

HEARINGS COMMITTEE AGENDA

THURSDAY, 8 DECEMBER 2022, 9.00 AM
Mayors Lounge, 2nd Floor, Civic Centre
50 The Octagon, Dunedin

MEMBERSHIP:

Commissioner Colin Weatherall

IN ATTENDANCE:

Campbell Thomson (Senior Planner/Committee Advisor),
Lianne Darby (Associate Senior Planner), Andrew Mactier
(Parks and Recreation Planner) and Wendy Collard
(Governance Support Officer)

PART A (Committee has the power to decide these matters):

1 ESPLANADE RESERVE WAIVER FOR RESOURCE CONSENT APPLICATION – SUB-2022-156, 102 Ravensbourne Road, Dunedin

Introduction

Applicant to introduce themselves and their team.

Procedural Issues

Any procedural matters to be raised.

Presentation of the Planner's Report

Report from

Refer to pages 1 - 4

The Applicant's Presentation

Application

Refer to pages 5 - 59

Council Officer's Evidence

- Memorandum from Parks and Recreation Planner
Refer to pages 60 - 62

The Planner's Review of their Recommendation

The Planner reviews their recommendation with consideration to the evidence presented

The Applicant's Response

The Applicant to present their right of reply

PLEASE NOTE: The **only** section of the hearing which is not open to the public is the Committee's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Committee will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

RESOLUTION TO EXCLUDE THE PUBLIC

To be moved:

“That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground(s) under section 48 for the passing of this resolution.
1	Resource Consent application – 102 Ravensbourne Road, Dunedin	That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.	Section 48(1)(d)

Report

TO: Hearing Commissioner

FROM: Lianne Darby, Associate Senior Planner

DATE: 28 November 2022

SUBJECT: **RESOURCE CONSENT APPLICATION**
SUB-2022-156
102 RAVENSBOWRE ROAD
DUNEDIN

DESCRIPTION OF ACTIVITY

Resource consent is sought to subdivide the land of Record of Title OT249/279 (Part Cancelled) so as to affect a boundary adjustment between titles. The subject site is situated within and near the Ravensdown Ltd property at 102 Ravensbourne Road, Dunedin, and includes some land between the harbour edge and the railway line.

The subject site is legally described as 'shown coloured green on a Plan deposited in the office of the Chief surveyor at Dunedin as Railway 10'. A series of alienation of parcels from the title has resulted in only two parcels remaining within the title. These are a significant distance apart. The parcels are:

- Lot 2 LT 514183 (being the definition survey for this consent). This is a small irregular shaped parcel of 80m² which is surrounded by land owned by Ravensdown Limited, and is fully occupied by driveway. It is referred to in the application as the 'Northern parcel'.
- The 'Southern parcel' being a triangular shaped parcel of approximately 1806m² situated between the railway and the harbour. It is occupied by the Maia cycleway and general landscaping.

The subdivision will take Lot 2 LT 514183 and amalgamate it with Lot 3938 (RT OT4A/1198) being the adjoining land owned by Ravensdown Ltd. The balance land (the 'Southern parcel') will be transferred into the Council's ownership. The application is accompanied by a sale and purchase agreement to this effect.

There is an esplanade reserve requirement along the harbour edge which will impact on the Southern parcel such that almost the entire parcel will become esplanade reserve if vested. As this land is already subject to a sale and purchase agreement between the applicant and the Council (and will be used as reserve as part of that process), the applicant seeks to have the esplanade reserve requirement waived.

PLANNING PROVISIONS

Proposed Plan

The subject site is zoned **Industrial** and it is in an **Archaeological Alert Layer**, **Noise Mapped Area**, **Ravensbourne Height Mapped Area** and **Wahi Tupuna Mapped Area**. The flat land is shown as **Hazard 3 (coastal) Overlay Zone**. There is an **Esplanade Reserve** requirement along the harbour edge which will impact upon the Southern parcel.

Subdivision

Rule 193.5.1 lists subdivision as being a restricted discretionary activity in the Industrial zone subject to compliance with the performance standards.

Rule 19.7.2 requires subdivision to comply with Rule 10.3.1.

