

# parklands

## RESIDENTIAL ESTATE

Thank you for your interest in purchasing a property in Stages 9-10, Parklands Residential Estate, Napier.  
**Please read this letter carefully.**

We now enclose for your perusal:

- a) an application form.
- b) section information including price indications.
- c) an example of the terms of the agreement for sale and purchase of real estate (which includes the proposed Land Covenants applicable for Stages 9-10). **Please do not sign this.**
- d) housing typology scheme plan for Area 3.
- e) a copy of the current design guidelines for these stages of the Parklands subdivision.
- f) a copy of the approved Title Plan.

If you wish to make an offer (or if you have any queries regarding the property or offers) please email [info@parklandsnapier.co.nz](mailto:info@parklandsnapier.co.nz) or phone **06 835 7579**.

### Offer Process

Please note the following matters:

1. If you wish to make an offer, please contact us on either of the contact details above and advise the following information on the attached application form;
  - The **name** of the party purchasing the property – please note Council do not accept nominations without prior written approval. If a trust is making the offer then make sure the trustees and the trust name are named as the purchasers (i.e. do not simply insert the name of the trust).
  - **Your** contact details (address/email/mobile etc).
  - Your **Solicitor's** details.
  - The **Lot** you are interested in.
  - The **amount** of your offer.
  - Whether your offer is plus **GST** (if any) OR inclusive of GST (if any).
  - **GST** information (if any).
  - Any additional **conditions/ further terms of sale** wish to include in your offer. Please include timeframes for these.
  - Your confirmation that **settlement date** of 10 working days from issue of title is agreed.

Please note, if you wish to put an offer on more than one Lot, please complete one application form for each Lot or state this clearly in your communications with us.

2. We will endeavour to notify you within 5 working days from the date all details are provided to us in the application form as to whether your offer is accepted or not.
3. If your offer is accepted, we will arrange for an agreement for sale and purchase (formal agreement) to be prepared and provided to you for signing. Once the offer has been signed by the purchasing party and the Council, we will provide you with a copy and you will be required to pay a deposit of 10% of the purchase price within 3 working days of notification that your offer has been signed. Payment details will be provided at the time of notification.
4. The application form is not an offer capable of being accepted. Council is not bound to sell any Parklands Lot to any party until it has signed the relevant formal agreement for sale and purchase.
5. Settlement Date on the agreement will be stated as 10 working days from the date of issue of title (titles expected late April 2024).

### Independent Advice

If your offer is accepted it will represent a binding legal agreement. Accordingly, we **strongly recommend** you seek advice from your Solicitor before signing the agreement.

**APPLICATION FORM – STAGES 9-10**

<b>Full names of Buyers: (nominations not accepted)</b>		
<b>Contact details of Buyers:</b>	Contact Person:  Address:  Phone:  Email address:	
<b>Buyer's Solicitor:</b>	Law Firm:  Contact Person:  Address:  Phone:  Email address:	
<b>Property Interested in:</b>	Lot	
<b>Purchase Price offered</b>	\$	plus GST (if any)  <b>OR</b>  inclusive GST (if any)  if neither is deleted, purchase price includes GST (if any)
<b>Are you GST registered?</b>	Yes / No (please circle)	
<b>If you are GST registered, please answer the following questions:</b>	GST Number:  Will you use the property for making taxable supplies?  Will you be using the property for your principal place of residence?	Yes / No  Yes / No (please circle)
<b>Any additional conditions/further terms:</b>		
<b>Is settlement date 10 working days from issue of title agreed?</b>	Yes / No (please circle)	

# parklands

## RESIDENTIAL ESTATE

### AREA 3

#### STAGE 9 (12 Lots)

#### STAGE 10 (17 Lots)

LOT	AREA m <sup>2</sup>	Designated House Type
200	908m <sup>2</sup>	Traditional Parklands - Type M2 (2-storey with instepped upper floor and dual frontage)
21	552m <sup>2</sup>	Prebensen (optional 2-storey)
22	557m <sup>2</sup>	Prebensen (optional 2-storey)
23	562m <sup>2</sup>	Prebensen (optional 2-storey)
24	545m <sup>2</sup>	Prebensen (optional 2-storey)
25	544m <sup>2</sup>	Prebensen (optional 2-storey)
26	587m <sup>2</sup>	Prebensen (optional 2-storey)
27	600m <sup>2</sup>	Traditional Parklands - Type M2 (2-storey with instepped upper floor and dual frontage)
28	505m <sup>2</sup>	Traditional Parklands (single storey only)
29	498m <sup>2</sup>	Traditional Parklands (single storey only)
30	534m <sup>2</sup>	Traditional Parklands (single storey only)
31	534m <sup>2</sup>	Traditional Parklands (single storey only)
44	603m <sup>2</sup>	Traditional Parklands (single storey only)
45	402m <sup>2</sup>	Traditional Parklands (single storey only)
46	390m <sup>2</sup>	Traditional Parklands (single storey only)
47	427m <sup>2</sup>	Cottage (single storey only)
48	448m <sup>2</sup>	Cottage (single storey only)
49	430m <sup>2</sup>	Cottage (single storey only)
50	348m <sup>2</sup>	Cottage (single storey only)
51	465m <sup>2</sup>	Cottage (single storey only)
52	389m <sup>2</sup>	Cottage (single storey only)
53	444m <sup>2</sup>	Cottage (single storey only)
54	603m <sup>2</sup>	Cottage (single storey only)
55	451m <sup>2</sup>	Cottage (single storey only)
56	308m <sup>2</sup>	Cottage (single storey only)
57	320m <sup>2</sup>	Cottage (single storey only)
58	330m <sup>2</sup>	Cottage (single storey only)
59	375m <sup>2</sup>	Cottage (single storey only)
60	409m <sup>2</sup>	Cottage (single storey only)

#### Price Indication

Smaller lots (308m<sup>2</sup> - 466m<sup>2</sup>)     \$350,000 to \$390,000

Medium lots (498m<sup>2</sup> – 600m<sup>2</sup>)     \$435,000 to \$460,000

Large lots (603m<sup>2</sup> – 908m<sup>2</sup>)     \$445,000 to \$565,000

# 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: NAPIER 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:

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):

## 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): \$ Equivalent to 10% of purchase price

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

(1) By payment in cleared funds on the settlement date which is: 10 working days from issue of title

OR  
(2) In the manner described in the Further Terms of Sale. Interest rate for late settlement: 14 % p.a.

## CONDITIONS (refer clause 9.0)

Finance required (clause 9.1):	Yes/No	Finance date:
LIM required (clause 9.3):	Yes/No	LIM date:
Building report required (clause 9.4):	Yes/No	Building report date:
Toxicology report required (clause 9.5):	Yes/No	Toxicology report date:
OIA consent required (clause 9.6):	Yes/No	OIA date (clause 9.8):
Land Act consent required (clause 9.7):	Yes/No	Land Act date (clause 9.8):

## TENANCIES

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

Yes/No

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: 9 May 2023

1

356664-806-D01

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# 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 report date" means the building report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (8) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (9) "Cleared funds" means an electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines.
- (10) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (11) "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.
- (12) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (13) "Finance date" means the finance date stated on the front page of this agreement, or if no date is stated, means the tenth working day after the date of this agreement.
- (14) "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.
- (15) "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.
- (16) "Land Act date" means the Land Act date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (17) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (18) "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.
- (19) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (20) "LIM date" means the LIM date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement, taking into account clause 1.1(45)(c).
- (21) "LINZ" means Land Information New Zealand.
- (22) "Local authority" means a territorial authority or a regional council.
- (23) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (24) "OIA date" means the OIA date stated on the front page of this agreement, or if no date is stated, has the meaning described in clause 9.8.
- (25) "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.
- (26) "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.
- (27) "Property" means the property described in this agreement.
- (28) "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.
- (29) "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.
- (30) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (31) "REINZ" means the Real Estate Institute of New Zealand Incorporated.
- (32) "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.
- (33) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (34) "Rules" means body corporate operational rules under the Unit Titles Act.

- (35) "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.
- (36) "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.
- (37) "Settlement date" means the date specified as such in this agreement.
- (38) "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.
- (39) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (40) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (41) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (42) "Toxicology report date" means the toxicology report date stated on the front page of this agreement, or if no date is stated, means the fifteenth working day after the date of this agreement.
- (43) "Unit title" means a unit title under the Unit Titles Act.
- (44) "Unit Titles Act" means the Unit Titles Act 2010.
- (45) "Working day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day;
  - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
  - 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 the LIM date, ending on the 15th day of January) in the following year, both days inclusive;
  - the day observed as the anniversary of any province in which the property is situated;
  - the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
  - any other day that the Government of New Zealand declares to be a public holiday.
- 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:

- 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
- 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

- 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.
- 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.
- 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:

- All notices must be served in writing.
- 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.
- All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
  - on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
  - on the party or on the party's lawyer:
    - by personal delivery; or
    - by posting by ordinary mail; or
    - by email; or
    - 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.
- In respect of the means of service specified in clause 1.4(3)(b), a notice is deemed to have been served:
  - in the case of personal delivery, when received by the party or at the lawyer's office;
  - 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;
  - in the case of email:
    - when sent to the email address provided for the party or the party's lawyer on the back page; or
    - 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
    - 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;
  - 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;
  - 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.
- 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

- 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 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.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until the latest of those of the following matters which are applicable to this agreement:
  - (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and/or
  - (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/or
  - (3) where the property is a unit title:
    - (a) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
    - (b) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
    - (c) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act; and/or
  - (4) this agreement is:
    - (a) cancelled pursuant to clause 6.2(3)(c); and/or
    - (b) avoided pursuant to clause 9.10(5).

~~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.~~

### 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 so 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. If the property is a unit title, the vendor's settlement statement must show any periodic contributions to the operating account that have been struck prior to the settlement date (whether or not they are payable before or after the settlement date) and these periodic contributions to the operating account shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.

- 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 off-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, and~~
  - (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 clause 8.3,~~
- ~~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:~~  
~~(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).~~
- ~~(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 outgoings 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 and a pre-settlement disclosure statement in accordance with the Unit Titles Act. The requirements of this clause 8 are in addition to, and do not derogate from, the requirements of that Act.—~~
- ~~8.2 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as follows as at the date of this agreement.—~~  
~~(1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct to the extent required by the Unit Titles Act.—~~  
~~(2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate.—~~  
~~(3) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.—~~  
~~(4) No order or declaration has been made by any Court or Tribunal against the body corporate or the vendor under any provision of the Unit Titles Act.—~~  
~~(5) 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.—~~  
~~(6) 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.—~~  
~~(7) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property.—~~

- ~~(8) 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.~~

- ~~8.3 If the property is a unit title, not less than five working days before the settlement date, the vendor will provide:~~
- ~~(1) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act, and~~
  - ~~(2) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act.~~
- ~~8.4 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as at the settlement date:~~
- ~~(1) Other than contributions to the operating account, long-term maintenance fund, contingency fund, or capital improvements fund that are shown in the pre-settlement disclosure statement, there are no other amounts owing by the vendor under any provision of the Unit Titles Act.~~
  - ~~(2) All contributions and other moneys payable by the vendor to the body corporate have been paid in full.~~
  - ~~(3) The warranties at clause 8.2(2), (3), (4), (5), (6), (7), and (8) are repeated.~~
- ~~8.5 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 8.3, then in addition to the purchaser's rights under sections 150, 151 and 151A 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, such election to be a waiver of any other rights to delay or cancel settlement under the Unit Titles Act or otherwise.~~
- ~~8.6 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.~~
- ~~8.7 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 indicated 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.
- (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; and
  - (b) this agreement is conditional upon the purchaser approving that LIM by the LIM date, 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 LIM date 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 LIM date and the vendor does not give an extension when requested, then unless the purchaser waives this condition, 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 third 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 fifth 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 building report date 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 toxicology report date, 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 in accordance with 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 on terms and conditions that are satisfactory to the purchaser, acting reasonably, the purchaser being responsible for payment of the application fee. This condition is inserted for the benefit of both parties, but (subject to clause 9.6(2)) may not be waived by either party, and the vendor is not required to do anything to enable this condition to be fulfilled.
  - (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.
- 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
- 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 claims a right to compensation (and in making such a claim, the purchaser must act reasonably, but the vendor taking the view that the purchaser has not acted reasonably does not affect the purchaser's ability or right to make such a claim) 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) on or before the date that notice is due under clause 10.3(1) 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 an appointee under either clause 10.6 or clause 10.8, that appointee:
- (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 all or some the reasonable legal costs of the other party, and in making such an order the appointee may without limitation take into account the appointee's view of the reasonableness of the conduct of the parties under this clause.
- 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, willing, and able 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, willing, 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 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.

