a) 0.7989ha (more or less) legally described as Lot 3 DP 55450 held in Record of Title WN23C/991;
- (b) 4.7766ha (more or less) legally described as Lot 3 DP 82220 held in Record of Title WN48D/641; and
- (c) 4.0591ha (more or less) legally described as Lot 1 DP 66444 held in Record of Title WN35A/110.

Land Covenants means the land covenants applicable to the Property an initial draft of which is attached to this agreement as Annexure 2 (subject to clause 26.1) including without limitation the no-objection covenant as set out in clause 3.7 of the Land Covenants.

LINZ means Land Information New Zealand.

Lodge any Submission means (without limitation) personally or through any agent or servant, directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning/resource management hearing, or appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

Planning Proposal includes (without limitation) any application for resource consent and/or plan change and/or variation of any nature under the relevant District Plan and/or a proposed District Plan in respect of the Land including the Balance of the Land.

Property means that part of the Land comprising approximately [*****m²] (subject to final survey) as approximately shown outlined in red and labelled lot [*****] on the Subdivision Plan and being a freehold estate under the Land Transfer Act 2017.

Relevant Authority means any corporation, including any government, local, statutory or non-statutory authority or body having jurisdiction over the Land or any part of the Land.

RMA means the Resource Management Act 1991.

Section 224(c) Certificate means the certificate or certificates issued pursuant to section 224(c) of the RMA in respect of the Consents.

Settlement Date means, subject to clause 20.0 of the General Terms of Sale, the tenth (10th) Working Day following the date on which the vendor has given the purchaser written notice that a search copy of the record of title to the Property, as defined in section 60 of the Land Transfer Act 2017, is obtainable.

Staged Subdivision Plan means an amended or reduced version of the Subdivision Plan that will enable the subdivision of and/or any relevant stage of the Development.

Stakeholder means the vendor's solicitors, Simpson Grierson, Wellington.

Subdivision Plan means the scheme plan of proposed subdivision of the Land in Annexure 1 of this agreement and any variations thereto that are required by any Relevant Authority or by the vendor (in the vendor's sole discretion).

21.2 Interpretation: reference to any statute, regulation, ordinance or bylaw in these Further Terms of Sale shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.

22.0 INTRODUCTION

22.1 The vendor is proposing to undertake the Development and/or sell the Land (if required, at its option, in stages), for residential purposes (and such other purposes) as the vendor in its sole and absolute discretion considers appropriate.

22.2 It is the vendor's intention to impose high level design guidelines and parameters in regards to the look and feel of any development on the Land and the Property, and accordingly, the Property shall be subject to the Land Covenants and the purchaser shall be bound by their terms.

22.3 The purchaser acknowledges that the development of the Land is an evolving concept and is likely to be undertaken in stages. The vendor will not be obliged to complete any development or work on the Land other than the Property and such works as are required to comply with the provisions of any Consents.

22.4 The purchaser further acknowledges that the vendor (in its own name or through other entities and/or in conjunction with other persons or entities) owns or will own an interest in the Balance of the Land, which the vendor may develop whether in whole or in part for such use or uses as the vendor in its sole and absolute discretion considers appropriate. In consideration of the vendor entering into this agreement with the purchaser, the purchaser acknowledges that the Land and the Property will be subject to the no objection provisions contained in the Land Covenants, pursuant to which the purchaser will be bound, *inter alia*, to not directly or indirectly object or procure any person or entity to object to the vendor's development (including subdivision) and use of the Balance of the Land.

22.5 The purchaser acknowledges that it is not purchasing the Property in reliance upon the development of any part of the Land or any further development on the Land including the Balance of the Land proceeding at any particular time or in any particular manner.

23.0 SUBDIVISION

23.1 Subject to clause 22.3 and any conditions the purchaser may request (if any) the vendor will commence and complete the Development or the relevant stage of the Development as relates to the subdivision of the Property in a proper and professional manner in accordance with all statutory and regulatory requirements of all Relevant Authorities. The vendor will not be responsible for any delays in obtaining any Consents or any delay caused by the purchaser,

weather conditions, strikes, lockouts, accidents, epidemics, emergencies or any other matter or cause beyond the vendor's reasonable control.

23.2 The vendor will, at the vendor's expense in all things but subject to clause 22.3:

- (a) implement the conditions of the Consents;
- (b) carry out and comply with all work necessary to give effect to the Consents;
- (c) procure a surveyor to prepare a survey plan for the Property (as the case may be);
- (d) have the Relevant Authority and LINZ approve that survey plan; and
- (e) deposit that survey plan in LINZ and apply to LINZ for the issue of a separate record of title for the Property.

23.3 Provided the requirements of clause 23.2 have been met, the purchaser shall not:

- (a) withhold any part of or the balance of the purchase price or claim a set-off on settlement by reason of any defect or fault in the Property, the services to the Property or the Land or any other part of the Development, or for lack of completion of the Development (but settlement will not prejudice any bona fide claim the purchaser has against the vendor); and/or
- (b) make any objection, requisition or claim for compensation because of any alteration to the Subdivision Plan and/or any Staged Subdivision Plan whether made because of a requirement or direction of the Relevant Authority or as required by the vendor.

23.4 Stormwater connection, wastewater connection, water supply connection, fibre and power connections and other services as required by the conditions of the Consents shall be provided to a point or points on the boundary of the Property, with the location of such point or points to be at the sole discretion of the vendor. The purchaser acknowledges that the vendor is not responsible for the reticulation of any power, or other services or supplies within the Property.

23.5 All costs of connection to services will be the responsibility of the purchaser.

24.0 TITLE, BOUNDARIES, ETC

24.1 The purchaser acknowledges that:

- (a) a separate title has not yet issued for the Property;
- (b) the title to issue for the Property will be a freehold estate subject to the Interests;
- (c) the record of title for the Property may (at the vendor's discretion) be subject to all current covenants, consent notices, drainage or water rights, building line restrictions and any other easements, reservations, statutory materials and exceptions of any kind that are currently registered on the records of title of the Land that comprises the Development;
- (d) the location of any boundaries, services, connection points to services, existing trees or other vegetation, landscaping or other features of the Development as shown on the

Subdivision Plan and/or any Staged Subdivision Plan or any other brochure, report, plan or other document provided to the purchaser is approximate only and does not amount to a representation to the purchaser as to the whereabouts of any services, vegetation or other features on or in relation to the Property, and such matters remain subject to any requirements imposed or requested by a Relevant Authority;

- (e) any alteration to services or connection to services or the number, size, or location, of any lot in the Development (including the Property) will not be an error or misdescription under this clause or this agreement and will not give rise to any right to or claim for compensation by the purchaser. Where a material alteration has occurred, the vendor will, within a reasonable time, notify the purchaser of such; and
- (f) the vendor retains the rights in respect of the Property and the Development as set out in clause 26.3.

24.2 The area of the Property shown on the Subdivision Plan is approximate only and is subject to adjustment on final survey and approval by the Relevant Authority and LINZ.

24.3 The parties agree to adjust the purchase price shown on the front page of this agreement if there is a difference of five percent (5%) or more between the area of the Property as shown on the Subdivision Plan (**attached**) and the final area of the Property as shown on the record of title for the Property when it issues. The parties will adjust the purchase price at the rate of \$500 per m² (five hundred dollars) inclusive of GST. To avoid doubt, if the area of the Property as shown on the Subdivision Plan (**attached**) and the final area of the Property as shown on the record of title for the Property when it issues varies by less than five percent (5%), there shall be no adjustment to the purchase price.

24.4 The purchaser will not be entitled to a transfer of the Property or to call for settlement in accordance with the provisions of this agreement until:

- (a) all conditions precedent (if any) have been satisfied;
- (b) a new title for the Property has been issued; and
- (c) all moneys payable by the purchaser to the vendor under this agreement have been paid to the vendor in cleared funds.

24.5 The vendor gives no warranty to the purchaser as to when the title to the Property will issue or when the Subdivision Plan and/or any Staged Subdivision Plan will be approved by the Relevant Authority or deposited in LINZ, or as to when the purchaser will be able to register a transfer instrument of the Property to the purchaser. The purchaser acknowledges that any projected dates for settlement given by the vendor or its agents prior to or after signing this agreement are indicative and approximate only and are not to be binding on the vendor and do not give rise to any claim for compensation by the purchaser.

25.0 SUNSET DATE

25.1 Unless agreed otherwise by the parties and subject to clause 25.2, if a separate record of title to the Property has not issued by 1 December 2023 (**Sunset Date**) the purchaser will be entitled, at any time after the Sunset Date, to cancel this agreement by written notice to the vendor. Upon receipt by the vendor of such cancellation notice the agreement will be at an end and all money

paid under this agreement by the purchaser must be refunded, without deduction and set off, and neither party will have any claim against the other.

25.2 If the vendor has made reasonable progress towards obtaining a separate record of title to the Property and such title could feasibly be obtained within an additional period of six (6) months, the vendor may, prior to the purchaser exercising its right of cancellation pursuant to clause 25.1, by notice in writing to the purchaser elect to extend the Sunset Date by a period of up to an additional six (6) months.

24.3 Nothing in clauses 25.1 and 25.2 limits section 225 of the RMA.

26.0 LAND COVENANTS AND INTERESTS

Land Covenants

26.1 In furtherance of clauses 22.1, 22.2 and 22.4, the purchaser acknowledges:

- (a)** the Property shall be subject to the Land Covenants;
- (b)** the vendor shall be entitled in its sole discretion to alter or amend the Land Covenants (including without limitation the no-objection covenant as set out in clause 3.7 of the Land Covenants) and the Design Guidelines and/or include further and/or amended provisions that the vendor in its sole discretion considers appropriate and/or as may be required by a Relevant Authority (pursuant to the Consents or otherwise), in favour of the benefited land which shall include such land as the vendor shall nominate; and
- (c)** the provisions of the Land Covenants shall form part of the purchaser's obligations under the terms of this agreement and shall apply to the purchaser (and all persons who gain access to the Property through the purchaser, with the vendor's consent (at the vendor's sole and absolute discretion)) and its executors, administrators, successors and assigns from the date of the agreement to the extent any covenants in the Land Covenants are applicable to any actions that the purchaser may take in relation to the construction and the design of any building, structure or landscaping to be constructed on the Property and/or any use of the Property.

26.2 In the event of a default by the purchaser (and/or all persons who gain access to the Property through the purchaser) or its successors or assigns of the Land Covenants or any of the requirements referred to in clause 26.1:

- (a)** the purchaser will, upon written demand from the vendor, remedy the breach or non-observance of the Land Covenants and/or requirements;
- (b)** the vendor may, at the purchaser's expense, take such action as the vendor considers necessary, including exercising the vendor's remedies under this agreement and/or the Land Covenants; and
- (c)** the purchaser will at all times hereafter keep the vendor indemnified from all proceedings, costs, claims and demands in respect of any breaches by the purchaser of the Land Covenants or requirements referred to in clause 26.1.

Interests

- 26.3** The vendor retains in relation to the subdivision, the Development, and in relation to the Property, the following rights (for the vendor and the vendor's employees, agents and contractors):
- (a) to, at any time alter or vary the Subdivision Plan and/or any Staged Subdivision Plan, and any subsequent plan relating to the Development (including the addition, alteration, variation or cancellation of any proposed Interests shown on any such plan) in such manner as the vendor in its sole and absolute discretion considers appropriate having regard to the circumstances, including if required by a Relevant Authority;
 - (b) to grant any rights to lay and maintain over or within the Property telecommunication and computer media cables, power cables, gas, sewerage, water and storm water pipes and infrastructure and connections for any of those purposes and to construct and maintain above or below ground any transformer or supply box and storm water depressions or detentions, and to secure such rights by easement on terms and conditions as the vendor at its sole discretion may require;
 - (c) to create and register against the record of title to the Property the Interests and in relation to such benefited and burdened land or in favour of such land owners or party/parties, as the vendor in its sole discretion sees fit and without limitation for the protection of the Balance of the Land and/or some or all purchasers of lots in the Development;
 - (d) to construct or lay any road, path, access way, cable, piping or any other infrastructure that in the opinion of the vendor is necessary or desirable;
 - (e) to excavate, cut, create batters, contour, lower, fill, landscape or plant the Development or any part of it which the vendor at its sole discretion may require;
 - (f) to store soil in the course of the Development;
 - (g) to amend the Development at its sole discretion in respect of any land shown on the Subdivision Plan as legal road and/or reserve (provided legal access is provided to the Property) so that any such area is not vested or dedicated as road or reserve but remains in private or other ownership; and
 - (h) to enter upon any part of the Property and do such work as shall in the opinion of the vendor be necessary or desirable.
- 26.4** In each case detailed in clauses 26.3 (a) to (h) above, the vendor shall not be liable for any damage or to make any compensation to the purchaser or any person claiming under the purchaser in respect thereof and the purchaser shall not be entitled to make any objection or requisition against the Property or the title to the Property.
- 26.5** The purchaser must take title to the Property subject to or with the benefit of the Interests, and shall execute all documents (containing all terms considered reasonably desirable by the vendor's solicitors) and do such things and take such steps as may be required by the vendor to obtain the deposit of the Subdivision Plan and/or any Staged Subdivision Plan and the implementation of the Interests whether in respect of the Land, the Property or the Development.