Rule 10.3.1.1 requires subdivision activities along the mark of mean highwater springs of the sea must provide an esplanade reserve with a minimum width of:

- a) 6m in the Harbourside Edge Zone; and
- x) 20m in all other locations.

The proposal to waiver the esplanade requirement will be a **restricted discretionary** activity pursuant to Rule 10.3.1.4.

Operative District Plan

Most of the relevant rules of the Proposed Plan for this zone and site have not been appealed and so the zoning and rules of the Operative Plan have been effectively superseded. In accordance with Section 86F of the Resource Management Act 1991 the Operative Plan provisions do not need to be considered as part of this subdivision application where replaced by the Proposed Plan provisions

Resource Management Act 1991

Sections 77 and 230 of the Resource Management Act 1991 (RMA) allow for variation of the width of esplanade reserves, either in the District Plan or by a Resource Consent. In considering this request, Council is required to have regard to matters set out in section 229 of the RMA.

Section 229 of the Resource Management Act 1991 identifies the purposes for which these esplanade reserves or strips can be taken. The reserve or strip can have one or more of the following purposes:

- (a) *To contribute to the protection of conservation values by, in particular:*
 - (i) *Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
 - (ii) *Maintaining or enhancing water quality; or*
 - (iii) *Maintaining or enhancing aquatic habitats; or*
 - (iv) *Protecting the natural values associated with the strip or reserve; or*
 - (v) *Mitigating natural hazards; or*
- (b) *To enable public access to or along any sea, river, or lake; or*
- (c) *To enable public recreation use of the strip or reserve and adjacent sea, river or lake, where the use is compatible with the conservation values.*

ASSESSMENT

The Southern parcel has an area of approximately 1806m² and is a relatively long and narrow parcel situated between the harbour and the railway line. It is currently land locked except that it has the cycleway passing through it from west to east. The Council has a signed agreement with the applicant to purchase this parcel.

The parcel is approximately 23m wide at its widest point, so a 20.0m wide esplanade reserve will effectively impact on the entire parcel.

The proposal to waiver the esplanade reserve requirement has been considered by Council's Parks and Recreation Planner, Parks and Recreation Services (PARS). He notes that PARS have an interest in this subdivision because any land taken for esplanade reserve purposes would be owned and managed by the Dunedin City Council (DCC), with PARS as the administering body of the reserve.

PARS supports the waiver of the esplanade reserve requirements on the basis the southern parcel is already being transferred to the ownership of the Council. The acquiring of this land by the Council will formalise an existing arrangement where the Southern parcel is currently being managed by the Council's Transport department, in respect of the formed Dunedin-Port Chalmers pedestrian/cycle path, with the balance of the area being managed by PARS. The adjoining parcels to the west and east are already owned by the Council.

The Parks and Recreation Planner notes that the purchase of the land by Council, as has already been agreed, will ensure that the key components of an esplanade reserve will be achieved, even if the land is not formally recognised as an 'esplanade reserve'. The provision of public access to and through the Southern parcel is secured, there will be public recreational use of the site, and there will be protection of the natural character of the coastal margin.

In light of the already agreed purchase of the Southern parcel by the Council, there is no benefit in taking an esplanade reserve as part of this application. The only adverse effect will be, as pointed out by the applicant's agent, a slight delay in acquiring the land by the Council as the purchase of the land will follow subdivision rather than being part of the subdivision process. It is my view that the requirement for an esplanade reserve can be waived with no adverse effects.

RECOMMENDATION

That, pursuant to Section 230(5) of the Resource Management Act 1991, the esplanade reserve requirement for the Southern parcel of RT OT249/279 be waived in full at the time of resource consent SUB-2022-156.

Prepared by:

Lianne Darby
Associate Senior Planner

Report approved by:



Campbell Thomson
Senior Planner

Date report prepared: 11 September 2015

Appendix One: Application.

Appendix Two: PARS memorandum.