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May 2023

## FURTHER TERMS OF SALE

SEE ATTACHED

DRAFT



DRAFT

## FURTHER TERMS OF SALE

### 21.0 Subdivision

- 21.1 This Clause 21.0 shall apply where the plan of subdivision has not deposited with Land Information New Zealand at Wellington at the date this agreement is signed by both parties.
- 21.2 The Vendor will at its own cost and with all reasonable speed and diligence arrange for:
- (a) the deposit of the subdivisional plan with Land Information New Zealand at Wellington; and
  - (b) compliance with the terms and conditions of the subdivision consent of the Napier City Council (hereinafter called "the Council")
- 21.3 The Purchaser acknowledges that the Vendor retains the following rights in respect of the property:
- (a) To make any survey plan adjustments required by the Council or any government department or other authority having jurisdiction or as the Vendor may consider necessary or desirable for the purposes of the subdivision of the land.
  - (b) To grant to the Council and/or any government department, local authority or utility provider the right to lay telephone cables and power, sewerage, stormwater and water pipes and/or connection underground and to construct any transformer or supply box.
  - (c) To provide for any stormwater, sewage drainage, electricity, rights of way and other requirements by easement or otherwise howsoever.
  - (d) To store soil in the course of development works.
  - (e) To cut away or remove the soil and substrata of the property and/or any other land in the subdivision and berm and fill adjacent to roads accessways or rights of way.
  - (f) To excavate, contour, lower, fill, landscape or plant the property and/or any other land in the said subdivision.
  - (g) To enter upon the property itself or by its servants agents or workers and do such work as shall in the opinion of the Vendor be necessary or desirable to complete the said subdivision.
- 21.4 None of the matters referred to in subclause 21.3 shall entitle the Purchaser or any person claiming under them to damages or compensation or to make any objection or requisition and the Purchaser is deemed to have accepted the Vendor's title.
- 21.5 The Purchaser will not at any time prior to the settlement date lodge any caveat pursuant to the provisions of the Land Transfer Act 2017 against the title to the land of which the property forms part. If the Purchaser does so, the Purchaser irrevocably appoints any officer of the Vendor or its nominee to be the Purchaser's true and lawful attorney to make execute and register in the name of the Purchaser and on the Purchaser's behalf all consents, notices, withdrawals, documents, papers and to do any other act or thing which the Vendor deems necessary or expedient to have such caveat removed from the said title. The Purchaser agrees that the production of this agreement to the Registrar General of Land shall be sufficient evidence of the appointment of the attorney of the Purchaser for any such purpose. The costs of removal of any caveat shall be payable by the Purchaser to the Vendor immediately the Vendor advises the Purchaser of the amount of those costs.
- 21.6 It being acknowledged that the Vendor has obtained the necessary subdivision consent under the Resource Management Act 1991 to the proposed subdivision, neither the Vendor nor their agent shall be under any obligation to hold any deposit or other moneys paid by the Purchaser

in trust.

## **22.0 Accruals**

- 22.1 The parties acknowledge that the purchase price is the lowest price for which the Vendor would have sold the property if the purchase price had been paid in full on the date of execution of this agreement and that there is no element of interest contained in the purchase price.

## **23.0 Building Covenants and Design Confirmation**

- 23.1 The Purchaser acknowledges and agrees with the Vendor that:
- (a) the property is part of a development which is intended to establish a modern and well-designed subdivision. It is desirable that supervision and control be exercised by the Vendor for the protection and in the interests of all Purchasers of lots in the subdivision in relation to the nature and type of construction to be erected in the subdivision which includes the property. This includes control over the grouping of similar style housing within a street. In recognition of these objectives the Purchaser acknowledges that prior to the date of settlement there will be registered against the title to the property an instrument creating land covenants which will be substantially similar to those described in Schedule 2 annexed hereto; and
  - (b) the land covenants referred to in sub-clause (a) above will contain a prohibition on construction works commencing without first obtaining a design confirmation from the Vendor's Parklands Design Review Panel for any proposed residence and supplementary structures.

## **24.0 Rates**

- 24.1 Subject to subclause 24.2, until the property is separately rated, as from settlement date rates will be apportioned on the basis of an estimate of \$600 per annum and the Purchaser shall pay such apportionment on settlement date.
- 24.2 Where the property is sold during the year in which rates are struck for that property and in the period from 1 July to the date when rates are struck, the rates shall be apportioned on the basis of the amount of such rates once struck and if that amount is not known at the time of sale then on the basis of an estimate of what the rates will be, such estimate to be determined by the Vendor (acting reasonably). The parties agree that no adjustment will be made, and neither party will have any further liability or obligation to reimburse the other, if the rates that are struck are greater or less than the estimated amount used at time of settlement.

## **25.0 Formation of Contract**

- 25.1 This agreement is not binding on the Vendor until execution of the same by the Vendor, and communication of such execution has been made to the Purchaser or the Purchaser's solicitor.

## **26.0 Utility Providers**

- 26.1 The Purchaser acknowledges and agrees to the Vendor providing any network utility provider, providing utilities within this subdivision, with the Purchaser's personal contact details.

## **27.0 Adjoining Owners**

- 27.1 This subclause 27.1 applies during the period commencing on the date of this agreement and expiring on the Settlement Date. If, during the period that this provision applies, the owner of an adjoining property wishes to erect a fence along the boundary of the property and the said adjoining property the Purchaser shall be deemed to be an adjoining occupier for the purposes of the Fencing Act 1978 ("the Act") and the Act shall apply accordingly. Any contributions and/or payments that the Purchaser is required to make under the Act shall be payable to the adjoining owner on the Settlement Date.

- 27.2 This subclause 27.2 applies where a fence has been erected along the boundary of the property and an adjoining property prior to the date of this agreement. If this provision applies the Purchaser shall, at the written request of the owner of the adjoining property (provided such request is made no later than three (3) months after the Settlement Date), contribute an equal proportion of the costs incurred by that adjoining owner for the construction of the said boundary fence (including materials and labour). Any contributions and/or payments that the Purchaser is required to make under this provision shall be payable to the adjoining owner on the later of the Settlement Date or ten (10) working days after the request from the adjoining owner is received by the Purchaser.
- 27.3 The Purchaser acknowledges and agrees to the Vendor providing any adjoining owner with the Purchaser's personal contact details for the purposes of boundary fencing arrangements.
- 27.4 The Purchaser acknowledges and agrees that this Clause 27.0 confers a benefit on the owners of any adjoining property to the property and it is intended that the Purchaser's obligations and liabilities under this Clause 27.0 are enforceable at the suit of such adjoining owners pursuant to the Contract and Commercial Law Act 2017.

## **28.0 Road Debris**

- 28.1 The Purchaser must ensure that any mud from any vehicles of the Purchaser, or any contractor or agent of the Purchaser, or any other form of debris deposited on any road or other Lot, is cleaned and removed away immediately otherwise the Vendor shall clean and remove such debris at the sole cost of the Purchaser.

## **29.0 Insolvency**

- 29.1 If at any time prior to settlement:
- (a) the Purchaser becomes insolvent or is unable to pay its debts as they fall due (other than debts falling due pursuant to this agreement); or
  - (b) any proceedings, resolutions, orders, filings, appointments or other steps are instituted with respect to the Purchaser relating to the bankruptcy, liquidation, receivership and/or administration of the Purchaser or if the Purchaser is placed under official or statutory management; or
  - (c) any assignment is made of the Purchaser's property for the benefit of creditors or if the Purchaser compounds with the Purchaser's creditors,

the Vendor may, upon notice to the Purchaser, cancel this agreement with immediate effect and forfeit and retain for the Vendor's own benefit the deposit paid by the Purchaser.

## **30.0 No assignments or nominations**

- 30.1 The Purchaser shall not assign any of its rights or powers under this agreement, or purport to nominate any third party to be the purchaser under this agreement, without first obtaining the written consent of the Vendor (such consent to be provided at the Vendor's sole discretion).
- 30.2 Where the Vendor consents to any such assignment or nomination it shall be a condition of the consent that the Purchaser obtains from the assignee or nominated purchaser a written statement containing the same warranties as are provided by the Purchaser in Schedule 1.

## **31.0 Miscellaneous**

- 31.1 **Entire Agreement:** This agreement (including all schedules and annexures) sets out the only and entire agreement between the parties. It replaces all earlier agreements, either oral or written, between the parties, on the subject matter of this agreement.
- 31.2 **No Warranty:** The Purchaser enters into this agreement entirely in reliance on the Purchaser's own skill and judgment and not in reliance on any representations, warranties, statements, agreements or undertakings of any nature made by the Vendor; any agent, officer or employee of the Vendor; or any other person acting for or on behalf of the Vendor except only to the extent

that those representations, warranties, statements, agreements or undertakings (or any of them) are expressly set out in this agreement.

- 31.3 **Requirement for Writing:** No interpretation, change, termination or waiver of any of the terms of this agreement will be binding unless in writing and properly signed by or on behalf of each party.
- 31.4 **Law:** This agreement is governed by, and shall be construed in accordance with, the laws of New Zealand.
- 31.5 **No Waiver:** A party's failure or delay in exercising any right or remedy under this agreement will not operate as a waiver. A single or partial exercise of any right or remedy will not prevent the exercise of that right or remedy in the future.
- 31.6 **Non Merger:** Each of the terms of this agreement will continue to have effect, despite settlement, and even if any of those terms are not performed at settlement.
- 31.7 **Effect of Invalidity:** If any of the terms of this agreement are held to be illegal, invalid or unenforceable under any applicable law, then:
- (a) that illegality, invalidity or unenforceability will not invalidate the rest of this agreement or make it unenforceable; and
  - (b) each invalid term will be treated as modified as is necessary to make it legal, valid or enforceable, provided that if the modification of an invalid term is not possible, then this agreement will be interpreted and enforced as if not containing the term held to be illegal, invalid or unenforceable, and the parties' rights and obligations will be interpreted and enforced accordingly.

## 32.0 Fencing

- 32.1 If this agreement relates to any of Lots 21 to 26 (inclusive) and Lot 200, as described on the attached plan, then the parties agree that the boundary between the property and Prebensen Drive will be fenced with a 1.8 metre high fence, comprising a 0.9m high BelAire panel bottom and a 0.9m high black balustrade fencing top (the "BelAire fence"). The Vendor will be responsible for the design and erection of the BelAire fence. The parties acknowledge that the purchase price includes the cost of the BelAire fence (but not that of fencing the property's other boundaries which shall remain at the Purchaser's cost).