26.6 The vendor gives no warranty as to the type, location or improvements of any communal or public facilities, reserves or access that will form part of the Development at Settlement and any plans or documents or similar provided to the purchaser showing or anticipating such public or communal reserve, land, facilities or access are acknowledged by the purchaser as to be indicative only (and subject to the terms of the Consents, approval of the Relevant Authority and the discretion of the vendor).

27.0 PAYMENT OF DEPOSIT AND BALANCE OF PURCHASE PRICE (SETTLEMENT)

Deposit

27.1 The purchaser shall pay the Deposit to the Stakeholder immediately upon execution of this agreement by both parties (time being of the essence).

27.2 The Deposit shall be paid in cleared funds and from the trust account of the solicitor acting for the purchaser.

27.3 If the Deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser a notice requiring payment. If the purchaser fails to pay the Deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the Deposit has been paid before the notice of cancellation is served.

27.4 The Stakeholder will not be liable to any party for any delay in investing the Deposit or any part of it, for any default on the part of the bank or for any costs deducted by the bank for handling the deposit or any interest thereon.

27.5 The vendor and purchaser agree that the Deposit shall be held in the Stakeholder's trust account on interest bearing deposit in the name of the vendor and the purchaser, and:

- (a)** where this agreement is entered into subject to any conditions expressed in this agreement, each such condition has been fulfilled or waived; and
- (b)** contemporaneous with a separate record of title being issued for the Property, the Deposit plus net interest (if any) less any applicable withholding tax and commission (**Net Deposit**) will be released to the vendor; or
- (c)** in the event that this agreement is cancelled:
 - (i)** as a result of a default by the purchaser, the Net Deposit will be immediately released to the vendor; and
 - (ii)** for any other reason save the default of the purchaser, the Net Deposit will immediately be refunded to the purchaser.

Settlement

27.6 The purchaser shall pay the balance of the purchase price on the Settlement Date.

27.7 The Purchaser must comply with all applicable anti-money laundering legislation and provide all information that is requested by the Stakeholder or vendor (including where a nomination takes

place, all information requested in respect of the nominee and its underlying beneficial owners and other persons with control).

28.0 NO CAVEAT

28.1 The purchaser must not lodge a caveat, relationship property notice, charging order or any other encumbrance (collectively **Caveat**) against the vendor's title to the Land or the Property, unless a separate record of title has issued for the Property and the vendor is in default of any of its obligations under this agreement.

28.2 If the purchaser breaches this clause, then without limitation, the purchaser must on demand pay all costs, expenses and disbursements (including the vendor's legal costs on a client/solicitor basis) arising out of the same.

28.3 The purchaser (and if more than one, each of them) hereby irrevocably appoints the Chief Executive of the vendor as its attorney for the purpose of executing any consent of withdrawal of Caveat, in each case whether or not the vendor has requested the purchaser to execute that consent or withdrawal of Caveat. If this power of attorney needs to be registered, this agreement shall be deemed to comprise a registerable deed at law in accordance with the provisions of the Land Transfer Act 2017 and the commencement date of which shall be the date of this agreement.

29.0 REPRESENTATION

29.1 The parties acknowledge that this agreement, and the annexures to this agreement, together with any approvals and consents in writing provided for in this agreement and given prior to the execution of this agreement, contain the entire agreement between the parties, notwithstanding any negotiations or discussions prior to the execution of this agreement, and notwithstanding anything contained in any brochure, report or other document or source.

29.2 The purchaser acknowledges that it has not been induced to execute this agreement by any representation, verbal or otherwise, made by or on behalf of the vendor, which is not set out in this agreement.

29.3 The purchaser purchases the Property on an "as is where is" basis and all implied representations or warranties are hereby expressly excluded. The purchaser has satisfied itself as regards all aspects and matters pertaining to the Property and shall make no claim and shall have no recourse against the vendor in respect of this agreement or any other matter whatsoever howsoever arising and the purchaser will not on settlement retain any monies by way of set off, counter claim or deduction or otherwise.

29.4 If any provision of this agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions shall not be affected by that event and each provision shall be valid and enforceable to the fullest extent permitted by law.

30.0 LOWEST PRICE CLAUSE

30.1 **Lowest Price:** For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

- (a)** the purchase price, as adjusted or calculated in accordance with any provision of this agreement, plus GST (if any) is the lowest price (within the meaning of section EW

32(3) of the Income Tax Act 2007) that they would have agreed for the sale and purchase of the Property (**Lowest Price**), on the date that this agreement was entered into, if payment would have been required in full at the time the first right in the Property was transferred;

- (b) the Lowest Price is the value of the Property; and
- (c) they will compute their taxable income for the relevant period on the basis that the purchase price includes no capitalised interest and they will file their tax returns on that basis.

31.0 GENERAL PROVISIONS

31.1 Nomination: Where the purchaser executes this agreement with provision for a nominee, or as an agent for an undisclosed principal, or on behalf of a company to be formed, the purchaser must, at all times, remain liable for the observance and performance of all obligations on the part of the purchaser under this agreement. The purchaser shall notify the vendor of any such nomination and shall provide the name of the nominee and the full details of such nomination to the vendor. The purchaser warrants on behalf of itself and any nominee that both it and the nominee will comply with the requirements of the Overseas Investment Act 2005 and any applicable anti-money laundering legislation.

31.2 Assignment by purchaser: The purchaser must not assign, transfer, dispose of or alienate the benefit of this agreement, without the prior written consent of the vendor. Any consent given by the vendor may be subject to such terms and conditions as the vendor in its sole and absolute discretion thinks fit including, without limitation:

- (a) a requirement that the purchaser remains liable for the observance and performance of all obligations on the part of the purchaser under this agreement, (including, but not limited to, the observance and performance of clause 26.1 (**Land Covenants**));
- (b) the execution by the assignee of a deed of covenant in a form acceptable to the vendor;
- (c) the purchaser paying the vendor's costs, including solicitor's costs.

31.3 Deed of covenant on assignment by purchaser: If the vendor consents to the assignment, transfer, disposal or alienation of the benefit of this agreement by the purchaser, the vendor will procure its solicitors to deliver to the purchaser a deed of covenant and the purchaser will, at the cost of the purchaser (including the vendor's reasonable legal fees and disbursements), procure execution of the deed pursuant to which the assignee, transferee or disposee covenants with the vendor that the assignee, transferee or disposee is bound by the provisions contained or implied in this agreement and on the part of the purchaser to be observed and performed.

31.4 Assignment by Vendor: The vendor will be free to assign, transfer, or otherwise dispose of or alienate the benefit of this agreement to a third party on such terms and conditions as it thinks fit. As from completion of such assignment, transfer or other alienation the obligations of the vendor under this agreement or otherwise howsoever will be at an end and will not be continuing.

31.5 Formation of Contract: This agreement upon execution by the purchaser shall constitute an offer by the purchaser and shall not for any purpose constitute or be deemed to constitute a contract nor shall such offer be or be deemed to have been accepted unless and until this agreement is also actually executed by the vendor or on behalf of the vendor.

32.0 COMPANY OR TRUST PURCHASER – GUARANTEE

32.1 If the purchaser under this agreement is a company or a trust, then the details in clause 32.2 must be completed and signed, and the following terms shall apply:

- In consideration of the vendor having entered into this agreement with the purchaser at the Guarantor's request (as is hereby acknowledged by the Guarantor) the Guarantor unconditionally and irrevocably guarantees to the vendor the payment of all monies payable by the purchaser, and performance of all of the purchaser's obligations, under this agreement.
- The Guarantors liability to the vendor shall be that of a principal obligor under this agreement. As between the Guarantor and the vendor, the Guarantor may for all purposes be treated as the purchaser and the vendor shall be under no obligation to take proceedings against the purchaser before taking proceedings against the Guarantor. The Guarantors liability shall not be affected by any indulgence grant of time, waiver or any other act or thing on the vendor's part which might affect the Guarantors liability if the Guarantor was a surety only. This guarantee will continue in the event of the purchaser assigning its interest in the agreement.
- The Guarantor indemnifies the vendor against any losses, damages, expenses, and costs the vendor may incur by reason of any breach or default on the part of the purchaser under this agreement.

32.2 For the purposes of clause 32.1 above:

- The Guarantor(s) are:
- Signed by the Guarantor(s)

33.0 CAPACITY OF VENDOR

33.1 The vendor has entered into this agreement in its non-regulatory capacity (as landowner). This agreement does not bind the Palmerston North City Council in its capacity as a regulatory authority in any way, and any consent or agreement the vendor gives under this agreement is not an agreement or consent in the Palmerston North City Council's regulatory capacity and vice versa.

33.2 When acting in its regulatory capacity, the Palmerston North City Council is entitled to consider all applications to it in relation to the Property without regard to this agreement and in accordance with its normal procedures, timeframes, principles and standard criteria.

33.3 The vendor will not be liable to the purchaser or any other party if, in its regulatory capacity, the Palmerston North City Council declines or imposes conditions on any consent or permission the purchaser or any other party seeks for any purpose associated with this agreement.

33.4 For the purposes of this agreement, "Palmerston North City Council" refers to the Palmerston North City Council in its regulatory capacity and "vendor" refers to the Palmerston North City Council in its non-regulatory capacity as landowner.

34.0 RESALE OF PROPERTY

34.1 Disposal of Property: The purchaser warrants and undertakes with the vendor not to Dispose of the Property or agree to Dispose of the Property without the prior written consent of the vendor (such consent to be at the sole discretion of the vendor). Any consent given by the vendor may be subject to such terms and conditions as the vendor in its sole and absolute discretion thinks fit including, without limitation:

- (a) a requirement that the purchaser remains liable for the observance and performance of all obligations on the part of the purchaser under this agreement, (including, but not limited to, the observance and performance of clause 26.1 (**Land Covenants**));
- (b) the execution by the dispose/transferee of a deed of covenant in a form acceptable to the vendor;
- (c) the purchaser paying the vendor's costs, including solicitor's costs.

34.2 Deed of Covenant - Disposal of Property: If the vendor consents to Dispose of the Property under clause 34.1, the vendor will procure its solicitors to deliver to the purchaser a deed of covenant in a form acceptable to the vendor and the purchaser will, at the cost of the purchaser (including the vendor's reasonable legal fees and disbursements), procure execution of the deed pursuant to which the transferee or disposee covenants with the vendor that the, transferee or disposee is bound by the provisions contained or implied in this agreement and on the part of the purchaser to be observed and performed.

34.3 Lapse of Requirement for Consent to Dispose: The requirement in clause 34.1 to obtain vendor consent to Dispose of the Property shall lapse on the date a code compliance certificate is issued for a residential dwelling constructed on the Property and which has been built and landscaped in accordance with the design approval issued by the vendor pursuant to the Land Covenant.

ANNEXURE 1
SUBDIVISION PLAN

Notes:

1. Horizontal Datum: New Zealand GD2000 (Wanganui Circuit).
2. Not all public and private services are necessarily shown on this plan.
3. The aerial photograph and contours are sourced from the LINZ Data Service and is dated 20/02/19. Aerial photographs are subject to various distortions and inaccuracies and should not be wholly relied upon.
4. This plan has been prepared for the purpose of a resource consent application only. It is not a precise survey plan. As areas and dimensions are likely to vary upon survey it should not be attached to any sale & purchase agreements without an appropriate condition to cover such variations.

**AREAS & DIMENSIONS
SUBJECT TO SURVEY**

Owner: Palmerston North City Council
 Certificate of Title: WN48D/641, WN5A/110 & WN23C/991
 Total Area: 9.6346 ha
 Local Authority: Palmerston North City Council
 District Plan Zone: Whakaranga Residential Area

Client & Site
 Palmerston North City Council
 56 & 56A, James Line
 Whakaranga, Palmerston North