APPENDIX ONE: APPLICATION



APPLICATION FORM FOR A RESOURCE CONSENT

PLEASE FILL IN ALL THE FIELDS

Application details

I/We **Ravensdown Limited**

(must be the FULL name(s) of an individual or an entity registered with the New Zealand Companies Office. Family Trust names and unofficial trading names are not acceptable: in those situations, use the trustee(s) and director(s) names instead) hereby apply

Consent ☒ Subdivision Consent ☒ Land Use ☐

I opt out of the fast-track consent process: Yes ☐ No ☒
(only applies to controlled activities under the district plan, where an electronic address for service is provided)

Brief description of the proposed activity:

Subdivision of OT249/279 to formalise occupation and facilitate transfer of ownership

Have you applied for a Building Consent? Yes, Building Consent Number ABA ☒ No ☐

Site location/description

I am/We are the: (owner, ☒ occupier, lessee, ☒ prospective purchaser etc) of the site (tick one)

Street address of site: **102 Ravensbourne Road, RAVENSBORNE**

Legal description: **Land shown coloured green on plan deposited in the office of the Chief Surveyor at Dunedin as Railway 10**

Certificate of Title: **OT249/279**

Contact details

Name: **Terramark Ltd** (applicant ☒ agent (tick one))

Address: **Level 1, 330 Moray Place, Dunedin**

Postcode: **9016**

Phone (daytime): **03 4774783**

Email: **maaike@terramark.co.nz**

Chosen contact method (this will be the first point of contact for all communications for this application)

I wish the following to be used as the address for service (tick one): ☒ Email ☐ Post ☐ Other:

Ownership of the site

Who is the current owner of the site? **Port Otago Limited**

If the applicant is not the site owner, please provide the site owner's contact details:

Address: **C/- Alistair Moore, Anderson Lloyd, Private Bag 1959, Dunedin**

Postcode: **9054**

Phone (daytime): **03 477 3973**

Email: **Alistair.moore@al.nz**



Planning Application Fees Payment Details (Who are we invoicing)

THIS FORM MUST BE COMPLETED FOR ALL PLANNING APPLICATIONS THAT ATTRACT A FEE. ALL FIELDS ARE MANDATORY

This information is required to assist us to process resource consent invoices and refunds at lodgement and the end of the process. If you have any queries about completing this form, please email planning@dcc.govt.nz

Deposit Payment Payee Details:

Full Name of Deposit Payee (Person or Company): **Ravensdown Limited**

Mailing Address of Deposit Payee (please provide PO Box number where available) :

C/- Terramark Limited, Level 1 330 Moray Place, 9016

Email Address of Deposit Payee: c/- maaike@terramark.co.nz

Daytime contact phone number: **03 477 4783**

Important Note: The Payee will automatically be invoiced for the deposit and/or any additional costs. Should a portion of the deposit be unspent, it will be refunded to the payee.

Fees

Council recovers all actual and reasonable costs of processing your application. Most applications require a deposit and costs above this deposit will be recovered. A current fees schedule is available on www.dunedin.govt.nz or from Planning staff. Planning staff also have information on the actual cost of applications that have been processed. This can also be viewed on the Council website.

Development contributions

Your application may also be required to pay development contributions under the Council's Development Contributions Policy. For more information please ring 477 4000 and ask to speak to the Development Contributions Officer, or email development.contributions@dcc.govt.nz.

Occupation of the site

Please list the full name and address of each occupier of the site:

See attached application for specific detail

Monitoring of your Resource Consent

To assist with setting a date for monitoring, please estimate the date of completion of the work for which Resource Consent is required. Your Resource Consent may be monitored for compliance with any conditions at the completion of the work. (If you do not specify an estimated time for completion, your Resource Consent, if granted, may be monitored three years from the decision date).

(month and year)

Monitoring is an additional cost over and above consent processing. You may be charged at the time of the consent being issued or at the time monitoring occurs. Please refer to City Planning's Schedule of Fees for the current monitoring fee.

Detailed description of proposed activity

Please describe the proposed activity for the site, giving as much detail as possible. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please provide proposed site plans and elevations.

See attached application for specific detail

Description of site and existing activity

Please describe the existing site, its size, location, orientation and slope. Describe the current usage and type of activity being carried out on the site. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please also provide plans of the existing site and buildings. Photographs may help.

See attached application for specific detail

District plan zoning

What is the District Plan zoning of the site? **See attached application for specific detail**

Are there any overlaying District Plan requirements that apply to the site e.g. in a Landscape Management Area, in a Townscape or Heritage Precinct, Scheduled Buildings on-site etc? If unsure, please check with City Planning staff.