## 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.

<b>Section 1 Vendor</b>	
1(a) The vendor's registration number (if already registered): 10-889-324	
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
<b>Section 2 Purchaser</b>	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	
<b>If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)</b>	
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
<b>OR</b>	
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.	Yes/No
That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	
<b>If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.</b>	
<b>Section 3 Nominee</b>	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	
<b>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.</b>	
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
<b>OR</b>	
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.	Yes/No
That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	

**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/under bench oven ( )	Cooktop ( )
Dishwasher ( )	Kitchen waste disposal ( )	Light fittings ( )	Smoke detectors ( )
Burglar alarm ( )	Heated towel rail ( )	Heat pump ( )	Garage door remote control ( )
Garden shed ( )	Blinds	Curtains	Drapes
Fixed floor coverings	Bathroom extractor fan		

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**

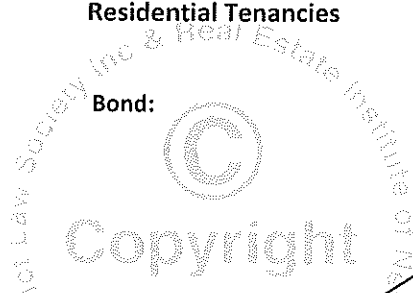
**Residential Tenancies**

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:

SCHEDULE 2  
PROPOSED LAND COVENANTS

**Interpretation**

1. For the purposes of these covenants the following expressions shall have the following meanings ascribed to them:
  - (a) **Builder:** means any builder, contractor or sub-contractor (or employee of such).
  - (b) **Council:** means the Napier City Council and any successor body.
  - (c) **Design Confirmation:** means the confirmation received by the Owner from the Parklands Design Review Panel as described in clause 6 below.
  - (d) **Guidelines:** means the design guidelines for Parklands as contained in the latest version of the Parklands Design Guidelines prepared by and available from the Council. The Guidelines may be amended by the Council from time to time provided that any change to the Guidelines will not have retrospective effect on any construction which has previously received Design Confirmation.
  - (e) **Owner:** means the registered proprietor(s) from time to time of any part of the burdened land.
  - (f) **Parklands Design Review Panel:** means the design review panel appointed by the Council for the purpose of ensuring all Residences, fences and other structures erected on the Property comply with the relevant Guidelines for the Precinct in which the Property is situated.
  - (g) **Precinct:** means the area of the Parklands development in which the Property is situated for which specific design guidelines are applicable and which are identified in clause 18 of these covenants.
  - (h) **Property:** means all and any of the parcels of land identified as burdened land in the instrument used for registering these land covenants.
  - (e) **Residence:** means a detached residential building designed for and occupied exclusively as one household unit for residential purposes only; provided that a Residence may be part of a duplex or terraced building in specific Precincts where such buildings are provided for in the Guidelines.

**SITE DESIGN**

**Construction of a Residence**

2. The Owner may not construct or erect on the Property anything other than a Residence and any structure supplementary to such Residence that is permitted in the Guidelines (such as garages

and fencing). The Owner must not use the Property for any purpose other than construction and occupation of a Residence.

3. Any development (including, but not limited to, the erection of Residences, garages and fences) undertaken on the Property shall be in accordance with the Guidelines. The Guidelines applicable to each Property shall be those in place immediately prior to the Owner submitting its application for building consent.
4. It shall be the Owner's ultimate responsibility to establish which version of the Guidelines is applicable to the Property. However, if requested, the Council will make information available to the Owners in respect of which version of the Guidelines is applicable and an Owner may rely on such information.
5. If an Owner requests a specific exemption to the Guidelines in its application for Design Confirmation, the Parklands Design Review Panel:
  - (a) will be under no obligation to grant or consider such a request;
  - (b) shall have no obligation to act reasonably or in accordance with previous decisions if considering such a request;
  - (c) may grant an exemption to any part of the Guidelines, subject to any conditions it deems reasonable. Where an exemption is granted, a Residence or structure will not be in breach of these covenants only for the reason that it does not comply with the relevant Guideline to which an exemption has been granted; and
  - (d) will not be obliged, in the future, to grant or consider any requests for similar exemptions in respect of any other Property and any exemptions granted under this clause 5 shall not set a precedent.
6. No construction works shall commence until Council is in receipt of a Design Confirmation from the Parklands Design Review Panel noting that the design of the Residence and other supplementary structures (including garages, fences and driveways) is in accordance with the Guidelines. Compliance with the Guidelines and receipt of a Design Confirmation does not warrant that such design complies with the district plan for Napier City and compliance with the said district plan remains the ultimate responsibility of the Owner.
7. The number of Residences on a Property shall not exceed those provided for in the Guidelines for the Precinct in which the Property is situated.
8. No granny flat or supplementary unit may be erected on any Property unless expressly provided for in the Guidelines.

#### **Design Confirmation – Services and Roads**

9. The issue of a Design Confirmation by the Parklands Design Review Panel must be based on the plans, specifications and other information supplied by the Owner, including any certificate

or information supplied by the Owner's building designer. It shall not imply any warranty by the Council that:

- (a) The proposed Residence may utilise existing services;
- (b) The proposed siting of any proposed Residence is not affected by the location of existing services;
- (c) The location of egress on the building designer's plans is in accordance with the Council's requirements as to public roads.

### **Subdivision**

10. Subject to the further provisions of this clause 10, the Owner must not:

- (a) Erect any flats or other dwelling units which may be subject to a cross lease or registration under the Unit Titles Act 2010; or
- (b) Complete any further subdivision of the Property.

Except that further subdivision of a Property may be approved in conjunction with a Design Confirmation relating to duplex or terraced housing typologies within a Precinct for which the Guidelines allows such typologies.

### **Boundary Adjustment**

11. The Owner must not alter the boundaries of the Property whether by amalgamation, boundary adjustment or in any manner whatsoever without first obtaining the consent in writing of the Council.

### **Boundary Fencing**

12. Prior to the Residence on the Property being occupied for residential purposes or being offered for sale the Owner must ensure that all boundary fences around the said Property have been erected in accordance with the Guidelines and any Design Confirmation.

13. No fence already erected in accordance with the Guidelines may be changed without the Council's consent. Such consent shall be at the Council's sole discretion and there shall be no requirement for the Council to act reasonably or to provide a reason for withholding its consent.

14. Where the Council has agreed contractually to take on the responsibility and cost of erecting a boundary fence the Council retains the right to alter the said boundary fence at its sole discretion, including the total fence height or fence material, provided such alteration is undertaken prior to completion of construction of the Residence.

### **Foundations**

15. The foundations for any residence constructed on the Property must comply with the design for foundations for such properties (as recommended by any geotechnical consultant employed or

contracted by the Council) current at the time the Owner (or their agent) applies for a building consent. The Owner may request a copy of such design recommendations from the Council.

### **Driveways**

16. Each property is limited to one vehicle crossing.

### **Garages**

17. Where garage doors face the street frontage, the garage must not extend forward of the front façade of the Residence. A garage door facing a street frontage must be no greater than 45 per cent of the width of the front façade of the Residence (with the exception of duplex dwellings within the Parkside Precinct). In addition to the provisions of this clause 17, Garages must be constructed in accordance with the Guidelines

### **Precincts**

18. For the purposes of the Guidelines and these covenants:
- (a) Lots 21 to 26 (inclusive) shall be deemed to be in the **Prebensen Precinct**;
  - (b) Lots 27 to 31 (inclusive), Lots 44 to 46 (inclusive) and Lot 200 shall be deemed to be in the **Traditional Parklands Precinct**;
  - (c) Lots 47 to 60 (inclusive) shall be deemed to be in the **Cottages Precinct**;
  - (e) Lots 200 and 27 are also classified as marker sites, **Type M2**.

## **SITE ESTABLISHMENT**

### **Construction timeframes**

19. The Owner must commence construction of a Residence on the Property within one (1) year of the date of possession, as specified on the Agreement of Sale and Purchase that first saw possession of the Property pass from the Council (whether possession passed to the Owner or any other interim party). The Owner must not permit any deviation from the Council approved plans and specifications used to obtain the Design Confirmation without the written consent of the Council, and must complete the construction of the Residence within one (1) year from the date of receiving the Design Confirmation.

### **Contractors**

20. The Owner must immediately prior to commencing the construction of any Residence on the Property construct an all weather access crossing for the purpose of avoiding unsightly mud and rubbish being deposited on to the roads. Except where the access crossing is to be used as part of the driveway to the Property, the access crossing shall on completion of the construction of any Residence on the Property, be removed by the Owner and the surface of the ground restored to its condition immediately prior to the laying of the access crossing.

21. The Owner must also before commencing the construction of any Residence on the Property construct a mud free, hard stand loading pad for a distance of 5 metres from the boundary of the Property into the Property, and of a minimum width of 3.5 metres.
22. In constructing the access crossing and loading pad the Owner must ensure that no damage is caused to any existing roads, berms or footpaths and the Owner hereby indemnifies the Council from any ensuing cost or liability suffered by the Council in respect of any such damage.
23. The Owner must ensure that no concrete trucks servicing any construction activities on the Property dump concrete slurry on the land.
24. The Owner must not permit any Builder to commence construction of the Residence without first ensuring that the Builder is familiar with the requirements of clauses 20 to 23 (inclusive) and all other provisions relating to the construction of the Residence. The Owner shall be responsible for ensuring that these provisions are complied with.

## **GENERAL**

### **Access for Further Works**

25. The Council and its agents and employees shall continue, after possession has been given, to have the right to enter upon the Property for the purpose of completing any subdivisional work including surveying, earthworks, constructing drains, roads, footpaths, driveways and the installation or maintenance of services generally.

### **Section Maintenance**

26. The Owner must ensure from the date of possession that the Property is kept in a neat and tidy condition and maintained free from long grass, weeds, rubbish, builder's waste or other substances before, during and after the construction of any Residence thereon. In the event that while the Property remains unoccupied the Owner fails to do so the Council may arrange for the Property to be cleared and the Owner must pay to the Council immediately upon demand the costs incurred by the Council together with interest thereon at a rate of 20 percent per annum on a daily basis from the date that such costs were incurred by the Owner.
27. The use of adjacent or abutting land for access and dumping of rubbish and waste concrete is strictly prohibited; provided however that the Owner or the Owner's Builder may have access across any other land upon obtaining written approval from the Council.
28. The Owner is liable for any damage caused to roads or footpaths or to any adjoining land resulting from the construction of any Residence on the Property, and the Owner hereby indemnifies the Council from any ensuing cost or liability suffered by the Council in respect of any such damage.

### **Occupation of Residence**

29. Any Residence constructed on the Property must not be occupied until all exterior claddings to the Residence are installed and completed; the driveway has been laid; the grounds around the

Residence are levelled and prepared for the development of lawn and gardens; and the boundary fences have been erected around the property to the minimum standard set out herein.

#### **Relocatable Structures**

30. The Owner must not place on any Property any relocated or transportable building or structure whether new, used, or recycled provided that builder's sheds or such other buildings that are required during the course of the construction and erection of any Residence may be placed on any Property but must be removed on completion of construction.

#### **Disrepair of Buildings**

31. The Owner must not allow on any Property any buildings or structures to become dilapidated or to fall into disrepair or allow any nuisance or disturbance to be caused to any owner or occupier of neighbouring residences.

#### **Temporary Dwellings**

32. No temporary dwelling, caravan, trade vehicle or other equipment and materials may be brought onto or allowed to remain on the Property following completion of the Residence unless they are garaged or screened so as to preserve the neighbourhood amenity values.

#### **Graffiti**

33. The Owner must not allow to remain on any wall, fence, structure or building on the Property any graffiti or similar disfiguring for more than 5 working days from the date that such occurred or was brought to the notice of the Owner.

#### **Animals**

34. The Owner must not keep any poultry or farm animals and not breed for commercial purposes any animals or birds on the Property.