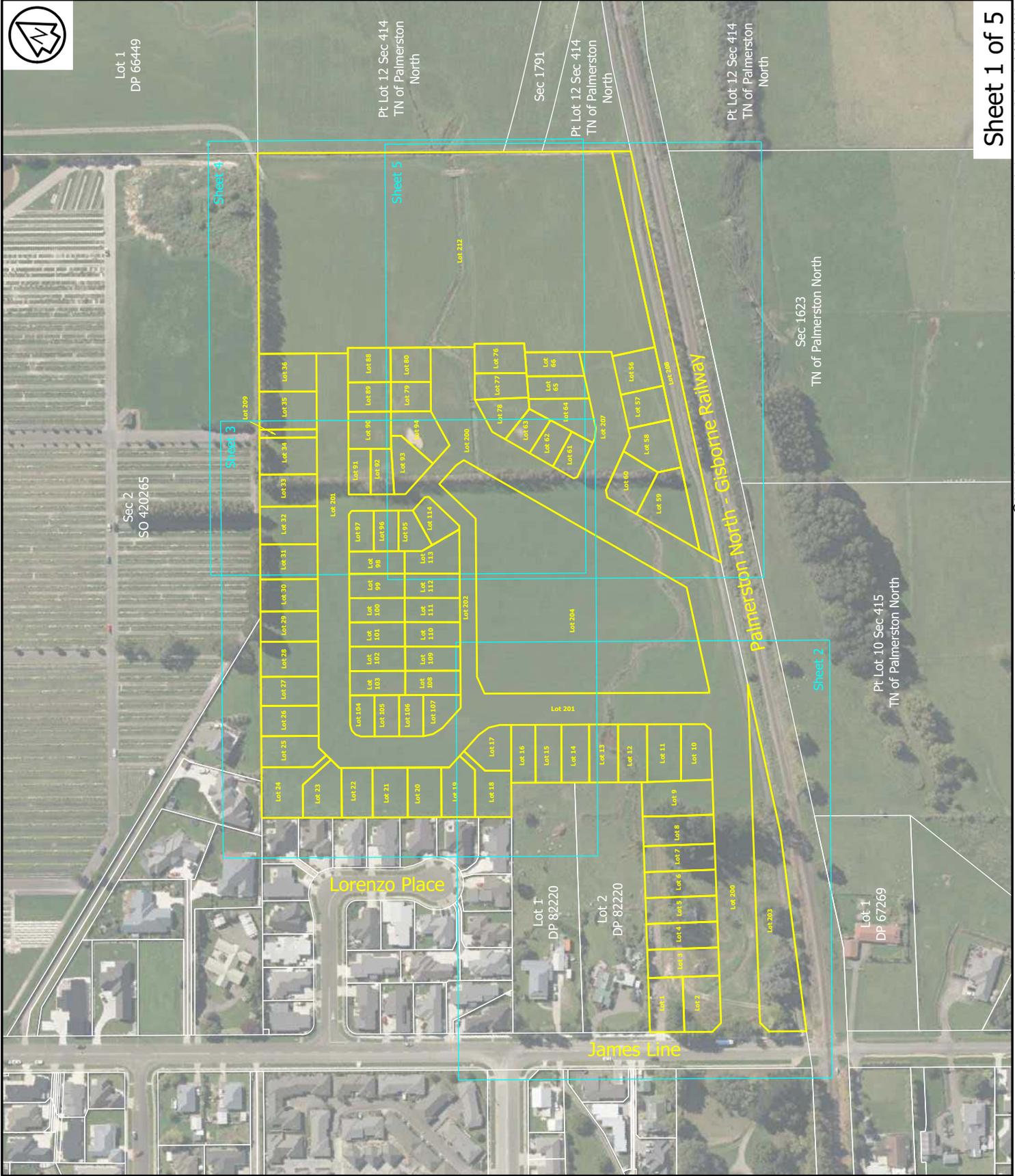
Project
 Proposed Subdivision of Lot 3 DP 55450,
 Lot 3 DP 82220 & Lot 1 DP 66444
 STAGE ONE

Rev	Date	Amendment	By
C	10/04/19	Buy changes Lots 1-9, 30-60, 208	BC
D	21/02/20	Staging, spill road & reserve lots	BC
E	22/07/20	Lots 17-19, 24-25, 40-43, 64, 70, 85, 104, 107	BC
F	18/01/21	Reissue (no changes to this sheet)	BC
H	17/08/21	Separate stage plan sets, Lot 208 increased	BC
I	17/08/21	Reissue (no changes to this sheet)	BC

Surveyed	Approved for Issue
Checked: B Curtis	27/08/21

Drawing
Stage 1 Scheme Plan: Overview

CAD File Name	Scale
18-690-SC-1.dwg	1:2,000 @ A3
Drawing Number	Rev
18-690-SC-101	1



Notes:

1. Horizontal Datum: New Zealand GD2000 (Wanganui Circuit).
2. Not all public and private services are necessarily shown on this plan.
3. This plan has been prepared for the purpose of a resource consent application only. It is not a precise survey plan. As areas and dimensions are likely to vary upon survey it should not be attached to any sale & purchase agreements without an appropriate condition to cover such variations.

Proposed Easements		
Purpose	Shown	Servient (Burdened Land) / Dominant (Benefited Land)
Right to Drain Water.	A	Lot 8 Lots 1 & 2 DP 82220
Right to Drain Water (in gross).	G	Lot 2 PNCC

AREAS & DIMENSIONS SUBJECT TO SURVEY

Owner: Palmerston North City Council
 Certificate of Title: WN48D/641, WN35A/110 & WN23C/991
 Total Area: 9.6346 ha
 Local Authority: Palmerston North City Council
 District Plan Zone: Whakarongo Residential Area

Client & Site

Palmerston North City Council
 56 & 56A James Line
 Whakarongo, Palmerston North

Project

Proposed subdivision of Lot 3 DP 55450,
 Lot 3 DP 82220 & Lot 1 DP 66444
 STAGE ONE

Rev	Date	Amendment	By
D	21/02/20	Staging, spill road & reserve lots	BC
E	22/07/20	Lots 17-19	BC
F	18/01/21	Lots 1, 2 & 8 nett areas, easement widths	NF
G	27/05/21	Lot 2 - additional SW easement	BC
H	17/08/21	Separate stage plan sets	BC
I	27/08/21	Lot areas to nearest m ² (removed rounding)	BC

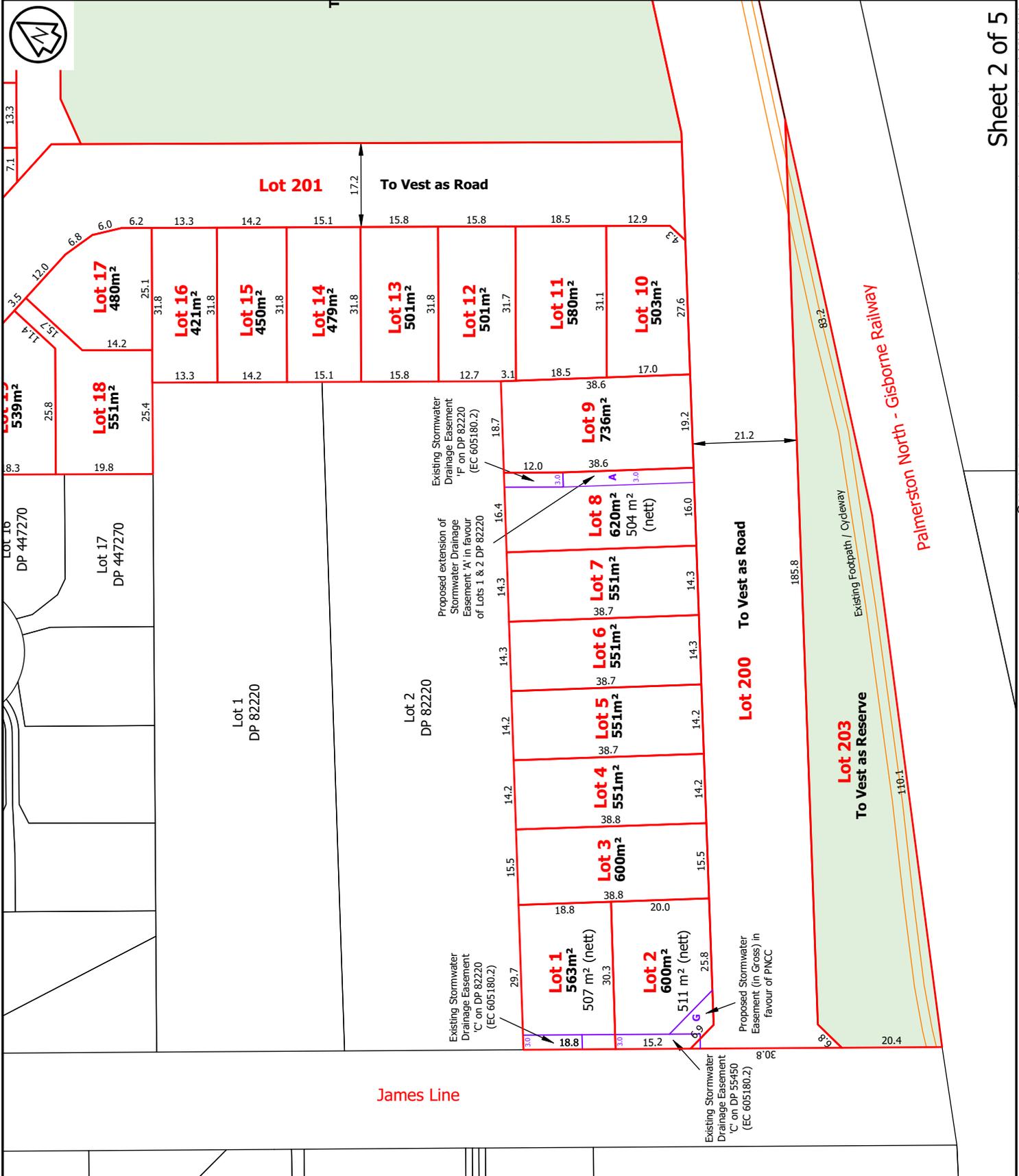
Surveyed	Approved for Issue
Checked: B Curtis	27/08/21

Drawing

Stage 1 Scheme Plan

CAD File Name	Scale
18-690-SC-1.dwg	1:750 @ A3

Drawing Number	Rev
18-690-SC-102	1



ANNEXURE 2
FORM OF LAND COVENANTS

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

PALMERSTON NORTH CITY COUNCIL

Covenantee

PALMERSTON NORTH CITY COUNCIL

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) 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 of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenants		Lots [*****] DP [*]	Lots [*****] DP [*]

Covenant rights and powers (including terms, covenants and conditions)

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 209 of the Land Transfer Act 2017].~~

[Annexure Schedules 1& 2].

Insert instrument type

Covenant Instrument to note land covenant

Continue in additional Annexure Schedule, if required

Annexure Schedule 1

PROVISIONS APPLYING TO COVENANTS

Background

- a. PNCC is subdividing the Burdened Land to create the Subdivision.
- b. PNCC intends that certain parts of the Subdivision be subject to a general scheme applicable to and for the benefit of the Benefitted Land to ensure that the Subdivision is and remains a good quality and well-designed subdivision (**Scheme**).
- c. PNCC may elect to administer the Scheme for the benefit of the Benefitted Land and the burden of the Burdened Land.
- d. The parties intend that the obligations and covenants of the Covenantor under this Instrument enure for the benefit of PNCC (in accordance with contractual privity provisions of the Contract and Commercial Law Act 2017).

Covenant Terms

1. The Covenantor covenants and agrees with the Covenantee:
 - (a) to at all times observe and perform the Covenants set out in this Instrument unless PNCC has given its written consent authorising non-observance and performance of the Covenants or any one or more of the Covenants in accordance with clause 4.8;
 - (b) that, subject to clause 5 below, the Covenants will forever run with and bind the Burdened Land for the benefit of the Benefitted Land and PNCC in accordance with clause 4.1;
 - (c) to ensure that all tenants, occupiers, employees, contractors, invitees and anyone or thing that is present on the Burdened Land under the control of, or at the direction or invitation of the Covenantor, observes and performs all relevant and applicable Covenants at all times; and
 - (d) where the Covenantor is a company this Instrument shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Covenantor is a natural person this Instrument shall bind the Official Assignee acting in the bankruptcy of the Covenantor. In either case this Instrument binds a mortgagee in possession.

Definitions and Interpretation

2.1 Definitions:

In this Instrument the following words have the following meanings:

Accessory Structures means any accessory buildings or other structures associated with a Dwelling (whether the Dwelling exists or not) including but not limited to a garage, carport, storage shed, tiny home, sleepout, garden or tool shed, glasshouse or other structure);

Balance of the Land means any balance land within records of title WN23C/991, WN48D/641 and WN35A/110 (or balance records of title issued from them) that is not then part of any stage of the Subdivision;

Benefitted Land means the land described as Lots [****] Deposited Plan [****] and shown on the front page of this Instrument as the Benefitted Land;

Building means a temporary or permanent movable or immovable structure (including a Dwelling and any other structure intended for occupation by people, animals, machinery, or chattels) on the Burdened Land other than:

- (a) Improvements as defined below;
- (b) Any conduit, pipes, plant and/or other structures required by utility and/or service providers;
- (c) Temporary scaffolding used in the course of the construction process; or
- (d) Temporary construction sheds and porta-loos used in the course of the construction process;

Burdened Land means the land described as Lots [****] Deposited Plan [****] and shown on the front page of this Instrument as the Burdened Land;

Concept Plans means together:

- (a) **Site plans** showing building location and orientation, driveway position including any onsite turning and parking, all proposed hard and soft landscaping including fences and structures, stormwater management devices, setbacks and levels);
- (b) **Floor plans** of all Buildings;
- (c) **A full set of elevations** including all sides of Buildings with heights and dimensions including the final full description of exterior materials, design and appearance, finishes and colours (walls, roof, windows, door frames, doors, gutters and garage doors);
- (d) **Landscape Plans;**

and containing sufficient details to enable PNCC to properly understand the proposed Building, erection or other structure or development on the Burdened Land; and

Considerate Construction Covenants means the covenants detailed in Annexure Schedule 2 of this Instrument;

Covenantee means and includes all persons executing this Instrument as Covenantee jointly and severally (if more than one) and all their executors, administrators, assigns, successors in title and their tenants, licensees and invitees;

Covenantor means and includes all persons executing this Instrument as Covenantor jointly and severally (if more than one) and their executors, administrators, assigns, successors in title and their tenants, licensees and invitees;

Covenants means the obligations and covenants set out in this Instrument;

Design Guidelines means the design control guidelines issued by PNCC from time to time applicable to the Property and Development in general and made available at www.tamakukuterrace.co.nz or such other website as is nominated by PNCC from time to time;