See attached application for specific detail

Breaches of district plan rules

Please detail the rules that will be breached by the proposed activity on the site (if any). Also detail the degree of those breaches. In most circumstances, the only rules you need to consider are the rules from the zone in which your proposal is located. However, you need to remember to consider not just the Zone rules but also the Special Provisions rules that apply to the activity. If unsure, please check with City Planning staff or the Council website.

See attached application for specific detail

Affected persons' approvals

I/We have obtained the written approval of the following people/organisations and they have signed the plans of the proposal:

Name:

Address:

Name:

Address:

Please note: You must submit the completed written approval form(s), and any plans signed by affected persons, with this application, unless it is a fully notified application in which case affected persons' approvals need not be provided with the application. If a written approval is required, but not obtained from an affected person, it is likely that the application will be fully notified or limited notified.

Assessment of Effects on Environment (AEE)

In this section you need to consider what effects your proposal will have on the environment. You should discuss all actual and potential effects on the environment arising from this proposal. The amount of detail provided must reflect the nature and scale of the development and its likely effect. i.e. small effect equals small assessment.

You can refer to the Council's relevant checklist and brochure on preparing this assessment. If needed there is the Ministry for the Environment's publication "A Guide to Preparing a Basic Assessment of Environmental Effects" available on www.mfe.govt.nz. Schedule 4 of the Resource Management Act 1991(RMA) provides some guidance as to what to include.

See attached application for specific detail

The following additional Resource Consents from the Otago Regional Council are required and have been applied for: Yes ☒ No

Water Permit Discharge Permit Coastal Permit Land Use Consent for certain uses of lake beds and rivers ☒ Not applicable

Assessment of Objectives and Policies

In this Section you need to consider and assess how your application proposal aligns with the relevant objectives and policies in the District Plan relating to your activity. If your proposal is a discretionary or non-complying activity under the District Plan more attention to the assessment will be necessary as the objectives and policies of the District Plan may not always be in support of the proposed activity.

See attached application for specific detail

Declaration

I certify that, to the best of my knowledge and belief, the information given in this application is true and correct.

I accept that I have a legal obligation to comply with any conditions imposed on the Resource Consent should this application be approved.

Subject to my/our rights under section 357B and 358 of the RMA to object to any costs, I agree to pay all the fees and charges levied by the Dunedin City Council for processing this application, including a further account if the cost of processing the application exceeds the deposit paid.

Signature of: Applicant ☒ Agent (tick one):

MDuncan

Date: 9/11/2022

Privacy – Local Government Official Information and Meetings Act 1987

You should be aware that this document becomes a public record once submitted. Under the above Act, anyone can request to see copies of applications lodged with the Council. The Council is obliged to make available the information requested unless there are grounds under the above Act that justify withholding it. While you may request that it be withheld, the Council will make a decision following consultation with you. If the Council decides to withhold an application, or part of it, that decision can be reviewed by the Office of the Ombudsmen.

Please advise if you consider it necessary to withhold your application, or parts of it, from any persons (including the media) to (tick those that apply):

- ☐ Avoid unreasonably prejudicing your commercial position
- ☐ Protect information you have supplied to Council in confidence
- ☐ Avoid serious offence to tikanga Māori or disclosing location of waahi tapu

What happens when further information is required?

If an application is not in the required form, or does not include adequate information, the Council may reject the application, pursuant to section 88 of the RMA. In addition (section 92 RMA) the Council can request further information from an applicant at any stage through the process where it may help to a better understanding of the nature of the activity, the effects it may have on the environment, or the ways in which adverse effects may be mitigated. The more complete the information provided with the application, the less costly and more quickly a decision will be reached.

Further assistance

Please discuss your proposal with us if you require any further help with preparing your application. The Council does provide pre-application meetings without charge to assist in understanding the issues associated with your proposal and completing your application. This service is there to help you.

Please note that we are able to provide you with planning information but we cannot prepare the application for you. You may need to discuss your application with an independent planning consultant if you need further planning advice.