#### **Trees**

35. The Owner will take measures to ensure that any tree planted on the Property is located a minimum of 1.5 metres away from any underground services (whether those services are on the Property or not).

#### **Screens**

36. Clauses 37-39 below shall apply to any motor vehicles with a gross weight in excess of 2.5 tonnes (whether mobile or immobile), caravans, boats, trailers, recreational vehicles, machinery, firewood, apparatus or any such similar thing.
37. The Owner will not bring on or allow to remain on the Property any of the items described in clause 36 if such items, when parked or stored on the Property, exceed a height of 2.5 metres



and/or are longer than 6 metres unless such items are parked or stored entirely within the confines of a shed or garage.

38. The Owner will not bring on or allow to remain on the Property any of the items described in clause 36 if such items, when parked or stored on the Lot, are under 2.5 metres in height and less than 6 metres in length unless such items are parked or stored in a shed, garage or carport and/or any area that is properly screened from the street.
39. The Owner will not allow any of the items described in clause 36 to be parked on a street within the Parklands subdivision.

#### **Fencing Covenant**

40. The Council is not 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 Council but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land.

#### **Council's Indemnity**

41. The Owner agrees that it will at all times hereafter save harmless and keep indemnified the Council from all proceedings costs claims and demands in respect of any breaches by the Owner of any of the covenants and restrictions hereinbefore on the Owner's part contained or implied.

#### **Enforcement of Covenants**

42. The Council shall not be required or obliged to enforce all or any of the covenants (including the requirement to follow the Guidelines), stipulations and restrictions contained herein nor liable to the Owner for any breach thereof by any of the registered proprietors from time to time of the other properties which are subject to the within covenants.

#### **Damages for Breach of Covenants In Gross**

43. The Council has a legitimate interest in the covenants in gross contained in this document being complied with. Those legitimate interests include, but are not limited to, the effect a breach of such covenants in gross may have on:
  - (a) the amenity value of the subdivision;
  - (b) the value of properties in the subdivision still owned by the Council; and
  - (c) in the case of the covenants in gross contained in clause 19, ensuring the subdivision is completed in a timely manner (with no Owners "land banking" the properties they purchase) with a view to helping to ease Napier City's lack of housing stock.
44. In the event of a breach of the covenants in gross contained in clause 19, whereby the Owner fails to either commence construction within one (1) year of the date of possession, or to complete construction within one (1) year of receiving the Design Confirmation, or both, the Owner will be liable to the Council for the following amounts:

- (a) the sum of \$40,000.00; and
- (b) the sum of \$1,000.00 per week for each full week the Owner is in breach of any of the covenants in clause 19; and
- (c) all costs (including, but not limited to, legal costs on a solicitor/client basis) incurred in enforcing the covenants in clause 19 and collecting the amounts owed under this clause 44.

The above sums will constitute a debt due to the Council and are recoverable by the Council as liquidated damages. Nothing in this clause 44 shall interfere with any other rights the Council might have in relation to a covenant (including, but not limited to, injunctive relief and enforcing specific performance of the covenant).

45. No delay by the Council in enforcing the covenants contained in clause 19, or in requesting the amounts payable under clause 44, will be deemed to be a waiver of the Council's rights under those provisions. If the Council agrees to grant extensions to an Owner in relation to the time within which that Owner must comply with their obligations under clause 19, then the provisions of clause 44 will apply as from the expiry of such extended dates. Nothing in this clause 45 will oblige the Council to grant any extensions to the time limits prescribed in clause 19.
46. In the event of a breach of any other covenant in gross the Owner will upon demand by the Council:
- (a) remedy the breach of the relevant covenant at its cost, to the reasonable satisfaction of the Council and within a reasonable time (such time to be no greater than 30 days from the date the Council's demand is received); and
  - (b) if the Owner does not remedy the breach of the covenant in accordance with sub-clause (a) above, the Owner shall pay to the Council a sum equivalent to the sum of \$40,000.00. This sum together with all costs incurred in enforcing the covenant will constitute a debt due to the Council and is recoverable by the Council as liquidated damages. Nothing in this clause 46 shall interfere with any other rights the Council might have in relation to a covenant (including, but not limited to, injunctive relief and enforcing specific performance of the covenant).
47. Nothing in clauses 43 to 46 (inclusive) shall interfere with any rights any Grantees (other than the Council) might have in relation to the land covenants granted in respect of the benefitted land (including, but not limited to, injunctive relief and enforcing specific performance of the covenant).

#### **Expiry of Covenants in Gross**

48. Subject to clause 49, the covenants in gross granted in favour of the Council shall expire and cease to have effect on the later of:
- (a) the date falling five (5) years from the date such covenants in gross were registered on the title for the burdened land; and

- (b) the date each and all of the burdened land contains a completed Residence built in compliance with the Design Guidelines and otherwise in compliance with these covenants.
49. The provisions of clauses 19, 40, 41, 44 and 45 shall survive the expiry of the covenants in gross and continue to apply for the benefit of the Council.
  50. Nothing in clause 48 shall interfere with the covenants granted in favour of the benefitted land (which do not have an expiry date).

## 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:

- (a) they are signing in a personal capacity as the 'vendor' or 'purchaser' named on the front page, or
- (b) 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):

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

*Delete the options that do not apply*

*If no option is deleted, the signatory is signing in their personal capacity*

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

*Delete the options that do not apply*

*If no option is deleted, the signatory is signing in their personal capacity*

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

*Delete the options that do not apply*

*If no option is deleted, the signatory is signing in their personal capacity*

Name:

Director / Trustee / Authorised Signatory / Agent / Attorney\*

*Delete the options that do not apply*

*If no option is deleted, the signatory is signing in their personal capacity*

\*If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- (ii) 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****VENDOR:** NAPIER CITY COUNCIL

Contact Details:

**VENDOR'S LAWYERS:**

Firm: Willis Legal

Individual Acting: Mark Goodson/Lizzie Sayer

Email: lsayer@willislegal.co.nz

Contact Details: Private Bag 6018

NAPIER 4142

Ph: 06 835 3229

Email address for service of notices (clause 1.4): lsayer@willislegal.co.nz

**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:

Salesperson:

Second Salesperson:

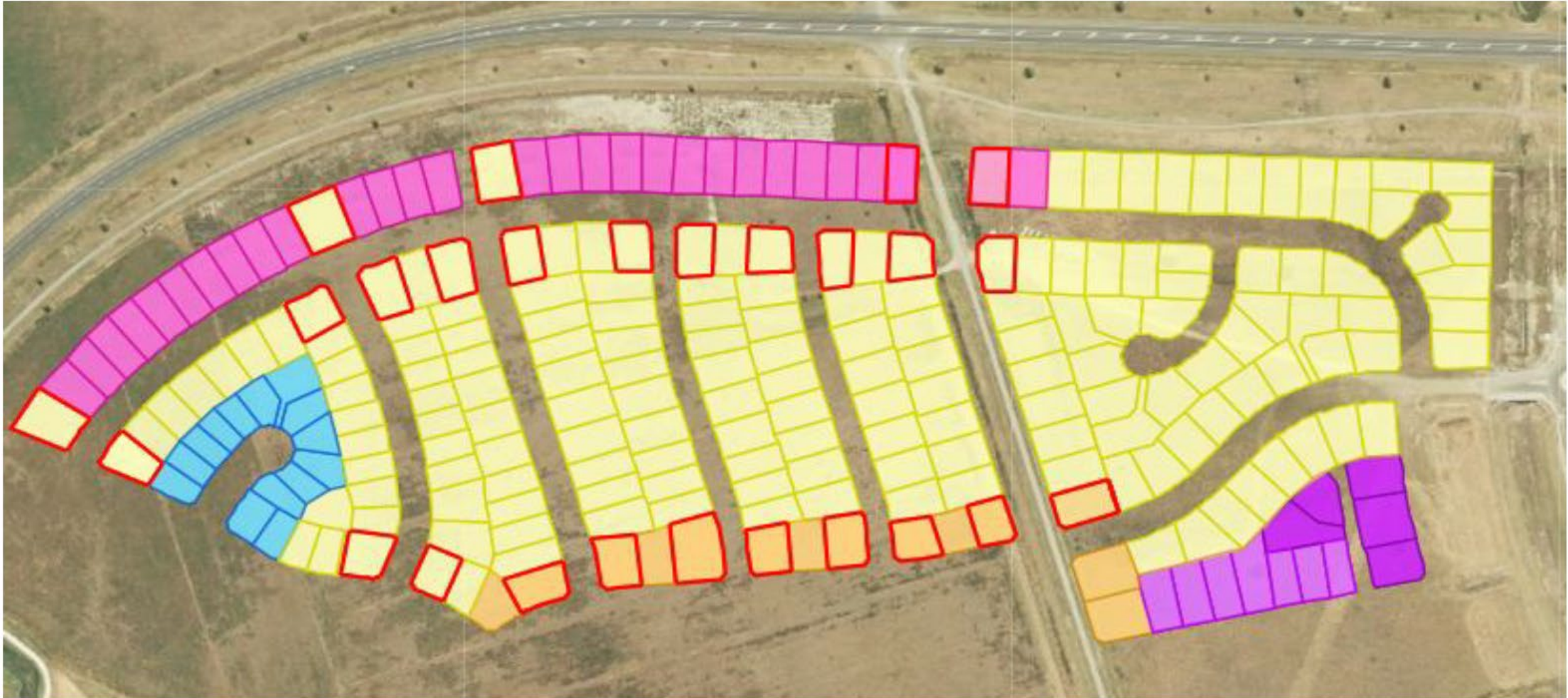
Contact Details:

Licensed Real Estate Agent under Real Estate Agents Act 2008

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# Parklands Housing Typology Scheme Plan - Area 3



- Existing**
- |   |   |  |
|---|---|--|
|  Prebensen Drive Edge  |  Facing Internal Reserve |  Townhouses |
|  Traditional Parklands |  Cottage                 |  |
|  Avenue / Terrace      |  Corner / Bookend        |  |

# PARKLANDS DESIGN GUIDELINES

1 FEBRUARY 2021

## INTRODUCTION

### PARKLANDS

These Design Guidelines are intended to ensure land owners and their designers contribute toward achieving the Napier City Council's vision for the Parklands development. Accordingly, these Design Guidelines comprise a combination of mandatory requirements (intended to maintain standards within the development) and recommendations for the design, materials and landscaping of your new house.

### OBJECTIVES

This document has been prepared by Napier City Council to establish a basis for the development of housing at Parklands from the date of these Guidelines.

The objective is to create a neighbourhood which:

- Provides a quality living environment for all residents
- Provides a range of housing choice within a modern suburban character
- Achieves safe and attractive streets and public open spaces
- Enables clear legibility and circulation
- Minimises environmental impact

The Design Guidelines are formulated to allow sufficient flexibility for individuals and designers to provide their own architectural response in achieving the above objectives.

### PRECINCTS

To assist in achieving the objectives, including providing for a range of housing choice within the Parklands community, a number of precincts have been established (refer to the table below). In addition to the guidelines in this document, specific guidelines for each precinct are also contained in the guidelines worksheet applicable to that precinct. It is therefore important to know and understand which precinct your property is in.