District Plan means the Palmerston North City Council District Plan including any variation, amendment and/or replacement to that plan as is applicable under the RMA and/or any equivalent planning document under any successor legislation;

Dwelling means a self-contained building that is used, or intended to be used, for residential purposes designed for the occupation not more than one household and includes Accessory Structures;

Governing Body means any local authority, Relevant Authority, Waka Kotahi - NZ Transport Agency (or any such replacement entity), or the Crown;

Improvements means improvements constructed or to be constructed by PNCC on or under the Subdivision and adjoining roads or reserves, including (but not limited to) roading, plant, pumps, conduits, pipes, footpaths, kerbs, gutters, swale crossings, landscaping, planting, open spaces and walkways;

Instrument means this covenant instrument creating a land covenant to be registered on the Burdened Land's record of title and all its schedules, annexures and amendments;

Landscape Plans means a landscape plan showing hard and soft landscaping on the Burdened Land including patios, decks, outdoor areas, footpaths, walls, driveways, fences (including specifications and details of all perimeter fencing), trees (including any large specimen tree planting), lawns, planting beds and other landscape features (including a plant list of all trees, bushes, gardens, and plants) to be planted on the Burdened Land;

Legal Road means all parts of any road vested in the Relevant Authority as legal road and includes footpaths, parking bays, kerbing, channelling and any grassed or landscaped areas situated on any Legal Road;

Lodge any Submission means (without limitation) personally or through any agent or servant, directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning/resource management hearing, or appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise;

Lot means any lot that is recorded as being Burdened Land in this Instrument (and "Lots" shall have a corresponding meaning);

Lot Owner means the registered owner(s) of a Lot;

Planning Proposal includes (without limitation) any application for resource consent and/or plan change and/or variation of any nature under the relevant District Plan and/or proposed District Plan in respect of the Land including the Balance of the Land;

PNCC means Palmerston North City Council in its capacity as owner of the Land and developer of the Subdivision and, where the context requires, means any other entity nominated by PNCC to perform or succeed its rights and obligations under this Instrument;

Rating Address means in respect of a Lot, the current address recorded by the Relevant Authority as the address of that Lot for rating purposes;

Relevant Authority means:

- (a) the Palmerston North City Council in its regulatory capacity or any successor to that Council; and
- (b) Manawatu-Whanganui Regional Council or any successor to that Council (**Horizons**);

Resource Consent means the resource consents to give effect to the Subdivision and development issued by the Relevant Authority and any variation, amendment and/or replacement of those resource consents;

RMA means the Resource Management Act 1991;

Stage means a stage of the Subdivision and “Stages” has the corresponding meaning;

Subdivide has the meaning set out in section 218(1) of the RMA and includes the creation of cross leases or units within the meaning of the Unit Titles Act 2010;

Subdivision means the subdivision undertaken by PNCC (known as Tamakuku Terrace, Whakarongo) of the land in records of title WN23C/991, WN48D/641 and WN35A/110 (or balance records of title issued from them) depicted in Deposited Plan [*****];

Scheme has the meaning given to it in the Background clause b above;

Truck/s means a goods vehicle that has a gross vehicle mass exceeding 3.5 tonnes; and

Vehicle Crossing means the part of a driveway or vehicle access-way situated on Legal Road between the road carriageway and the boundary of a Lot which is formed to enable vehicle access from the road carriageway to the Lot.

2.2 Interpretation:

In this Instrument, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) one gender shall include other genders;
- (c) words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- (d) any covenant or agreement on the part of two or more persons shall bind those persons jointly and separately;
- (e) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same;
- (f) where consent or approval is required pursuant to any provision of this Instrument, such consent or approval shall be required in writing and shall be for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on any prior occasion. Any consent required by either party to the other under this Instrument shall not be unreasonably or arbitrarily withheld or delayed;
- (g) subject to clause 2.2(h), if there is a conflict between the provisions of the Design Guidelines and the requirements of any Relevant Authority, the requirements of the Relevant Authority shall have precedence and the Design Guidelines shall be subject to the requirements of the Relevant Authority;
- (h) notwithstanding clause 2.2(g), where the requirements of the Design Guidelines are more onerous or restrictive than the requirements of the Relevant Authority (including the requirements of the District Plan), the provisions of the Design Guidelines shall prevail; and
- (i) a covenant to do something is also a covenant to permit or cause that thing to be done, and a covenant not to do something is also a covenant not to permit or cause that thing to be done.

The Covenants

Use and Time for Completion

3.1 The Covenantor shall:

- (a) not erect or place, or permit to be erected or placed any boat, trailer, caravan, mobile home, hut or any structure or vehicle capable of providing temporary accommodation on any Lot, provided that the storage of a boat, trailer, caravan, mobile home and cars is permitted on a Lot (but not on any Legal Road, reserve, road verge, road corridor or public open space) once a Dwelling has been constructed and completed on that Lot. Any such boat, trailer, caravan, mobile home and cars (unless such cars are in regular use) parked on a Lot must be screened from any Legal Road with such screening to be in accordance with the then current Design Guidelines;
- (b) not permit any rubbish, recycling or other waste material to be or remain on any Lot other than within suitably enclosed bins (which for the avoidance of doubt includes Relevant Authority approved rubbish and/or recycling bins and private service rubbish and recycling bins) and such bins must be located in the side or rear yard and appropriately screened from view from any Legal Road, reserves, and neighbouring Lots, with such screening to be in accordance with the then current Design Guidelines;
- (c) cause as little interference as reasonably possible with any Improvements and to promptly make good any damage caused by the Covenantor to the Improvements at the sole cost of the Covenantor;
- (d) not permit the parking of Trucks on or adjoining any Lot or on any road or accessway on the Subdivision, other than for temporary delivery or unloading;
- (e) not have a clothes line on a Lot (temporary or permanent and movable or fixed) in any other location other than in the rear yard and such clothes line not to be any higher than 1.6 metres.

Building Restrictions

3.2 The Covenantor shall not place, erect or permit to be placed, erected or constructed on the Burdened Land any Building, fencing, driveway, concrete works, pathways, landscaping or any other works whatsoever:

- (a) without having first obtained the written approval of PNCC to the Concept Plans, and provided that the Concept Plans comply with the provisions of this Instrument and the then current Design Guidelines; and
- (b) except in accordance with the approval of Concept Plans and using the materials, finishes and exterior colours so approved by PNCC and in compliance with the then current Design Guidelines;

PROVIDED THAT the approval of PNCC to the Concept Plans will be entirely at the discretion of PNCC in all respects and must be obtained by the Covenantor, at the Covenantor's cost, in writing before a building consent is applied for.

3.3 Once PNCC has approved the Covenantor's Concept Plans under clause 3.2, no subsequent amendment to the Design Guidelines shall require the Covenantor to alter its approved Concept Plans.

3.4 Development approvals under clause 3.2 (conditional or unconditional) given by PNCC shall not be construed as certifying compliance of any works with any laws or Relevant Authority requirements or other approvals required by other agencies for the work comprised in any development.

3.5 The Covenantor shall:

- (a) not make any changes to any Concept Plans approved under clause 3.2 unless approval to those changes has been obtained from PNCC at the Covenantor's cost;
- (b) adhere at all times to the requirements and restrictions of the Design Guidelines and any on-going conditions of the Resource Consent (including consent notices) in so far as they relate to the Burdened Land;
- (c) not occupy any Dwelling without a current code compliance certificate issued under the Building Act 2004 (or any amending or subsequent replacement legislation);
- (d) commence construction of a Dwelling on each Lot within 18 months of the completion of a transfer of that Lot from PNCC. For the purposes of this Instrument, commencement of construction means when the last of the following events have occurred:
 - (i) written approval has been obtained from PNCC pursuant to clause 3.2; and
 - (ii) when a building consent has been obtained; and
 - (iii) when material foundation preparatory work has commenced on that Lot;
- (e) once construction of a Dwelling on a Lot has commenced, complete construction of that Dwelling in a good and professional manner within 18 months of the commencement of construction. For the purposes of this Instrument, completion of construction of a Dwelling shall be the date when all material exterior work is completed on that Dwelling including but not limited to affixing all roofing, exterior cladding and the completion of exterior finishing;
- (f) complete all front yard landscaping on each Lot contemporaneously with completion of construction of any Dwelling on a Lot. All front yard landscaping must be completed to the prior to occupation of any Dwelling. All landscaping on a Lot must be completed to the standard of a professional landscaper and to the reasonable satisfaction of PNCC;
- (g) subject to clause 3.5(f), complete all other plantings shown on the approved Landscape Plans within six months of the occupation of any Dwelling erected on the Burdened Land;
- (h) maintain the Burdened Land in a tidy condition, free of noxious weeds, in accordance with the approved Landscape Plans, and otherwise in accordance with the Design Guidelines and to replace any plants on the Burdened Land (as shown in the Landscape Plans) that may die, with replacement plants of the same or similar type. Any plant replacements shall be completed by the end of the next closest planting season with plants of a similar scale to maintain consistency;
- (i) comply at all times with any requirements of any Relevant Authority or any other requiring authority in relation to the plants and vegetation within the Burdened Land;
- (j) not construct or place on any Lot any pre-used or second-hand Building, containers (other than for the temporary unloading of materials or furniture) or a Building that has been relocated, unless in the case of a pre-used/second-hand Building or relocated Building it complies with the Design Guidelines and has been approved by PNCC in accordance with clause 3.2; and
- (k) subject to clause 3.5(j) not to allow a Building to be erected on any Lot other than using new materials except for stonework and feature timber beams.

Construction and Adjacent Land Controls

3.6 The Covenantor shall:

- (a) not cause any damage to any part of the Improvements or any Legal Road or Vehicle Crossing on the Subdivision;
- (b) not interfere with or cause any damage to any trees or landscaping located on any part of any Legal Road, accessway or reserve including by removing, cutting down or trimming any tree or plant;
- (c) for the purposes of clauses 3.6(a) and 3.6(b) any damage caused by any employee, contractor or other person carrying out any works or activities on a Lot or by a vehicle driven by any person carrying out such works is deemed to be carried out by the owner of the Lot on which the works or activities are being carried out.
- (d) not allow the construction of any Building on any Lot other than in compliance with the Considerate Construction Covenants.

No Objection and Reverse Sensitivity

3.7 The Covenantor shall not:

- (a) object to or Lodge any Submission against any Planning Proposal;
- (b) obtain an order, injunction or any other remedy or make any complaint against any contractor or any consultant which relates to the Subdivision;
- (c) object to marketing methods employed by PNCC in an endeavour to sell other lots forming part of the Subdivision, including the use of signs, the placement of signs and the maintenance of display units, and/or a sales office on the Subdivision (but not on any Lot once a separate record of title for that Lot has been issued and that Lot has been transferred to a third party by PNCC); and/or
- (d) object to or make any complaint regarding any use and/or activity on the Balance of the Land.

Fencing

3.8 PNCC will, at its cost, construct the fencing along the rear boundary of Lots 29 to 36 Deposited Plan [*****] (inclusive) where it abuts the Kelvin Grove Cemetery.

3.9 Subject to clause 3.8 of this Instrument, PNCC will not be liable to pay for or contribute towards the expense of erection or maintenance of any boundary or dividing fence between any of the Lots within the Subdivision or between any of the Lots and any part of the Balance of the Land or any other land owned or occupied by PNCC. This proviso is for the benefit of PNCC and the Relevant Authority only and shall not enure for the benefit of any subsequent purchaser of the contiguous land.

Animal Controls

3.10 No kennel or other facility for raising or boarding dogs, cats or other animals or birds, including poultry, for commercial purposes shall be kept on any of the Lots. The keeping of ordinary household pets such as dogs, cats and birds is approved.

3.11 Each Lot Owner must use its best endeavours at all times to keep its Lot free of rabbits and other pests.

Enforcement

- 4.1 The Covenantor and Covenantee acknowledge and agree that:
- (a) this Instrument is subject to the contractual privity provisions of the Contract and Commercial Law Act 2017 and the Covenants that are intended to create obligations on the Covenantor, are also for the benefit of PNCC and are enforceable by PNCC as well as by the Covenantee;
 - (b) PNCC may (without being obliged) facilitate the observance of this Instrument by the Covenantor by taking all necessary steps to enforce its observance on behalf of any Covenantee;
 - (c) the Covenantee irrevocably appoints PNCC to be its attorney and in its name and at its expense to do anything which PNCC considers necessary to enforce or attempt to enforce the Covenantee's rights or powers under this Instrument; and
 - (d) without limiting the appointment made in clause 4.1(c) that appointment may specifically extend to PNCC issuing proceedings in the name of any Covenantee(s), provided that in doing so PNCC indemnifies such Covenantee(s) against all costs arising from or incidental to those proceedings.
- 4.2 The parties acknowledge that the Covenantee, PNCC and any nominee of PNCC will not be liable for any losses, damages, claims or expenses which arise from performing any function under the Design Guidelines or any approval process pursuant to this Instrument.
- 4.3 The Covenantor shall provide reasonable access to PNCC, its designated employees and contractors to inspect the Lots and any Building to check compliance with the applicable Design Guidelines and Covenants.
- 4.4 In the event that the Covenantor fails to observe and perform the Covenants set out in this Instrument, a Covenantee and/or PNCC shall have a right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Covenantor, and the cost incurred by the Covenantee and/or PNCC in remedying the default shall be refunded by the Covenantor to that Covenantee and/or PNCC as the case may be upon demand.
- 4.5 In addition to clause 4.4, in the event that the Covenantor fails to observe and perform the Covenants set out in this Instrument, PNCC may serve written notice on the Covenantor requiring it to remedy the breach of such Covenants and upon the expiry of seven (7) days from the date of receipt of such notice, the sum of \$100.00 per day shall be payable by the Covenantor to PNCC until such time as the breach is remedied.
- 4.6 PNCC may take any other action it considers reasonably necessary to prevent a breach of any building restrictions as set out in clauses 3.2 to 3.5 including (but not limited to) requiring construction of any Building on the Lot to cease pending remedy of such breach.
- 4.7 If PNCC ceases to exist, and where that entity has not nominated a current and legal person, association or entity to carry out its rights of approval under this Instrument, then the Covenantor shall not be required to obtain such approval.
- 4.8 Notwithstanding the Covenants, PNCC shall be entitled to waive strict compliance with any requirement set out in this Instrument (including the Design Guidelines) as it affects any part of the Burdened Land provided that PNCC decides in its sole discretion that the proposed amendments are generally in accordance with the aims expressed in this Instrument and in accordance with the continued harmony of the Subdivision generally. To avoid doubt the decision as to this waiver by PNCC shall be final and not subject to any review whatsoever and PNCC shall not be liable to any other party if it gives such a waiver or if it does not enforce performance of the Covenants or any one or more of them or breach of a covenant against the Covenantor.

- 4.9 All notices relating to this Instrument are to be served in writing. The address for service of any notice to the Covenantor is either:
- (a) the Rating Address that relates to the applicable Lot (provided the Lot's Dwelling has obtained a code compliance certificate from the Relevant Authority); otherwise
 - (b) the address of the solicitor who undertook the conveyance for the first Covenantor following ownership by PNCC.

Consents and Acknowledgements

- 5.1 The Covenantee acknowledges that PNCC intends to further subdivide the Balance of the Land as part of the Tamakuku Terrace, Whakarongo Development after the date of this Instrument and intends to vest or dedicate certain parts of the Burdened Land for roads (**Roads**) or reserves (**Reserves**). For the purposes of this clause 5, the meaning of Reserves shall also include the following, whether or not they are vested as reserves; public walkways and/or cycleways, public facilities (including buildings provided for the use or enjoyment of the general public) and other public or open space. For the purposes of this clause 5, the meaning of Roads shall also include service lanes.
- 5.2 The Covenantee consents to the deposit of any survey plan (**Survey Plan**) by PNCC or any successors in title, which has the effect of vesting or dedicating any of the Burdened Land as Roads or Reserves.
- 5.3 The Covenantee consents to all or any part of the Burdened Land being declared to be road pursuant to Part 8 of the Public Works Act 1981.
- 5.4 The Covenantee acknowledges and agrees that the Covenants shall cease to apply in respect of the land intended to be Roads and/or Reserves with effect on and from the date of deposit of the relevant Survey Plan or in the case of dedication, upon registration of a transfer of the proposed road to the Governing Body for the purpose of being used as a road.
- 5.5 This clause 5 will be deemed to be the Covenantees' (and, if applicable, the Covenantors') written consent required to allow the Roads and/or Reserves to be vested or dedicated or declared as Roads and/or Reserve (as applicable) (including under section 224(b)(i) of the Resource Management Act 1991 and section 114(2) of the Public Works Act 1981).
- 5.6 Any registered owner (**Encumbrancee/s**) of an encumbrance and/or interest registered against the Benefitted Land which is registered after the date of registration of this Instrument will take their interest/s in the Benefitted Land subject to the terms of this Instrument and, in particular (without limitation) will be deemed to have given its consent to the deposit or registration of any Survey Plan (and in the case of dedication, to the registration of a transfer of the proposed road to the Governing Body for the purposes of being used as a road) which has the effect of vesting or dedicating any of the Burdened Land as Road and/or Reserves, and further agrees that the Covenants will cease to apply in respect of any of the Burdened Land being vested or dedicated as Roads and/or Reserves.
- 5.7 If it is determined that further written consent and/or surrender is required from the Covenantee or any or all of the Encumbrancee/s in respect of the matters provided for under clause 5 then the Covenantee and/or Encumbrancee/s will immediately, at the request of PNCC or (if a different entity) the Covenantor, give that written consent and/or surrender and do all things necessary to procure the provision of consent by any other affected or interested parties.
- 5.8 The Covenantor and the Covenantee agree and acknowledge that PNCC is under no obligation to impose any land covenants and/or other interests on any lots of the

Subdivision other than this Instrument on the Burdened Lots and if PNCC may elect to impose any such land covenants and/or other interests then the form and content of such will be at the sole discretion of PNCC.

- 5.9 The Covenantor and the Covenantee agree and acknowledge that PNCC may amend the Design Guidelines from time to time provided that in relation to the construction of any Building or landscaping, the Covenantor shall only be bound by the Design Guidelines issued at the date that construction has commenced.

Liability

- 6.1 Without prejudice to the Covenantor's and Covenantee's other rights, this Instrument binds the Covenantor's and Covenantee's successors in title so that contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Burdened Land (however, to avoid doubt, any Covenantor will remain liable for any such prior breach following the transfer of its interest in the Burdened Land).

Costs

- 7.1 The Covenantor will pay all costs directly or indirectly attributable to the enforcement and discharge of this Instrument.
- 7.2 If the Covenantor applies to PNCC for approval pursuant to any provision of this Instrument or to authorise non-observance and performance of the Covenants or any one or more of the Covenants then the Covenantor will pay PNCC a fee for considering that application together with PNCC's costs and expenses should PNCC decide that it requires professional advice in order to consider such an application.

Implied Terms

- 8.1 No covenants by the Covenantor or by the Covenantor's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

Dispute Resolution

- 9.1 The parties agree to use their best efforts to resolve any dispute that may arise under this Instrument through good faith negotiations.
- 9.2 Neither party shall commence any arbitration in relation to this Instrument unless it has notified the other party in writing that there is a dispute (setting out the details of the dispute) and inviting the other party to meet for the purposes of endeavouring to resolve the dispute.
- 9.3 A party may, upon commencing the above negotiation process or receiving notice of a dispute, give notice to the other party requesting that the dispute be resolved by way of mediation. If a request for mediation is made, then the parties shall try to agree upon a mediator. If the parties fail to agree on a mediator within 14 days of the request for mediation the mediator shall be appointed by the then president of the New Zealand Law Society or their nominee.
- 9.4 Any dispute arising under this Instrument which cannot be settled by negotiation or mediation within 28 days of the notice of dispute/mediation (as applicable) being served shall be submitted to arbitration in accordance with the Arbitration Act 1996. In the

absence of agreement to the contrary, the arbitration shall be heard by a single arbitrator being a person agreed between the parties or, if they cannot agree within 7 days of commencing discussions on the proposed arbitrator, being a person nominated by the President of the New Zealand Law Society or their nominee. The decision of the arbitrator shall be final.

Annexure Schedule 2 – Considerate Construction Covenants

- a. Normal construction activity and associated noise is only allowable between the hours of:
- Monday to Friday 7.30am to 6.00pm – construction work permitted (low level noise activities permitted 6.30am to 7.30am including arrival and preparation for work)
 - Saturday 7.30am to 6.00pm – construction work permitted (no activities permitted before 7:30am)
 - Sundays and Statutory Holidays – no noisy construction work allowed

Particularly noisy work activity must be scheduled to avoid the earlier and latter part of the day. All unavoidable noise in the earlier or latter part of the day must be carefully controlled and monitored by the Lot Owner.

- b. The Lot Owner shall ensure that all construction access to the Lot is via the dedicated Vehicle Crossing for that Lot to prevent damage to the street swale.
- c. In the event of damage to the Legal Road and/or Improvements due to construction activity on a Lot, that Lot Owner shall, at its cost, be responsible for the prompt repair of the same.
- d. No use may be made of adjacent land, footpaths or reserves abutting any Lot for access (other than access approved by PNCC) or for the dumping of rubbish.
- e. All contractor's site sheds shall be placed on the respective building Lot no earlier than the commencement of construction of the Building works. The sheds and other temporary construction structures must be immediately removed from the Lot upon completion of the Building works.
- f. All loading, unloading, delivery and storage of materials shall take place within the bounds of the Lot.
- g. All construction vehicles whether they are contractors, tradesmen or a delivery must not be parked on the footpath, verges, berm areas or adjacent Lots. Any vehicle that deposits oils or other damaging material must be removed from the area and the damage made good immediately.
- h. No toilets other than porta-loo style toilets will be allowed on a Lot during the construction period.
- i. All exposed earth and disturbed areas of the Lot must be reasonably protected from the wind and water erosion during and after construction. Exposed areas should be watered and/or replanted as soon as possible.
- j. Appropriate rubbish skips shall be kept within the Lot (or in a designated area as approved by PNCC) for all rubbish and shall be cleared at regular intervals. At no time shall rubbish be permitted to escape outside of the Lot, or be permitted to cause an unsightly mess within the Lot.
- k. Construction must not be commenced on the Lot until temporary fencing has been erected on the entire length of all unfenced boundaries. The temporary fence must comprise removable wire or shade cloth (or other see-through material), be a minimum of 1.2 metres in height and have a rigid frame and in all circumstances provide only one vehicle access to the Lot from the road or right-of-way.
- l. Construction is not permitted unless the building site complies at all times with the requirements of the Health and Safety at Work Act 2015.

ANNEXURE 3
DESIGN GUIDELINES

Tamakuku Terrace

Whakarongo

Design Guidelines

Version B



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Version A	A	BETH NEEDS	STEPHEN CORNWALL	25.06.21
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This document meets 4Sights information and document control accordance with our quality assurance system, independently audited by Telarc under Qbase code 2001. All drawings are preliminary subject to development of design.

Photographs included are design precedents only as indicative look and feel for the design. They do not represent the design in any way and no ownership of the images or their implied.

1. Introduction

1.1 Overview

Tamakuku Terrace is located within the suburb known as Whakarongo at the eastern urban edge of Palmerston North in an area of transition between the suburban area and farmland. It is approximately 5.5km from the city centre of Palmerston North and 6km to the airport. A bus route services the local area and runs directly past the site along James Line.

Tamakuku Terrace was named in collaboration with Rangitāne o Manawatū. Tamakuku is the chief who Whatonga (from whom Rangitāne trace their descent) met when he arrived in the Manawatū.

Tamakuku Terrace Design Guidelines (Design Guidelines) are issued by the developer, Palmerston North City Council (PNCC or Developer) whose nominated agents, Veros, will administer the Guidelines.

The Design Guidelines seek to ensure Tamakuku Terrace, Whakarongo is a quality development fostering a sense of community, whilst reflecting the Manawatū identity.

The Design Guidelines detail the ongoing requirements for lot owners to comply with.

The Design Guidelines may be amended by the Developer at its discretion.

The Design Guidelines are to be read separately to regulatory requirements (such as local authority plans and bylaws), instruments, covenants or consent notices registered on records of title, industry specifications and any other regulations (Regulations). It is the responsibility of the lot owner or purchaser to ensure that their development is compliant with Regulations. If there is a conflict between the Regulations and the Design Guidelines then the Developer or its nominee, Veros, must be contacted and will make a determination on how this conflict with the Design Guidelines will be resolved whether in terms of the waiver of the Design Guidelines or otherwise.

The Design Approval Process (see paragraph 1.3) shall not be construed as compliance of any design with Regulations or any laws or other approvals required

by other agencies for the design and neither the Developer nor Veros accept liability for ensuring compliance with any Regulations ensuring compliance with any Regulations.

1.2 Vision & Objectives

The Design Guidelines aim to develop a strong sense of Manawatū character through the use of housing styles, front gardens, connected street layout, materiality, and planting. An open common/stormwater reserve forms the heart of this community, surrounded by 114 lots of various sizes to suit every stage in life. The Design Guidelines intend to help create spaces that connect the urban fabric to people and to nature creating spaces that are healthy and enjoyable to live, work and play in.

The Design Guidelines establish a framework for lot owners to achieve an individual quality and originality in design while being complementary to the overall character of the development by achieving a sense of consistency in form, materiality, colour, and vegetation palette.

The objectives are;

- to maintain residential amenity by ensuring lots are developed in a co-ordinated manner;
- to promote a balance between built form and open space;
- to ensure lots are developed to integrate with the existing topography of the land and surrounding neighbourhood;
- to promote appropriate design response to the site context; and
- to express local heritage and establish a distinct sense of place through integrated architecture and landscape materiality.

1.3 Design Approval Process

Every home and its landscape and layout will require approval from the Developer, prior to the submission of plans to PNCC (in its regulatory capacity) for building consent and the commencement of works on the lot. The Design Approval Process is simple and is required to ensure all development is of good quality and meets design requirements set out in these Design Guidelines.

The purchaser or lot owner must, in accordance with the Land Covenants and at its own cost, submit the design approval application form (in the form attached to the rear of these Design Guidelines) to the developer via Veros. Design approval must be obtained prior to lodging an application with PNCC (in its regulatory capacity) for building consent. It is the responsibility of the lot owner and their consultants to ensure all development that is proposed for the site satisfies the requirements of the Palmerston North City Council District Plan, the Land Covenants, the Design Guidelines and any other applicable legislation (including but not limited to the Building Act 2004 and the Resource Management Act 1991).