<i>Precinct</i>	<i>Description</i>
<i>Traditional Parklands</i>	This is the largest precinct. It seeks to achieve a modern suburban character generally consistent with the established Parklands area.  The precinct enables single storey (generally maximum 5.5m height), single house development on a range of site sizes and frontage widths to avoid monotony and enable a wider range of house sizes (1 – 4 bedrooms).
<i>Cottages</i>	This precinct provides a cluster of smaller sites (generally 300sqm – 400sqm) with lower building coverage

<i>Precinct</i>	<i>Description</i>
	allowances to enable 1-2 bedroom single level cottages in a community setting.
<i>Prebensen Drive</i>	Variety of building heights (up to 2 storey) and roof forms, and dual aspect designed houses are encouraged within this precinct to provide quality amenity for the Prebensen Drive reserve as well as the street.
<i>Parkside</i>	Larger standalone houses including duplex forms (up to 2 storey) are enabled within this precinct, contributing to greater housing choice in Parklands. Dual aspect houses are encouraged to provide quality onsite amenity and relationship to the street and reserve.
<i>Terraced Housing</i>	Attached housing forms (2 storey) enabled with greater building coverage and smaller private open space to provide a higher intensity residential offering and achieve a strong, quality edge to the adjacent reserves and/or street frontage. Additional design assessment applies for multi-unit development.

### Marker Sites

In addition to the precincts identified above, a number of sites are identified within the Land Covenants applicable to each property as “Marker sites”. Marker sites are usually corner or “book-end” properties located throughout the Traditional Parklands, Prebensen Drive and Parkside precincts. The same precinct design guidelines generally apply, however additional height is required. Single storey with higher roof pitches (Type M1) or two storey dwellings (Type M2) provide variety and assist residents and visitors in wayfinding around the development. Houses on corner sites are required to have frontages on both streets. These sites are generally larger to accommodate the additional height while minimising impacts on neighbours.

## THE PROCESS

### *Design review process*

No construction of a residence within the Parklands development may commence until the Parklands Design Review Panel (“the Panel”) has issued a design confirmation that confirms the design of the residence is in accordance with these Design Guidelines and the guideline worksheet applicable to the precinct in which the residence is to be situated.

### *Why is a design review process required?*

The role of the Panel is to promote good design, and a quality built environment within the Parklands development, with reference to the objectives and design controls stated in the Design Guidelines.

A covenant on the title of each property will require, among other things, that any building design be in accordance with the Design Guidelines. Therefore, the Design Guidelines controls will constrain what can be built. The provisions of the Napier District Plan as they relate to Main Residential zones will continue to apply to any proposed build within the Parklands development, provided that these Design Guidelines may provide for further controls and restrictions than those contained within the District Plan. The design review process will confirm that the site layout and concept design meets the relevant requirements of the Design Guidelines. However, the focus of the Panel is on design and a design confirmation is not a warranty or guarantee from the Panel that:

- the proposed design will comply with all aspects of the District Plan or any other statutory requirements relevant to construction of a residence (such as the Building Code); or
- that the Council will issue a building consent.



It shall remain the responsibility of the owner to ensure their construction complies with the District Plan, the Building Code and any other applicable statutory requirements.

*How and when do I apply for design review?*

Prior to applying to Napier City Council for building consent, design drawings are to be submitted to the Panel for approval. The designs will be assessed against the criteria within these Design Guidelines.

The Council has prepared “worksheets” to assist owners in ensuring their property layout and building design meets the requirements of any covenants registered against the property, these Design Guidelines, and the District Plan.

Drawings submitted shall include plans and elevations, as well as streetscape elevations when necessary, showing proposed materials and colour treatments, and how the house relates to its neighbours and adjacent public space (ie. roads and/or reserves).

*How long does it take?*

The Panel will use all reasonable endeavours to provide written approval, or otherwise, within ten (10) working days from receipt of a complete package of plans from the owner.

Following the design review, if the Panel is satisfied the design fully complies with the Design Guidelines for the relevant precinct then the Panel will issue a design confirmation which you must include with your application for building consent. If the Panel is not satisfied the design fully complies with the Design Guidelines for the relevant precinct then the Panel must issue to the applicant a Design Assessment Report recording the Panel’s view as to the degree of consistency of the proposal with the Design Guidelines. You will then have an opportunity to revise and re-submit your design proposal.

In all instances the Panel shall be the sole judge of whether a design proposal complies with the Design Guidelines. Where the design proposal varies from the design controls set out in the Design Guidelines but the Panel considers, in its sole discretion, that this variance will produce good built form outcomes, the report will record the reasons for this view and the Panel may issue a design confirmation. The issue of a design confirmation in such instances will not set a precedent and does not mean that the relevant design control is varied or that the Panel will agree to any variation from such design control in the future.

## DESIGN GUIDELINES

### DISTRICT PLAN AND OTHER STATUTORY OBLIGATIONS

The Design Guidelines are intended to be supplementary and additional to the requirements of the District Plan and other relevant statutory requirements related to the construction of a dwelling (such as the Building Code). Owners should be mindful that compliance with these Design Guidelines does not necessarily mean they will receive a Building Consent for their proposed dwelling or that all aspects of the District Plan have been complied with.

## DENSITY, HEIGHT AND COVERAGE

### Objectives

- Achieve a quality, modern suburban character while providing for a range of housing typologies and choice
- Provide strong, attractive edges along reserves
- Enable additional height in identified locations to provide variety and improve wayfinding

### Design Guidelines: *Density*

The following site sizes and density guidelines apply in each precinct:

- *Traditional Parklands, Prebensen Drive and Cottages precincts*: Only one house is permitted per site.
- *Parkside precinct*: Either a single house, or two houses in the form of a duplex on identified sites, is permitted per site. Duplex development requires both houses on a site to have direct frontage onto the street.
- *Terraced housing precinct*: Terraced housing forms are encouraged in this precinct. No density limit applies, provided that the development meets the guidelines set out in this document and the relevant worksheet for that precinct.

Granny flats or supplementary units are not permitted within the Parklands development.

### Design Guidelines: *Building Coverage*

- The District Plan – Main Residential Zone control of maximum 50% building coverage applies unless otherwise specified below:
  - *Cottages precinct*: Maximum building coverage of 40% applies
- No minimum building coverage applies.

### Design Guidelines: *Building Height*

The following building height guidelines apply:

- *Traditional Parklands and Cottages Precincts*: All houses in these precincts shall be single storey, unless identified as a “Marker Site”. The maximum building height is 5.5m. Additional height may be approved by the Panel where this would improve architectural variety and amenity without impacting on the amenity of adjacent sites.
- *Marker Sites*: Houses on “marker sites” shall either be:
  - Type M1: Single storey, provided that the roof is of a height and form to enable the house to visually define the street. An appropriate method to achieve this includes a roof with both a steep pitch (30 degrees or more) and gable ends to the street. Other methods may be acceptable where the Panel is satisfied the design visually defines the street; or
  - Type M2: Two storeys (maximum of 8m height as required by the District Plan – Main Residential zone).

- *Prebensen Drive and Parkside Precincts*: Flexibility in height (up to two storeys) is enabled in this precinct to encourage a range of housing forms, roof pitches and designs. A maximum of 8m height applies as required by the District Plan – Main Residential Zone.
- *Terraced Housing Precinct*: Two storey buildings are required in this precinct. A maximum of 8m height applies as required by the District Plan – Main Residential Zone.

## SITE ACCESS

### Objectives

- Driveways do not visually dominate front yards and landscape elements.
- Pedestrian and vehicular conflicts are minimised and safe sightlines are provided for.

### Design Guidelines:

- Each property is limited to one vehicle crossing.
- Driveway width is a maximum of 5.0m (double) or 3.5m (single), with localised widening in front of the garage if required.
- The design and finish of the driveway must be a permanent surface of concrete, concrete paver, flagstones, cobbles, brick paving or tar sealing with paver insets, with such surfacing to be completed to a good tradesman-like standard.
- A pedestrian path to the front door that is separated from the driveway by landscaping, or visually differentiated from the driveway by use of a different material, is preferred (see Figure 1 below).
- For houses within the Terraced Housing Precinct, vehicle access into a car space or garage must be from the rear of the house where practicable.

## GARAGES

### Objectives:

- Garages are integrated into the site design
- Garage doors do not visually dominate the street.
- Where car standing spaces are provided between a garage and the street, sufficient space is provided within the site to avoid cars over-hanging the footpath, providing for pedestrian amenity and safety.

### Design Guidelines:

- The house must include either a carport or a fully enclosed, attached, or separate garage which is to be completed at the same time as the residential building, and in the same or similar type of materials and style as the house.

- A garage door facing the street must be set back at least 5m from the site's frontage.

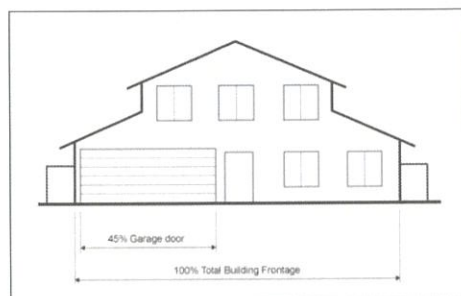


*Figure 1: Differentiated pedestrian entrance; garage set back from front façade; and garage width not dominating the frontage of the house*

*Figure 2: Side wall of garage facing the street, no fence and soft landscaping along front boundary, front door visible from the street*



- Where garage doors face the street frontage, the garage must not extend forward of the front façade of the house (refer Figure 1 above). Ideally, garages should be set back from the front façade of the house by a minimum of 1m. This control does not apply where garage doors face side boundaries.
- A garage door facing a street must be no greater than 45% of the width of the front façade of the house to which the garage relates (refer Figure 2 below). This may be achieved by a single door facing the street, or a double door facing the side boundary. Double garages facing the street may be feasible on wider sites, subject to achieving compliance with these design guidelines.



*Figure 2: Maximum width of garage door in relation to house width*

For the purpose of these controls, the front facade consists of a length of building facade in the first 10m from the street frontage of the lot. In the case of a corner lot, both sides of the house facing the street will be considered as the front facade.

## STREET AND RESERVE INTERFACES

### Objectives:

- Houses contribute to passive surveillance of the street and reserves, i.e. windows and general outlook to street and reserve.
- Houses positively address the street and reserves.
- Front yards are attractive transition spaces between the footpath and the front of the house that positively contribute to the streetscape.
- Fences within front yards and on reserve interfaces are limited to minimise visual dominance effects on the street or reserve and enable passive surveillance

### Design Guidelines:

The following guidelines apply in all precincts:

#### *Building frontage design*

- Glazing to the street (and reserves, where applicable) is maximised. As a guide, a façade of a house which faces the street or a reserve should contain glazing to a habitable room / rooms of no less than 10 per cent (cumulatively) of the area of the façade. For the purpose of this control, a “habitable room” is any room in the house excluding a laundry, bathroom, toilet or any room used solely as an entrance hall, passageway or garage.
- Houses are encouraged to locate a habitable room other than a bedroom to the street or reserve frontages.
- Front doors must be visible to the street.

#### *Front yards*

- The following front yards (building setbacks from road frontage boundary) apply:
  - *Cottages precinct: 5m*
  - *Terraced housing precinct: 1.5m*
  - *All other precincts: 3m*
- Front yard landscaping for lots within the Traditional Parklands, Cottages, Prebensen Drive and Parkside precincts must include a minimum of one tree of PB95 or 3m height at the time of planting, unless an alternative landscaping proposal will provide a positive contribution to the amenity of the street. The owner

retains responsibility for ensuring the roots of any tree planted on the property do not interfere with any utility services (e.g. pipes and cables) on the property.

- Air conditioning units, rainwater tanks and other utility equipment should be avoided in front yards and placed in side or rear yards where appropriately screened from direct view from the house's principal living room.

#### *Front fences*

- Front fences within 5 metres of any boundary fronting a road are not permitted in the Cottages precinct.
- Within all other precincts fences within front yards are generally discouraged.
- Where fences, hedges and walls are provided within 3 metres of any boundary fronting a road or reserve and further forward of the main façade of the house (except the Prebensen Drive reserve boundary), these must be either:
  - a maximum 1.0m in height above the natural ground level,
  - a maximum of 1.5m in height above the natural ground level and at least 50% visually open (refer Figure 3 below). Shade cloths or similar are not permitted.