The purchaser or lot owner is required to submit the following for design approval:

- a site plan showing building location and footprint, driveway position, fencing, site coverage calculations, setback dimensions, and general levels/contour information;
- floor plans of all buildings;
- a full set of elevations including all sides of the building with heights and dimensions. This shall include the final full description of exterior materials, finishes and colours (walls, roof, windows, door frames, doors, gutters, and garage doors);
- a landscape plan showing hard and soft landscaping on the lot, including patios, decks, outdoor areas, footpaths, walls, driveways, fences (including specifications and details of all perimeter fencing), trees (including any large specimen tree planting), lawns, planting beds, and other landscape features (including a plant list of all trees, bushes, gardens, and plants to be planted on the lot); and

- any non-compliance with the Design Guidelines must be clearly annotated on plans.

The Developer may request additional information from the purchaser or lot owner to enable it to properly understand the proposed design and adequately assess design approval. The Developer may, in its sole discretion, under the Land Covenants allow waivers to these Design Guidelines and their approval is final. The Developer will strive to review all design approval applications in a timely manner. However, the developer will not accept liability for delays in processing or obtaining design approval.

A lot owner may relocate or place on a lot any pre-used or second-hand dwelling if it complies with the Design Guidelines and has been approved by the Developer under the Design Approval Process.

Applications for design approval must be submitted to Veros using the following contact details:

Developer's Contact Information:

Palmerston North City Council

C/O Veros Property Services

Stephen Cornwall

Email: tamakukuterrace@veros.co.nz

1.4 Design Approval Fees

There are fees associated with the Design Approval Process that capture Design Review Board costs. The fees are based on single dwelling that comply with the Tamakuku Terrace Design Guidelines.

Review and approval fees are \$480 Plus GST

If applications are incomplete or additional time is required to review departures, then the additional time will be charged to the applicant up to \$1,000 Plus GST.

2. Site Layout

Disclaimer: All dwellings are to be constructed on the lots in accordance with Palmerston North City Council District Plan, the Land Covenants, the Design Guidelines and any other applicable legislation (including but not limited to the Building Act 2004 and the Resource Management Act 1991).

2.1 Setbacks / yards

The Tamakuku Terrace community is divided into various typologies (based on lot width and solar aspect) with specific requirements for dwelling setbacks from lot boundaries. Typology 4 sites are to meet the minimum set back requirements.

2.1.1 Front Yard

A minimum 3m front boundary setback from a public road is required across all lots to the nearest corner of the dwelling (excluding the garage). Where a lot has a north facing front boundary a minimum dwelling setback of 5m setback is recommended.

2.1.1.1 Garages and Carports

Any accessory building or garage, whether freestanding or adjoining a dwelling, must be recessed by a minimum of 0.5m behind the front façade of a dwelling to reduce the dominance of garages on the streetscape.

Garages sited parallel to the street frontage are prohibited if a perpendicular garage can be accommodated. Garages that are positioned perpendicular to the road must have a minimum setback of 6m across all lots to allow for a vehicle to be parked within the driveway.

Garages that are positioned parallel to the road may be designed to have a minimum front boundary setback of 3m on the basis that the garage is designed in accordance with the Architectural Guidelines herein (Section 3). Allowance for a vehicle to be parked within the driveway is required.

2.1.2 Side Yard

A minimum setback of 1.5m is required from each side boundary. Windows on side walls close to the boundary should respond to any existing neighbouring houses.



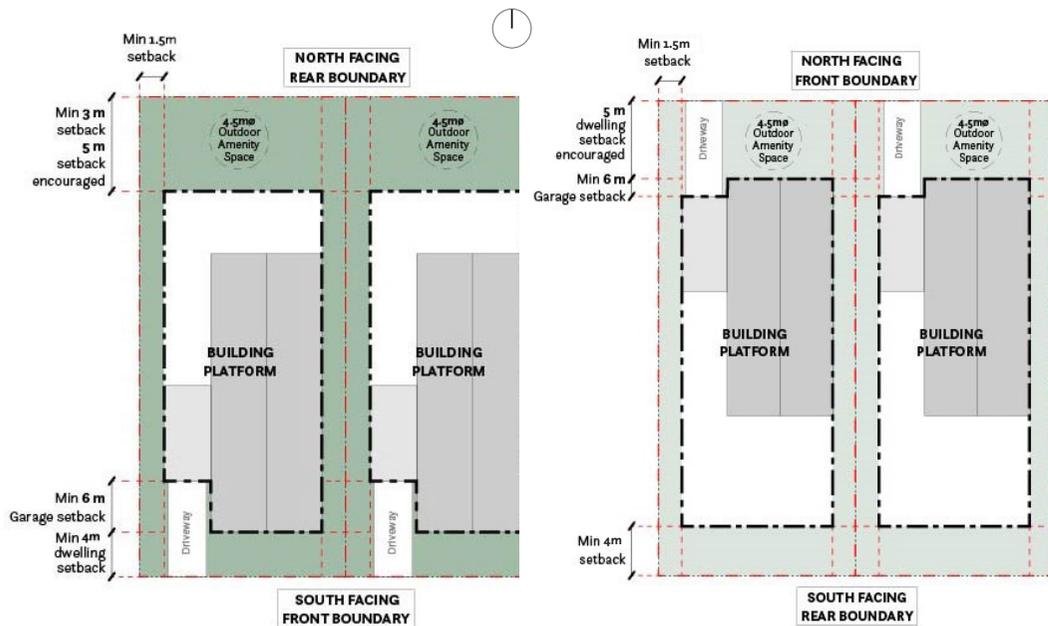


Figure 2: Typology 1a & 1b_Typical Boundary Setbacks Sketch

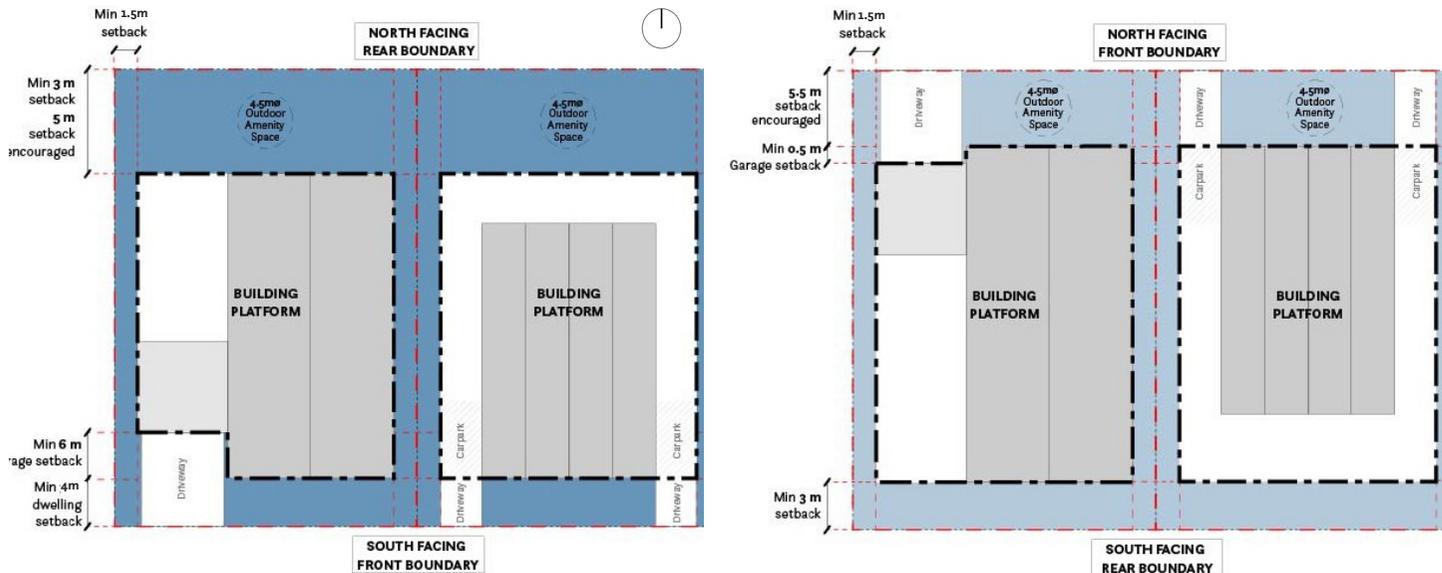


Figure 3: Typology 2a & 2b_Typical Boundary Setbacks Sketch

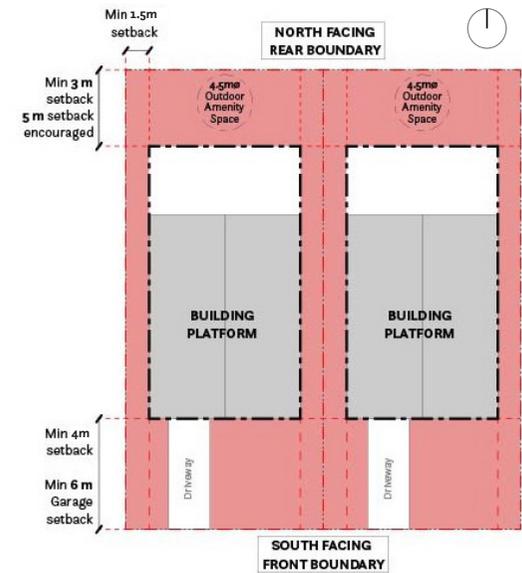


Figure 4: Typology 3_Typical Boundary Setbacks Sketch

Sketches are indicative only

2.1.3 Rear Yard

A minimum setback of 3m is required from the rear boundary setback to the nearest corner of the house, especially for northern facing rear boundaries to maximise sunlight into private open space.

2.2 Site Coverage

Subject to condition 23 of subdivision consent SUB5556, lots 1 to 36, 56 to 66, 76 to 80, 88 to 114 must ensure that the total proportion of impervious surface within their respective allotment does not exceed 75% of the total site area.

The max site coverage for all lots less than 500m² is 40%, and 200m² on sites of 500m² to 572m² and 35% on sites over 572m².

Note: Typology 4 sites are to meet the minimum setback requirements.

2.3 Open Space

Outdoor onsite amenity must meet the following requirements:

- a minimum open area of 36m² free of driveways, parking spaces, buildings (other than decks, verandahs and shade sails) and manoeuvring area;
- can accommodate a circle of 4.5 meters in diameter; and
- is orientated to the west, north or east of the dwelling.

3. Architecture

3.1 Form

The Design Guidelines dealing with primary architectural form are included to ensure Tamakuku Terrace has a consistent Manawatū identity. The architectural outcomes should be focused on the composition and relationships of the architectural form and the elements of the whole, especially in relation to the edge condition and visual interest at the street edge.

The following intend to guide a quality urban outcome that avoids visual clutter and respects the boundary to the adjoining rural character of Whakarongo:

- the front door must be identifiable from the street and have direct street connection and access;
- it is recommended that simple forms are used that follow the local architectural traditional style of cottages, villas, or barns. As such, pavilions forms are encouraged to be the dominant building with the garage visually less prominent;
- front façade fenestration to encourage habitable rooms which includes kitchen, living and dining rooms to face the street. Bathrooms fronting the street is not prohibited.
- letter boxes must be incorporated in the front boundary treatment and located adjacent to direct footpath access between building and street; and
- colours and materiality must comply with the lists specified in 3.2 and 3.3.



Figure 5: Form precedent images

3.2 Roof

3.2.1 Pitch

It is recommended that simple roof forms are used that follow the architectural form of cottages, villas, or pavilions. For a pavilion gabled roof, a minimum pitch of 25° and maximum of 45° is encouraged.

Mono-pitched roofs, exceeding 20% of the building footprint can be incorporated with a minimum pitch of 5° and maximum of 10° where the combination of roof forms is minimal.

No hip roofs are to be visible from the street.

3.2.2 Materiality and colour

Roofs must have a light reflectance value (LRV) between 5-22% in a neutral colour or be from Groups A-C of the [Resene BS5252 Colour Range Paint Palette](#) with a LRV of less than 40%.

Steel tray cladding/roof, Profiled Steel, Coloursteel or tiles are all permitted, with a maximum of two materials to be used.

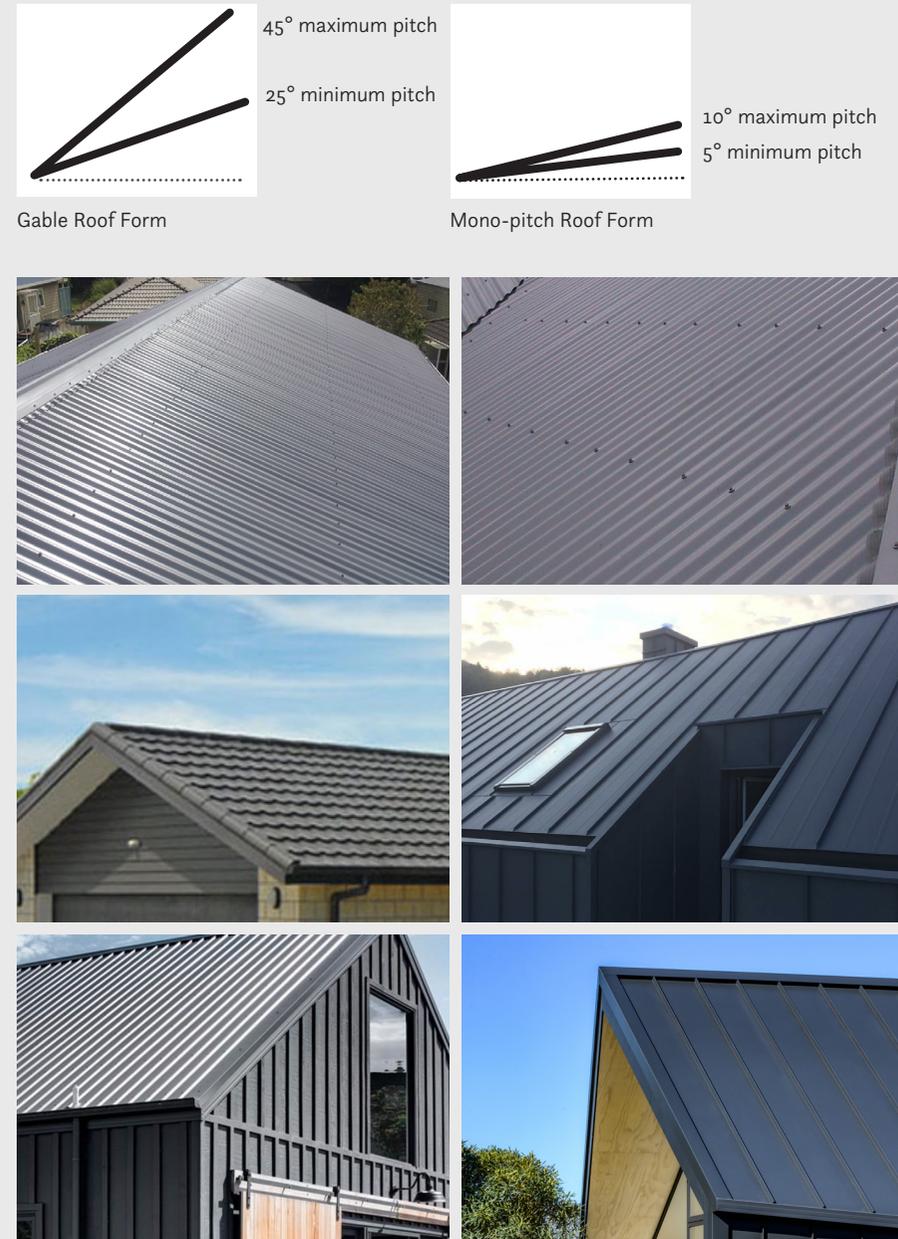


Figure 6: Typical Roof Pitch and Pavilion precedent images

3.3 Wall Cladding

Cladding materials must be authentic and of quality. The garage must be designed in a manner that compliments the dwelling and enhances the streetscape amenity.

3.3.1 Materiality & Colour

The following cladding materials and colours are permitted:

- architectural masonry concrete block or hard plastered concrete block (for not more than 30% of the total exterior façade wall cladding);
- brick (natural, painted in contemporary dark paint colours to match an LRV of 5-22% or be from Groups A-C of the [Resene BS5252 Colour Range Paint Palette](#) with a LRV of less than 40%);
- painted timber or Linea® weatherboards (in contemporary dark paint colours to match an LRV of 5-22% or be from Groups A-C of the [Resene BS5252 Colour Range Paint Palette](#) with a LRV of less than 40%);
- natural timber cladding (left to weather, oiled, or stained to match an LRV of 5-22%);
- board and batten (stained to match an LRV of 5-22%);
- profiled metal in dark colours or be from Groups A-C of the [Resene BS5252 Colour Range Paint Palette](#) with a LRV of less than 40%; and
- concrete with a low light reflection coefficient (i.e. textured such as board formed or oxide additives).

Joinery, guttering, and downpipes must match roof colours.

Corrugated Iron profile is not permitted.

Materials not listed above in clause 3.3.1 may, in the Developer's sole discretion, be permitted.

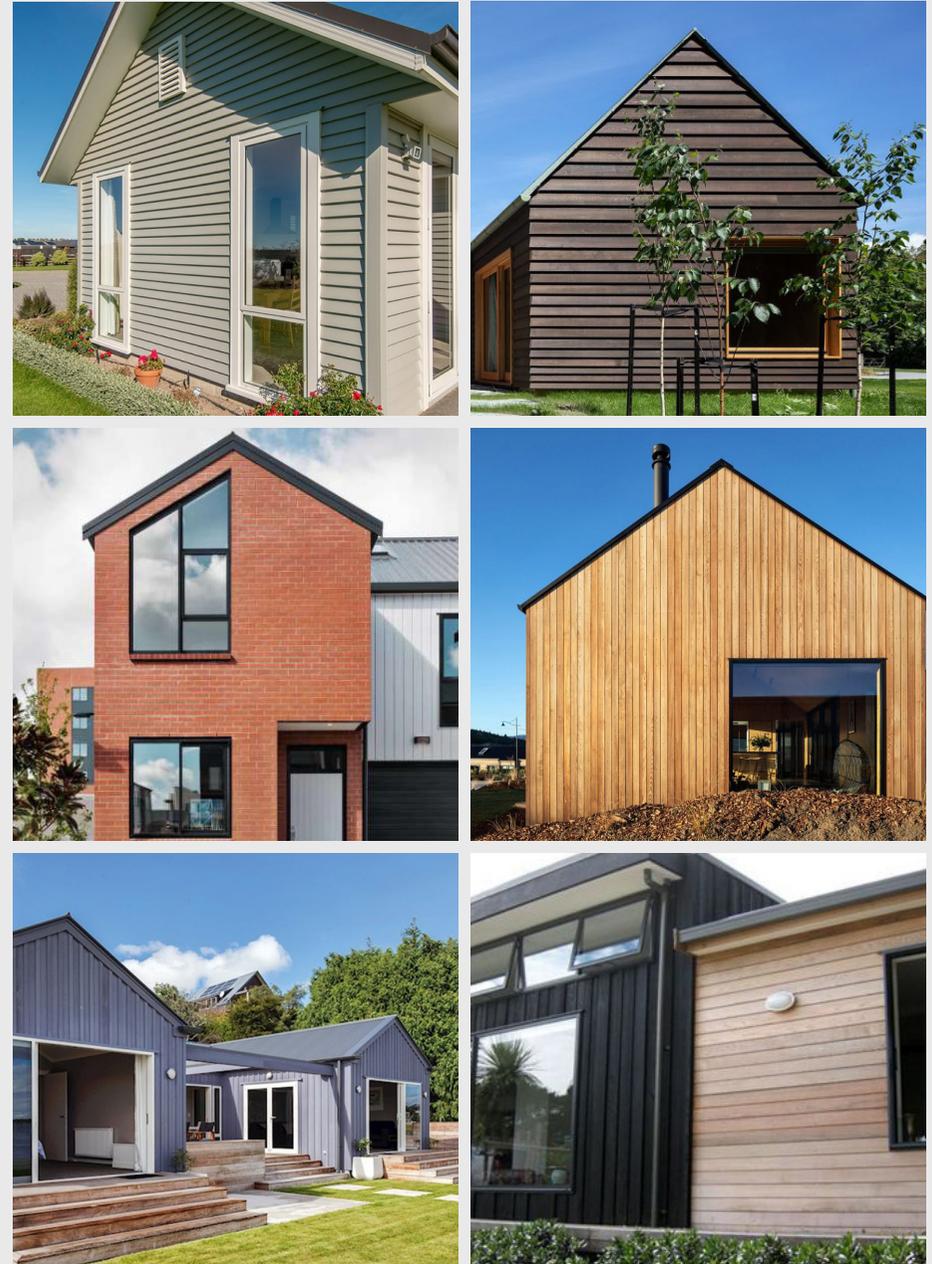


Figure 7: Typical Cladding precedent images

4. Landscape

4.1 Planting

A plant species list has been provided below in section 4.2.1 from which planting can be derived. Manawatu Plains Ecological District plant species and fruit trees are encouraged. A minimum of 70% of the front yard landscaping is to be from the Manawatu Plains Ecological District or listed plant species. Additional species may be approved at the sole discretion of the Developer.

Front yard landscaping must reflect and complement Tamakuku Terrace's streetscape and public open space in terms of planting, material, and layout. The front yard landscaping shall be implemented and maintained by the lot owner at the time of construction of the dwelling and completed prior to occupation of the dwelling.

Tree and/or shrub planting in the front yard shall be undertaken to enhance the streetscape amenity. Native specimens that reflect Tamakuku Terrace's amenity have been listed below with the addition of some exotic specimen trees that will provide seasonal colour and allow light within the front yards.

Front yard planting should define front boundaries, frame views from the house onto the street, provide privacy and separation between each lot and allow solar access to living areas.

To maintain 'eyes on the street' or passive surveillance, all front fences and walls must have a maximum height of 0.9m and all plants and hedges in the front yard should be maintained to a maximum height of 1.2m, except for specimen trees with clear stem of min 1.5m high for CPTED purposes.

In addition to this passive surveillance guideline, Lots 3-9; 79-82; and 108-113 must setback their front yard fence 0.5m from the front facade to provide better connection with the street on the northern side of this collector road.

Planting in the back yard must be planted within six months of the occupation of any Dwelling erected and maintained to a high standard.

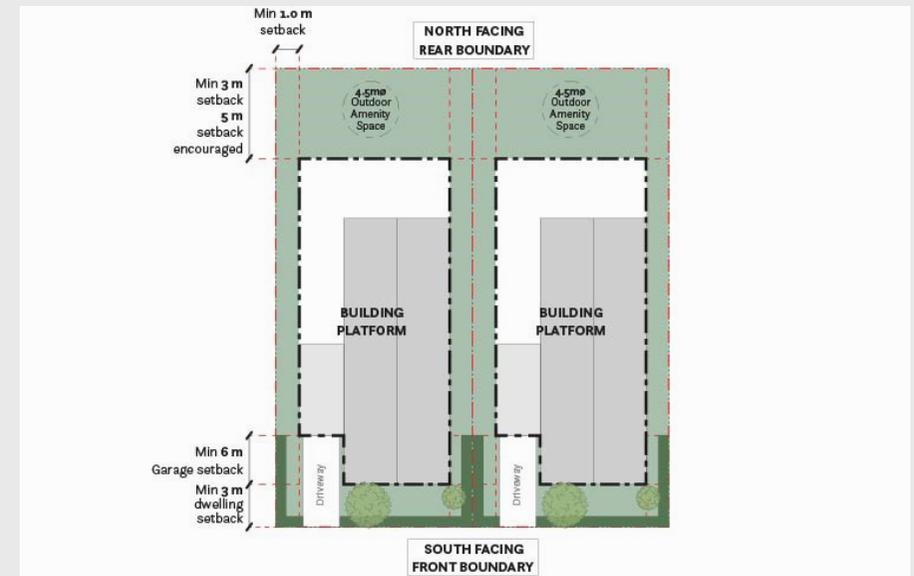


Figure 8: Typical Landscape Configuration & Setbacks

4.1.1 Planting Species List

4.1.1.1 Front Yard Specimen Tree List

Latin Name	Common Name	Native	Evergreen	Deciduous
<i>Sophora microphylla</i>	Small Leaved Kowhai	X	X	
<i>Sophora tetraptera</i>	North Island Kowhai	X	X	
<i>Alectryon excelsus</i>	Titoki	X	X	
<i>Metrosideros 'Mistral'</i>	Mistral Pohutukawa	X	X	
<i>Pennantia corymbosa</i>	Kaikomako	X	X	
<i>Hoheria spp.</i>	Lacebark	X	X	
<i>Styrax japonica</i>	Japanese Snowbell Tree			X
<i>Melia azedarach</i>	Indian Lilac			X
<i>Catalpa speciosa</i>	Catalpa			X
<i>Liriodendron tulipifera</i>	Tulip Tree			X
<i>Magnolia grandiflora</i>	Southern Magnolia		X	
<i>Michelia doltsopa</i>	Sweet Michelia		X	
<i>Prunus sp.</i>	Flowering Cherry			X
<i>Pyrus calleryana</i>	Ornamental Pear			X
<i>Liquidamber spp.</i>	Liquidamber			X
<i>Knightea excelsa</i>	Rewarewa	X	X	
<i>Rhopalostylis sapida</i>	Nikau	X	X	



Sophora microphylla



Metrosideros 'Mistral'



Alectryon excelsus



Sophora tetraptera



Pennantia corymbosa



Hoheria sexstylosa



Styrax japonica



Melia azedarach



Catalpa speciosa



Liriodendron tulipifera



Magnolia grandiflora



Michelia doltsopa



Liquidamber spp.



Knightea excelsa



Rhopalostylis sapida



Prunus sp.