*Figure 3: Example fence on left not accepted – does not provide passive surveillance or connection with the street.*

*Example fence on right provides balance between privacy, passive surveillance and visual amenity.*

- Fences must not be constructed of corrugated iron, raw concrete block, or post and wire. Exceptions may be approved by the Panel where the fence complements the architecture of the house and will contribute to the amenity of the street.
- Timber fences must not be stained or painted in a bright or bold colour.

## ROOFS

### **Objectives:**

- Roofs do not contribute to contamination of stormwater and the receiving environment.

- Each roof form reads as a strong, simple element from street level.

**Design Guidelines:**



*Figure 5: Examples of a variety of roof forms*

- Roof profile is stepped vertically to provide relief and visual interest.
- Roofs should have a non-reflective finish.
- The use of unpainted galvanised iron, unpainted zincalume or similar product must be avoided to ensure water quality.
- Eaves are strongly encouraged for the architectural character, with a minimum depth of 200mm.
- Large expanses of solar heating panels should be avoided on parts of a roof visible to the street.
- Satellite dishes must not be placed on a roof (or wall) of a house visible to the street. Small satellite dishes (up to 1m diameter) may be accepted where the Design Review Panel is satisfied they will not detract from the amenity of the streetscape.

## HOUSE FAÇADES, MATERIALS AND COLOURS

**Objectives:**

- Facade design and appearance contributes to visual interest along the street and from reserves, while avoiding overly complicated combinations of forms, materials and colours. This achieves a high amenity, varied but unified streetscape.

**Design Controls:**

- Facades facing the street and reserve should have depth and visual interest. Methods to achieve this include:
  - receding or projecting parts of the façade,

- visually strong roof forms,
  - provision of pergolas, bay windows, dormer windows, verandahs and balconies integrated with the design of the façade
  - the use of cladding materials with vertical or horizontal patterning
  - providing a complementary and/or contrasting house style from adjacent houses.
- Identical, or repetitive façade styles are discouraged. As a guide, no more than four adjoining houses should have strongly repeating elements.
  - Houses should generally have no more than three cladding materials and colours.
  - Any weatherboard detailing shall include, as the preferred design, traditional box and scribe treatments to the corners and windows, in conjunction with an appropriate use of colour.
  - Any buildings detached from the main house (garage or garden shed) should be of a complementary appearance to the main house on the site.
  - Any recycled or second-hand building material or joinery used for any purpose must be of a quality and appearance similar to that of an equivalent new item or material.
  - The front entrance to the house should be recessed or have a canopy integrated within the architecture of the house.

The following additional guidelines apply to “Marker sites”, and for end units in a terraced housing block:

- For corner lots or end houses, design elements used in the primary façade should be incorporated into the secondary frontage visible to the public realm.



- Corner lots should be designed to address both street frontages / reserve.

*Figure 6: Example of a corner site with dual façades facing the street*



## ADJACENT RESIDENTIAL SITE AMENITY

### Objectives:

- Require the height, bulk and location of development to maintain a reasonable standard of sunlight access and privacy and to minimise visual dominance effects to adjoining residential sites.

### Design Controls:

The following controls apply in all precincts:

- *Side and rear yards:* No building within 1.5m of side or rear boundaries, except for duplex and terraced housing typologies where these are connected across boundaries.
- *Fences:*
  - No fence along the back and side boundary may exceed 1.5m in height in the Cottages precinct and 1.83m in height in all other precincts (except where reserve interfaces apply), and is not permitted to extend forward of the front of the house/building.
  - Under no circumstance may any fence be constructed of corrugated iron, raw concrete block, or post and wire.
- *Height in relation to boundary:* The height in relation to boundary control of 3m + 45 degrees in the Main Residential zone of the District Plan applies (except for duplex and terraced housing typologies connected across boundaries) (refer Figure 7 below).
- *Shading:* In addition to compliance with the height in relation to boundary requirement, consideration should be given to site layout and building design to minimise shading to neighbouring houses on the southern and eastern boundaries.
- *Privacy:* Upper level windows are offset from those of neighbouring houses to minimise effects on privacy.

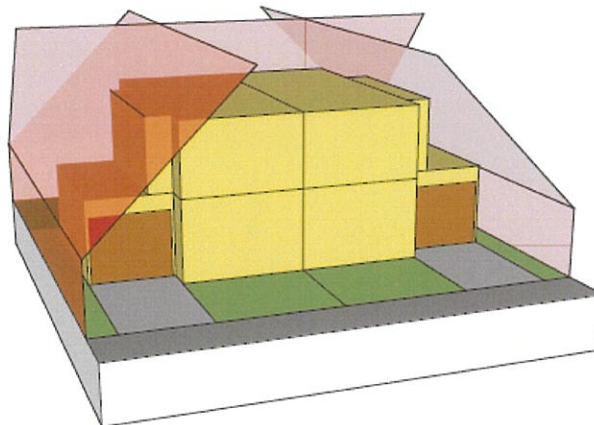


Figure 7: Height in relation to boundary control for duplex development

Within the Terraced housing and Parkside precincts, the following additional criterion applies:

- *Privacy:* To minimise overlooking to adjacent residential sites and provide an appropriate level of privacy, outlook from windows must be provided either within the site, over the street or over a reserve. Outlook distances of the following minimum depth must be provided perpendicular to the window as follows:
  - Principal living room: 6m
  - All other habitable rooms (including bedrooms): 3m

## ONSITE AMENITY

### Objectives:

- Houses are designed to provide access to daylight and sunlight and provide the amenities necessary to meet the day-to-day needs of residents.
- Sufficient useable and accessible outdoor living space is provided to meet the needs of residents.
- Houses within the Cottages precinct are universally accessible.

### Design Controls:

- The following minimum outdoor living space areas shall be provided for each house:
  - Within the Cottage, Parkside and Terraced housing precincts, a minimum private open space of 20m<sup>2</sup> per house must be provided.
  - Within all other precincts, each house must have an amount of open space on the building site of not less than 50% of the gross floor area of all buildings on the site, except that a minimum of 50m<sup>2</sup> per house must be provided (as required by the Main Residential Zone of the District Plan).
  - The open space must have a minimum dimension of 3 metres above natural ground level at the boundary.

Resource consent will be required for infringing the above requirements.

- The outdoor living space must be directly accessible from the principal living, dining or kitchen area and free of buildings, parking spaces and manoeuvring areas.
- The outdoor living space should be designed to maximise the number of sunlight hours during winter.
- All sites must have a landscaped area not less than 30% of the net site area as required by the Main Residential Zone of the District Plan. Resource consent will be required for non-compliance with this control.

### Additional criteria:

Within the Terraced housing precinct, and for duplexes in the Parkside precinct, the following additional criteria apply:

- Houses should be designed to provide for efficiency, convenience and amenity including:
  - Sufficient space within any room to provide for furniture, fittings and ease of circulation. As a guide, principal living rooms should have a minimum dimension of 6m by 3m.
  - Orientating and locating windows to optimise daylight, sunlight and privacy and encourage natural cross ventilation within the house.
  - Provide the necessary storage and waste collection and recycling facilities in conveniently accessible locations that are screened from public view.

Within the Cottages precinct, the following controls apply:

- Doorways must have a minimum clear opening width of 810mm
- Corridors must have a minimum width of 1050mm
- The principal means of access front the frontage, or the parking space serving the house, to the principal entrance of the house must have:
  - A minimum width of 1.2m
  - A maximum crossfall of 1:50

## SUSTAINABLE BUILDING

### Objectives:

- Sustainable design principles are incorporated in development design to minimise environmental impact and ongoing operating costs.

### Design Controls:

No specific controls apply. However, applicants are encouraged to consider the following principles in the site and house design:

- *Energy efficiency:*
  - Orientating the house on the site and positioning the most frequently used habitable rooms (for example, the lounge) to achieve maximum possible benefit from solar gain from low level sun in winter months, while considering design elements, such as screening devices, to manage solar gain from high level sun in summer months
  - Locating exposed concrete floors within the house, or other internal surfaces with a high thermal mass, in areas exposed to direct low-level sunlight in winter months
  - Prioritising natural, non-mechanical techniques for cooling and venting along with heat transfer and the consideration of integrated heat recovery systems
  - Reducing the size of the house (smaller buildings are more efficient to heat).

- *Water efficiency:*
  - Using water efficient building features, appliances and devices
  - Reusing grey water for irrigation
  - Providing for onsite water collection and re-use.
  
- *Stormwater management:*
  - Minimising stormwater runoff including by limiting building coverage and/or impervious areas, or by utilising permeable paving.



# Title Plan - LT 589158

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**Survey Number** LT 589158  
**Surveyor Reference** 230094 - NCC Parklands Stages 9 & 10  
**Surveyor** Alan Martin-Smith  
**Survey Firm** Cheal Consultants Limited  
**Surveyor Declaration** I Alan Martin-Smith, being a licensed cadastral surveyor, certify that--  
(a) this dataset provided by me and its related survey are accurate, correct and in accordance with the Cadastral Survey Act 2002 and Cadastral Survey Rules 2021; and  
(b) the survey was undertaken by me or under my personal direction.  
Declared on 13 Mar 2024 03:28 PM

---

## Survey Details

**Dataset Description** LOTS 21 - 31, LOTS 44 - 60, LOTS 200 AND LOTS 101 & 102 BEING A SUBDIVISION OF LOT 801 DP 578015

**Status** Approved as to Survey

**Land District** Hawkes Bay **Survey Class** Class A

**Submitted Date** 13/03/2024 **Survey Approval Date** 14/03/2024

**Deposit Date**

---

## Territorial Authorities

Napier City

---

## Comprised In

RT 1106483

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## Created Parcels

Parcels	Parcel Intent	Area	RT Reference
Lot 21 Deposited Plan 589158	Fee Simple Title	0.0552 Ha	1122655
Lot 23 Deposited Plan 589158	Fee Simple Title	0.0562 Ha	1122656
Lot 22 Deposited Plan 589158	Fee Simple Title	0.0557 Ha	1122657
Lot 24 Deposited Plan 589158	Fee Simple Title	0.0545 Ha	1122658
Lot 25 Deposited Plan 589158	Fee Simple Title	0.0544 Ha	1122659
Lot 26 Deposited Plan 589158	Fee Simple Title	0.0587 Ha	1122660
Lot 200 Deposited Plan 589158	Fee Simple Title	0.0908 Ha	1122661
Lot 27 Deposited Plan 589158	Fee Simple Title	0.0600 Ha	1122662
Lot 28 Deposited Plan 589158	Fee Simple Title	0.0505 Ha	1122663
Lot 29 Deposited Plan 589158	Fee Simple Title	0.0498 Ha	1122664
Lot 30 Deposited Plan 589158	Fee Simple Title	0.0534 Ha	1122665
Lot 31 Deposited Plan 589158	Fee Simple Title	0.0534 Ha	1122666
Lot 44 Deposited Plan 589158	Fee Simple Title	0.0603 Ha	1122667
Lot 45 Deposited Plan 589158	Fee Simple Title	0.0402 Ha	1122668
Lot 46 Deposited Plan 589158	Fee Simple Title	0.0390 Ha	1122669
Lot 47 Deposited Plan 589158	Fee Simple Title	0.0427 Ha	1122670
Lot 48 Deposited Plan 589158	Fee Simple Title	0.0448 Ha	1122671
Lot 49 Deposited Plan 589158	Fee Simple Title	0.0430 Ha	1122672
Lot 50 Deposited Plan 589158	Fee Simple Title	0.0348 Ha	1122673
Lot 51 Deposited Plan 589158	Fee Simple Title	0.0465 Ha	1122674