4.1.1.2 Front and Rear Yard Specimen Small Tree and Shrubs List

Latin Name	Common Name	Native	Evergreen	Deciduous	Front Yard
<i>Austroderia fulvida</i>	Toe toe	X	X		
<i>Astelia fragrans</i>	Kakaha/Bush Lily	X	X		X
<i>Brachyglottis repanda</i>	Rangiora	X	X		
<i>Carpodetus serratus</i>	Putaputaweta	X	X		
<i>Coprosma acerosa</i>	Sand Coprosma	X	X		X
<i>Coprosma robusta</i>	Karamu	X	X		
<i>Coprosma tenuicaulis</i>	Swamp Coprosma	X	X		
<i>Cordyline australis</i>	Cabbage Tree	X	X		X
<i>Cyathea dealbata</i>	Ponga	X	X		X
<i>Cyathea medullaris</i>	Mamaku	X	X		X
<i>Dicksonia squarrosa</i>	Wheki	X	X		X
<i>Hebe diosmifolia</i>	Shrubby Veronica	X	X		X
<i>Hebe stricta</i>	Koromiko	X	X		
<i>Kunzea ericoides</i>	Kanuka	X	X		X
<i>Leptospermum scoparium</i>	Manuka	X	X		
<i>Macropiper excelsum</i>	Kawakawa	X	X		
<i>Myoporum laetum</i>	Ngaio	X	X		X
<i>Phormium tenax</i>	NZ Flax	X	X		
<i>Pseudopanax arboreus</i>	Five Finger	X	X		
<i>Pseudopanax crassifolius</i>	Horoeka/Lancewood	X	X		X



Austroderia fulvida



Astelia fragrans



Brachyglottis repanda



Carpodetus serratus



Coprosma acerosa



Coprosma robusta



Coprosma tenuicaulis



Cordyline australis



Cyathea dealbata



Cyathea medullaris



Dicksonia squarrosa



Hebe diosmifolia



Hebe stricta



Kunzea ericoides



Leptospermum scoparium



Macropiper excelsum



Myoporum laetum



Phormium tenax



Pseudopanax arboreus



Pseudopanax crassifolius

4.1.1.3 Front Yard Hedging List

Latin Name	Common Name	Native	Evergreen	Deciduous
<i>Coprosma repens</i> 'Middlemore'	Coprosma 'Middlemore'	X	X	
<i>Corokia</i> 'frosted chocolate'	Corokia	X	X	
<i>Griselinia littoralis</i> 'Broadway Mint'	Griselinia 'Broadway Mint'	X	X	
<i>Teucrium fruticans</i>	Shrubby germander		X	



Coprosma repens
'Middlemore'



Corokia
frosted chocolate



Griselinia littoralis
'Broadway Mint'



Teucrium fruticans

4.1.1.4 Side and Rear Yard Hedging List

Latin Name	Common Name	Native	Evergreen	Deciduous
<i>Myrsine australis</i>	Mapou	X	X	
<i>Pittosporum eugenoides</i>	Lemonwood	X	X	
<i>Pittosporum tenuifolium</i>	Kohuhu	X	X	



Myrsine australis



Pittosporum eugenoides



Pittosporum tenuifolium

4.1.1.5 Amenity Planting and Ground Covers

Latin Name	Common Name	Native	Evergreen	Deciduous
<i>Apodasmia similis</i>	Oioi	X	X	
<i>Carex comans</i>	Longwood Tussock	X	X	
<i>Carex dissita</i>	Forest Sedge	X	X	
<i>Carex secta</i>	Purei	X	X	
<i>Carex virgata</i>	Small Swamp Sedge	X	X	
<i>Chionochloa rubra</i>	Red Tussock	X	X	
<i>Cyperus ustulatus</i>	Giant Umbrella Sedge	X	X	
<i>Juncus edgariae</i>	Wiwi	X	X	
<i>Juncus pallidus</i>	Giant Rush	X	X	
<i>Poa cita</i>	Silver Tussock	X	X	
<i>Libertia grandiflora</i>	NZ Iris	X	X	
<i>Libertia ixioides</i>	Mikoikoi	X	X	
<i>Phormium cookianum</i> 'Emerald gem'	Flax cultivar	X	X	
<i>Pittosporum tenuifolium</i> 'Golf Ball'	Pittosporum dwarf cultivar	X	X	
<i>Olearia solandri</i>	Coastal Shrub Daisy	X	X	



Apodasmia similis



Carex comans



Carex dissita



Carex secta



Carex virgata



Chionochloa rubra



Cyperus ustulatus



Juncus edgariae



Juncus pallidus



Poa cita



Libertia grandiflora



Libertia ixioides



Phormium cookianum
'Emerald gem'



Pittosporum tenuifolium
'Golf Ball'



Olearia solandri

4.2 Fencing

4.2.1 Front Yard

Front yard fencing must have a maximum height of 0.9m and have a minimum of 25% visual permeability. Alternatively, or in addition to fencing, hedging is allowed – but must be maintained to a maximum height of 1.2m. Hedging species must be planted at a maximum of 800mm centres for the entire width of the front boundary to provide a continuous hedge frontage (excluding the driveway and any pedestrian entry).

The use of fences and hedging must be designed to contribute to the aesthetic of the lot and complement the dwelling and adjoining street planting. Gates or fence returns must complement the front fence material, height, and colour. Timber fences must be stained or painted in a recessive finish. No corrugated profile fencing is allowed as a front fence.

4.2.2 Side Yard

Side boundary fencing or hedging must be a maximum of 1.8m in height. Materials allowed include vertical or horizontal timber paling or battens, stained a dark recessive colour, or left to silver. Where a side yard adjoins a road, this boundary is to be treated as a Front Yard for fencing requirements under the Design Guidelines. Side yard fencing materials must compliment the front facade materials and colour.

Fencing or hedging for side yard boundaries that adjoin shared paths or driveways must be no higher than 1.5m. Side yard fences between a front boundary and the house set back must be 0.9m in height. No corrugated profile fencing is allowed as a side fence.

4.2.3 Rear Yard

The owners of lots 51-59 must ensure that where fencing faces the boundary with lot 208 (local purpose reserve - walkway) it shall be to a maximum height of 0.9m along at least 50% of the length of the southern boundary. The remaining 50% must be no more than 1.8m in height.

The fence on the rear boundary that abuts the Kelvin Grove Cemetery (being lots 29-42 as shown in blue in Figure 9) shall be constructed by the Developer and thereafter maintained by each respective lot owner in good repair in accordance with the Fencing Design Details certified under Condition 19 of SUB 5556.

Excluding lots 29-42 and lots 51-59, rear yard boundary fencing must match the side yard fencing in height, material, and colour for lots adjoining another property.



Figure 9: Fencing Typologies



Rear yards adjacent to reserves, common driveways, green space, and open space (excluding lots 29-42 and lots 51-59) shall be treated in the same manner as Front Yards for fencing requirements under the Design Guidelines.

4.3 Hardscaping

4.3.1 Paving

All paving must be of a quality finish and durable. Paving shall be a neutral colour or grey colour. It is recommended that exposed aggregate or concrete is used.

4.3.2 Driveways

Driveways between the kerb and front boundary must be constructed of concrete of a similar finish to the footpath or exposed aggregate. Gravel surfacing is not permitted.

5. Ancillary Buildings & Structures

5.1 Storage areas / Rubbish bins

Storage areas (including all rubbish and recycling bins both PNCC issued and private service bins), must be in the side or rear yard and appropriately screened from view from the street, reserves, footpaths, and neighbours.

Screening must compliment the landscaping in terms of plant palette, materiality, colour, and finish and to a height of no more than 1.5m.

5.2 Clothes Lines

Clothes lines must be in rear yards and be no higher than 1.8m.

5.3 Other

Any boats, trailers or caravans must be parked within the lot and are not permitted to be stored on any reserve, road corridor, road verge or public open space.

The lot owner must ensure that all yards are maintained to a high standard all year. If occupied by tenants, the owner must ensure the maintenance of the yards. This includes, but is not limited to, the mowing of lawns, maintenance of hedges and weed removal.



Figure 10: Typical Hardscaping precedent images

Design Approval Application Form

Property Owner Details:

Property Owner:	
Lot number:	
Name:	
Postal address:	
Email:	
Phone number:	

House Designer / Architect:

Name:	
Company name:	
Postal address:	
Email:	
Phone number:	

Contact for Design Approval:

Name:	
Email:	
Phone number:	

Property Owner Authority:

I/we confirm that the application is complete and an accurate reflection of development. It is agreed that I/we are liable for all charges in respect of this application. Any agent noted above is authorised to act on my/our behalf.

Signed:	
Name:	
Date:	

Design Approval Application Checklist:

The following information is required to accurately assess your application for design approval. Failure to supply the following information may incur additional costs for processing and administration in requesting the required information. Any non-compliance with the guidelines shall be clearly annotated on plans.

	Information / Drawings	Attached
1	Site Plan: Detailing building location and footprint, driveway position, fencing, site coverage calculations, setback dimensions, and general levels/contour information.	<input type="checkbox"/>
2	Floor plans: Detailing all buildings	<input type="checkbox"/>
3	Elevations: A full set of elevations including all sides of the building with heights and dimensions. This shall include the final full description of exterior materials, finishes and colours (walls, roof, windows, door frames, doors, gutters, and garage doors).	<input type="checkbox"/>
4	Landscape Plan: A landscape plan showing hard and soft landscaping on the lot, including patios, decks, outdoor areas, footpaths, walls, driveways, fences (including specifications and details of all perimeter fencing), trees (including any large specimen tree planting), lawns, planting beds, and other landscape features (including a plant list of all trees, bushes, gardens, and plants to be planted on the lot).	<input type="checkbox"/>
5	Non-Compliance List: Any non-compliance with the Design Guidelines must be clearly annotated on plans.	<input type="checkbox"/>



SCHEDULE 1

(GST Information – see clause 14.0)

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

Section 1 Vendor	
1(a) The vendor’s registration number (if already registered): 053-037-169	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. “the main farmhouse” or “the apartment above the shop”)	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is “No”, go to question 2(e)	
2(c) The purchaser’s details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. “the main farmhouse” or “the apartment above the shop”)	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party (“nominee”).	Yes/No
If the answer to question 2(e) is “Yes”, then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is “No”, there is no need to complete this Schedule any further.	
3(c) The nominee’s details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. “the main farmhouse” or “the apartment above the shop”)	Yes/No

SCHEDULE 2

List all chattels included in the sale

(Strike out or add as applicable. If necessary complete on a separate schedule or the further terms of sale)

Stove	()	Rangehood	()	Wall oven	()	Cooktop	()
Dishwasher	()	Kitchen waste disposal	()	Light fittings	()	Smoke detectors	()
Burglar alarm	()	Heated towel rail	()	Heat pump	()	Garage door remote control	()
Blinds	()	Curtains	()	Fixed floor coverings	()		

Both parties should check that Schedule 2 (list of chattels) includes an accurate list of all items which are included with the sale and purchase (in addition to, or as part of any building).

SCHEDULE 3

Residential Tenancies

Name of Tenant(s):

Rent:

Term:

Bond:

Commercial/Industrial Tenancies

(If necessary complete on a separate schedule)

1. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

2. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

3. Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

WARNING AND DISCLAIMER

- This agreement is a standard form document. It is therefore likely that amendments and additions may need to be made in order to suit the circumstances of each of the vendor and the purchaser, and to suit the particular property involved. It is also important that you are certain that any amendments made correctly reflect your understanding of what has been agreed. **You should always get legal advice before you sign the agreement and throughout the buying and selling process.**
- ADLS and REINZ accept no liability whatsoever in respect of this document and any agreement which may arise from it.
- The vendor should check the correctness of all warranties made under clause 7, clause 8, and elsewhere in this agreement.
- In the case of a unit title, before the purchaser enters into the agreement, the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act.
- The transaction may have tax implications for the parties and it is recommended that both parties seek their own professional advice regarding the tax implications of the transaction before signing, including:
 - the GST treatment of the transaction, which depends upon the GST information supplied by the parties and could change before settlement if that information changes; and
 - the income tax treatment of the transaction, including any income tax implications of purchase price allocation.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Authority and a copy of the agency's in-house complaints and dispute resolution process.

The person or persons signing this agreement acknowledge that either:

- they are signing in a personal capacity as the 'vendor' or 'purchaser' named on the front page, or
- they have authority to bind the party named as 'vendor' or 'purchaser' on the front page.

WARNING *(This warning does not form part of this agreement)*

Before signing, each party should read this entire contract and should obtain all relevant professional advice.

This is a binding contract. Once signed, you will be bound by the terms of it and there may be no, or only limited, rights to terminate it.

Signature of Purchaser(s):

Signature of Vendor(s):

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

*If this agreement is signed under:

- a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney's Signature above:

Signed for [full name of the donor] by his or her Attorney [attorney's signature].

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

DATE:

VENDOR: Palmerston North City Council

Contact Details:

VENDOR'S LAWYERS:

Firm: Simpson Grierson

Individual Acting: Sonia Bannister

Email: sonia.bannister@simpsongrierson.comContact Details: Level 24 HSBC Tower
195 Lambton Quay
Wellington 6011
PO Box 2402, Wellington 6140
Ph: 04 924 3590**Email address for service of notices** (clause 1.4): sonia.bannister@simpsongrierson.com**PURCHASER:**

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Email:

Contact Details:

Email address for service of notices (clause 1.4):**SALE BY LICENSED REAL ESTATE AGENT:**

Manager: Karen MacGillivray

Salesperson: Raewyn Easton

Second Salesperson: Jack Monckton

Contact Details: Mid West Realty Limited
Bayleys ManawatuEmail: raewyn.easton@bayleys.co.nz / jack.monckton@bayleys.co.nz

Ph: 027 436 2600 (Raewyn) / 027 394 3705 (Jack)

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Licensed Real Estate Agent under Real Estate Agents Act 2008

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