# Title Plan - LT 589158

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## Created Parcels

Parcels	Parcel Intent	Area	RT Reference
Lot 52 Deposited Plan 589158	Fee Simple Title	0.0389 Ha	1122675
Lot 53 Deposited Plan 589158	Fee Simple Title	0.0444 Ha	1122676
Lot 54 Deposited Plan 589158	Fee Simple Title	0.0603 Ha	1122677
Lot 55 Deposited Plan 589158	Fee Simple Title	0.0451 Ha	1122678
Lot 56 Deposited Plan 589158	Fee Simple Title	0.0308 Ha	1122679
Lot 57 Deposited Plan 589158	Fee Simple Title	0.0320 Ha	1122680
Lot 58 Deposited Plan 589158	Fee Simple Title	0.0330 Ha	1122681
Lot 59 Deposited Plan 589158	Fee Simple Title	0.0375 Ha	1122682
Lot 60 Deposited Plan 589158	Fee Simple Title	0.0409 Ha	1122683
Lot 101 Deposited Plan 589158	Fee Simple Title	6.7383 Ha	1122684
Lot 102 Deposited Plan 589158	Vesting on Deposit for Road	0.6634 Ha	
Area A Deposited Plan 589158	Easement		
<b>Total Area</b>		<hr/> 8.8085 Ha	

# Schedule / Memorandum

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## LT 589158 Schedule/Memorandum

Land registration district  
Hawkes Bay

Territorial authority  
Napier City

### Memorandum of Easements in Gross

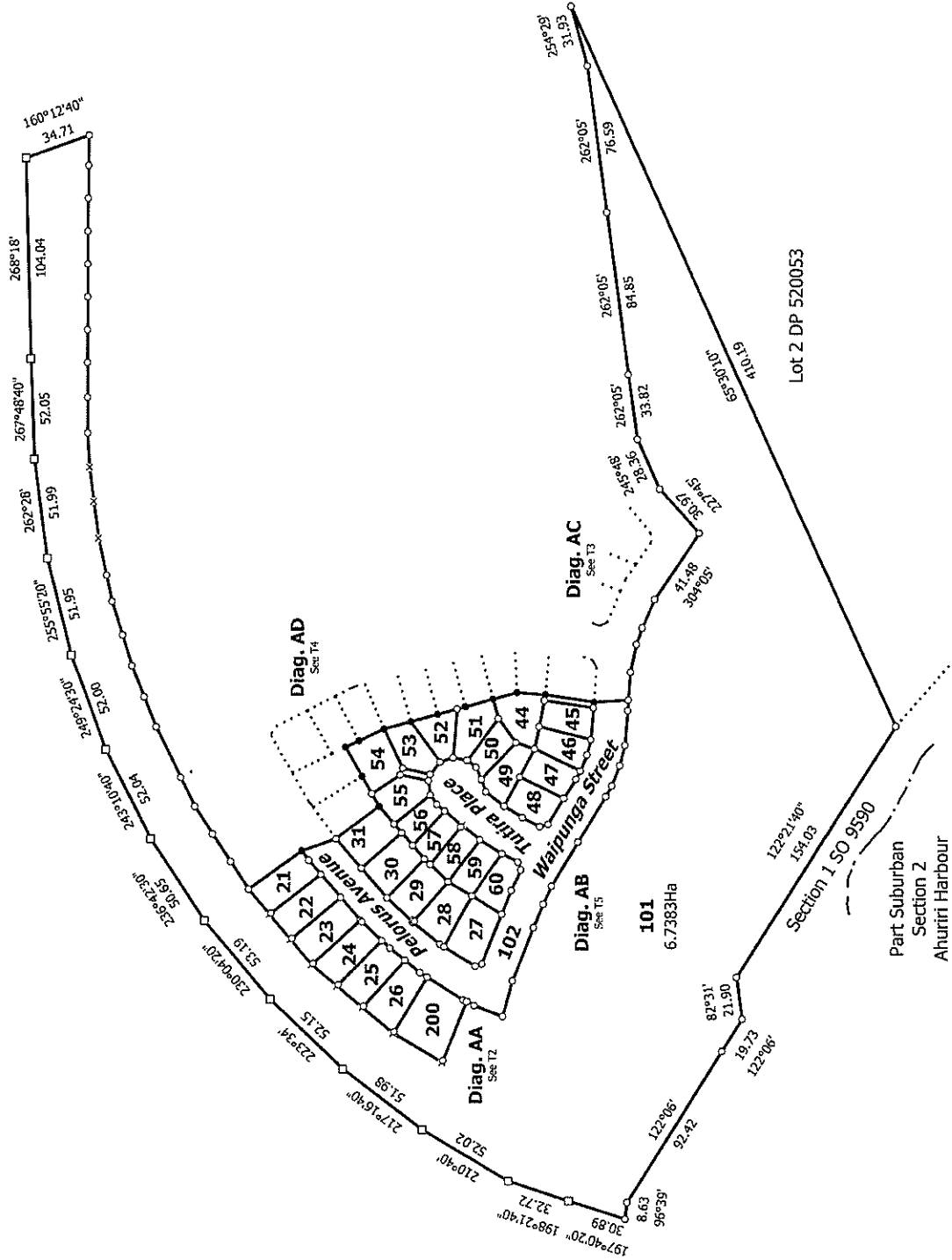
Parcels shown with a prefix of *HL*- include height-limited boundaries

PURPOSE	SHOWN	BURDENED LAND	GRANTEE
Right to convey electricity and right to convey telecommunications	A	Lot 101	Unison Networks Limited

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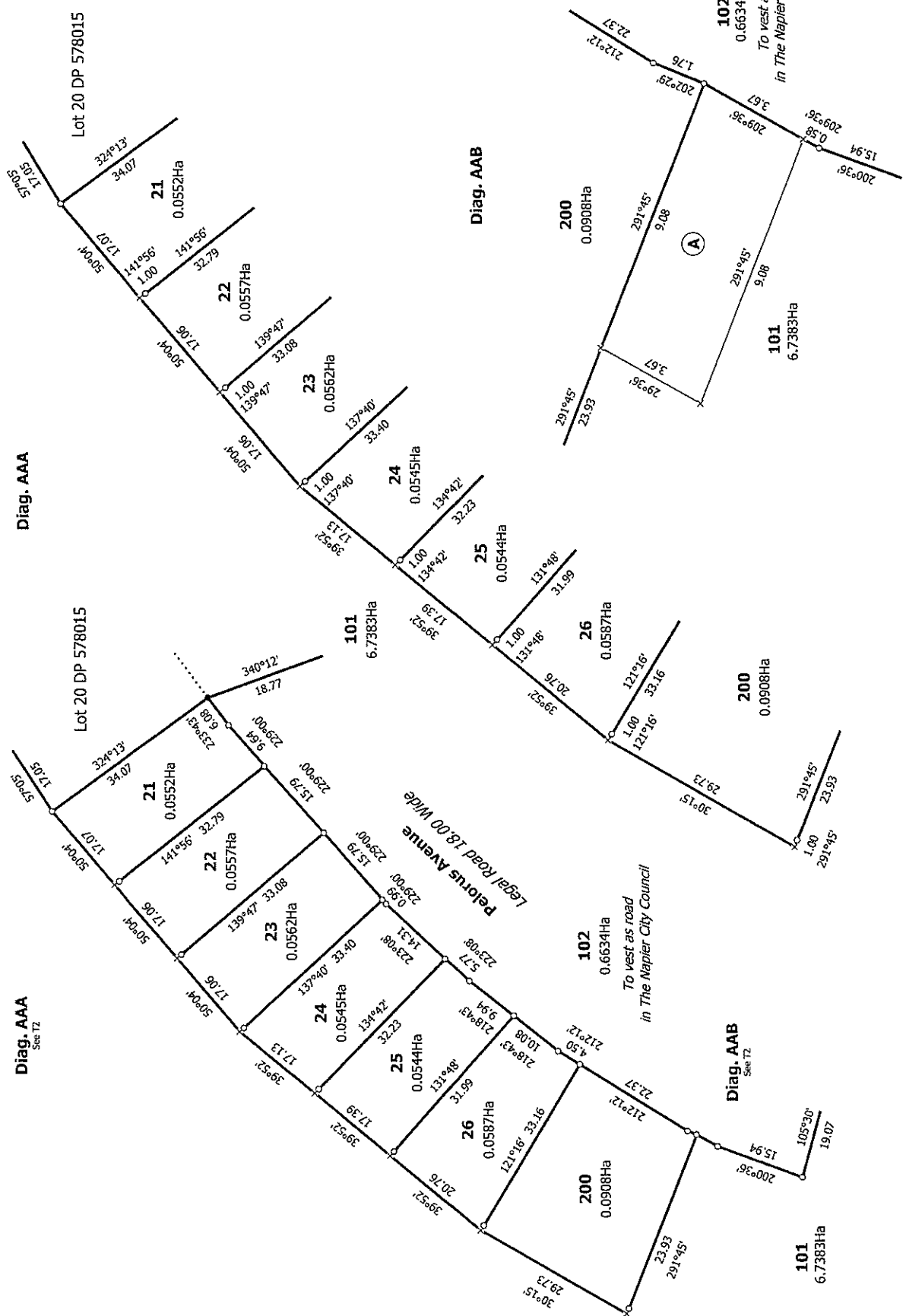


Diag. A



Land District: Hawkes Bay Digitally Generated Plan Generated on 14/03/2024 08:36am Page 4 of 8	LOTS 21 - 31, LOTS 44 - 60, LOTS 200 AND LOTS 101 & 102 BEING A SUBDIVISION OF LOT 801 DP 578015	Surveyor: Alan Martin-Smith Firm: Cheal Consultants Limited	Title Plan LT 589158 Approved on: 14/03/2024
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T 2/5

Diag. AA  
Diag. AAA  
Sec 7Z

Diag. AAB

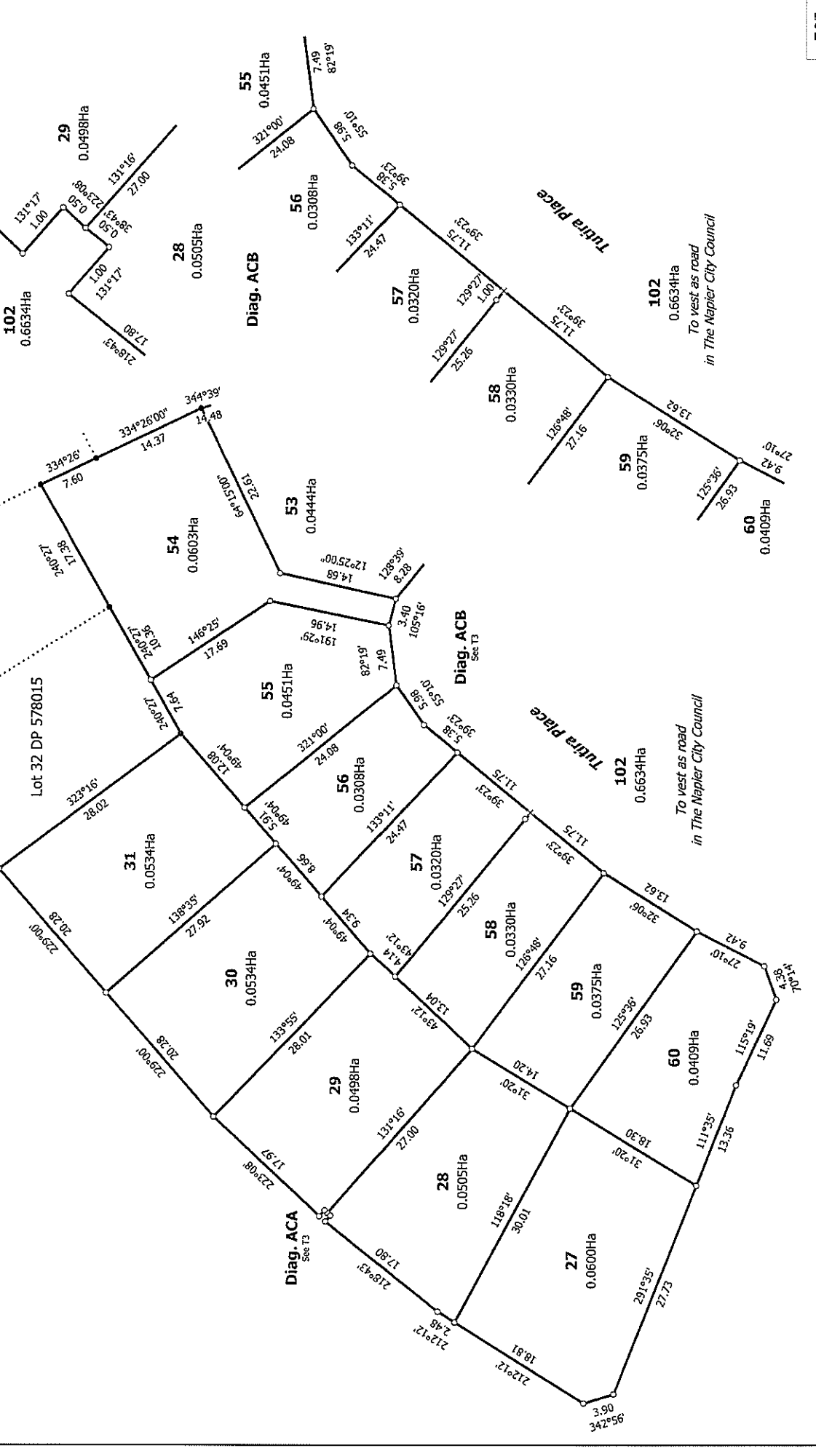
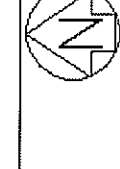
Diag. AAB  
Sec 7Z

Land District: Hawkes Bay  
Digitally Generated Plan  
Generated on: 14/03/2024 09:36am Page 5 of 8

LOTS 21 - 31, LOTS 44 - 60, LOTS 200 AND LOTS 101 & 102 BEING A  
SUBDIVISION OF LOT 801 DP 578015

Surveyor: Alan Martin-Smith  
Firm: Cheal Consultants Limited

Title Plan  
LT 589158  
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Diag. AC

Diag. ACA  
Sec T3

Diag. ACB

Diag. ACB  
Sec T3

Lot 33 DP 578015

Lot 32 DP 578015

Diag. ACA

Tudra place

Tudra place

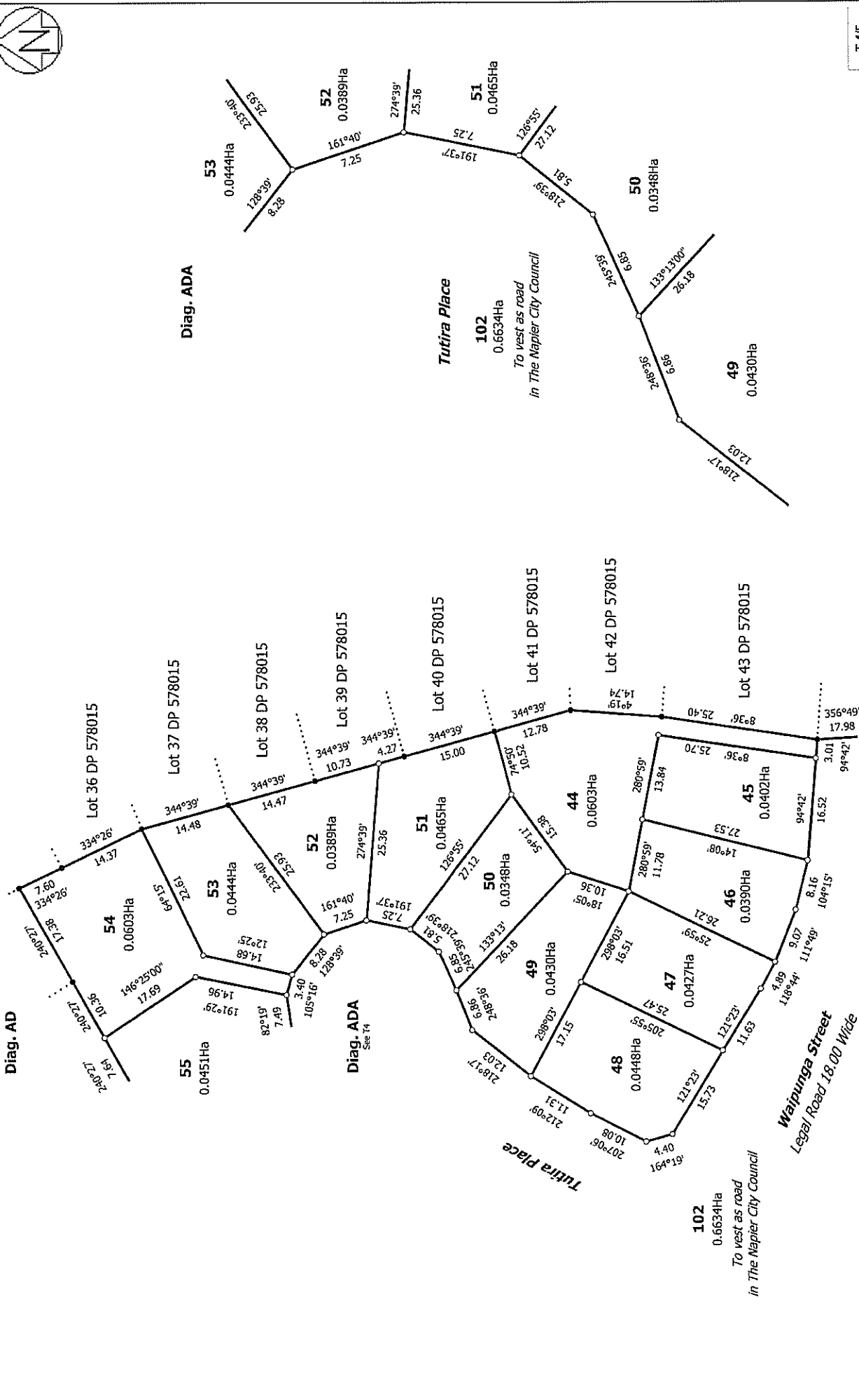
To vest as road  
in The Napier City Council

To vest as road  
in The Napier City Council

LOTS 21 - 31, LOTS 44 - 60, LOTS 200 AND LOTS 101 & 102 BEING A  
SUBDIVISION OF LOT 801 DP 578015

Surveyor: Alan Martin-Smith  
Firm: Cheal Consultants Limited

Title Plan  
LT 589158  
Approved on: 14/03/2024



T 4/5

Land District: Hawkes Bay

**Digitally Generated Plan**

Generated on 14/03/2024 08:38am Page 7 of 8

**LOTS 21 - 31, LOTS 44 - 60, LOTS 200 AND LOTS 101 & 102 BEING A  
SUBDIVISION OF LOT 801 DP 578015**

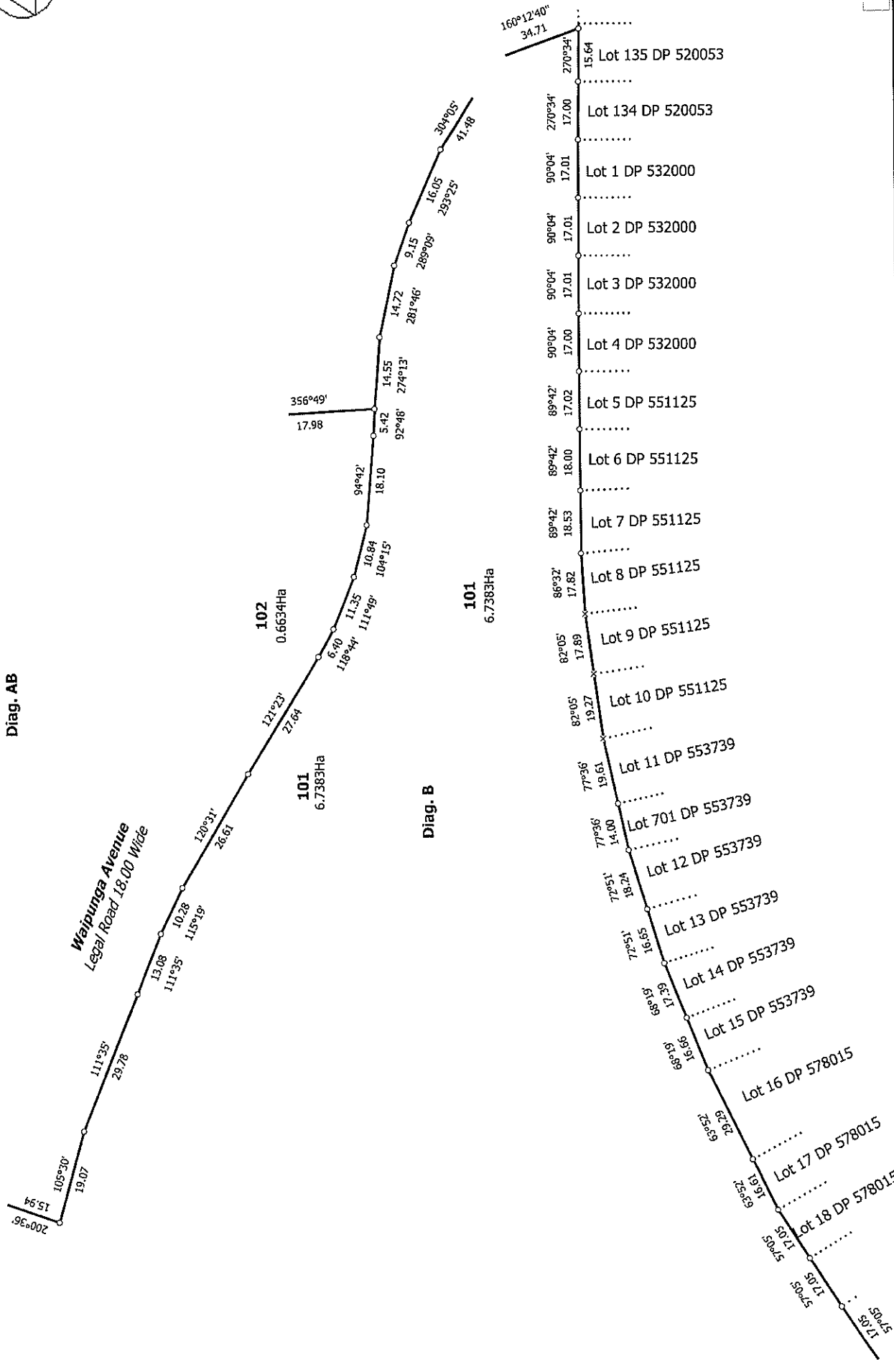
Surveyor: Alan Martin-Smith  
Firm: Cheal Consultants Limited

**Title Plan  
LT 589158**  
Approved on: 14/03/2024



Diag. AB

**Waipunga Avenue**  
Legal Road 18.00 Wide



Diag. B

T 5/5

Land District: Hawkes Bay

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**LOTS 21 - 31, LOTS 44 - 60, LOTS 200 AND LOTS 101 & 102 BEING A  
SUBDIVISION OF LOT 801 DP 578015**

Surveyor: Alan Martin-Smith  
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LT 589158  
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