City Planning Staff can be contacted as follows:

In Writing: Dunedin City Council, PO Box 5045, Dunedin 9054

In Person: Customer Services Centre, Ground Floor, Civic Centre, 50 The Octagon

By Phone: (03) 477 4000

By Email: planning@dcc.govt.nz

There is also information on our website at www.dunedin.govt.nz

Information requirements

- ✓ Completed and Signed Application Form
- ✓ Description of Activity and Assessment of Effects
 - Site Plan, Floor Plan and Elevations (where relevant)
 - Written Approvals
- ✓ Payee details
 - Application Fee (cash, eftpos, direct credit or credit card (surcharge may apply))
- ✓ Certificate of Title (less than 3 months old) including any relevant restrictions (such as consent notices, covenants, encumbrances, building line restrictions)
 - Forms and plans and any other relevant documentation signed and dated by Affected Persons

In addition, subdivision applications also need the following information:

- ✓ Number of existing lots
- ✓ Number of proposed lots
- ✓ Total area of subdivision
- ✓ The position of all new boundaries

In order to ensure your application is not rejected or delayed through requests for further information, please make sure you have included all of the necessary information. A full list of the information required for resource consent applications is in the Information Requirements Section of the District Plan.

OFFICE USE ONLY

Has the application been completed appropriately (including necessary information)?

Yes

No

Application: Received Rejected

Received by: Counter Post Courier Other:

Comments:

(Include reasons for rejection and/or notes to handling officer)

Planning Officer:

Date:

*Application for Resource Consent in accordance
with Schedule 4 of the Resource Management
Act 1991*

To undertake a boundary adjustment

Ravensdown Limited
102 Ravensbourne Road
Ravensbourne

Surveying, Planning and Engineering Consultants

DUNEDIN

03 477 4783

dunedin@terramark.co.nz

MOSGIEL

03 489 7107

mosgiel@terramark.co.nz

BALCLUTHA

03 418 0470

balclutha@terramark.co.nz

MEMBER OF SURVEY AND SPATIAL NZ (S+SNZ) AND THE CONSULTING SURVEYORS OF NZ (CSNZ)

Terramark.co.nz

Please Reply To Dunedin Office
Our Ref: D5893

9 November 2022

Dunedin City Council
PO Box 5045
DUNEDIN 9054

ATTENTION: The Senior Planner

Dear Sir/Madam

Re: Resource Consent Application – 102 Ravensbourne Road Ravensbourne

On behalf of our client, Ravensdown Limited, we would submit for Council's approval an application for the subdivision of land in OT249/279 pursuant to the Resource Management Act 1991. Please find enclosed the following documents:

1. Form 9
2. Consent Application - subdivision
3. Terramark Plan D5893-1a
4. Record of Title OT249/279

For reference, the applicant's details are:

Ravensdown Limited
102 Ravensbourne Road
Ravensbourne
DUNEDIN 9022

All resource consent associated correspondence is to be directed via the writer; the applicant's agents, and our contact details are as follows:

Terramark Limited
Level 1 330 Moray Place
Dunedin 9016

Attention: Mrs Maaike Duncan
Phone: 03 477 4783
Email: maaike@terramark.co.nz

If you have any further queries, please do not hesitate to contact the undersigned.

Yours faithfully
Terramark Ltd



Maaike Duncan
Licensed Cadastral Surveyor

Quality Assurance Statement

Revision History

Rev. No.	Prepared By	Description	Date
1	Maike Duncan	Draft for Client Review	9 November 2022
on behalf of Terramark Limited		 Terramark Setting New Boundaries	

Subdivision and Land Use Consent Application

102 Ravensbourne Road, Ravensbourne

Existing Title Structure

The subject site comprises two parcels of land located in Ravensbourne near the Ravensdown Plant. Both land parcels are comprised in RT OT249/279 in the name of Port Otago Limited.

Record of Title OT249/279 originally contained 2.1995ha and is legally described as land shown coloured green on a plan deposited in the office of the Chief Surveyor at Dunedin as Railway 10.

The two parcels are the only land parcels remaining within the part cancelled title due to previous legal dealings which can be seen as registered interests on the title. The title area comprises approximately 1886m².

The "Northern" parcel contains an area of 80m² and is located between two titles owned and occupied by Ravensdown Limited in Ravensbourne. It comprises a triangular parcel with a long narrow rectangle extending off the north eastern tip.

The "Southern" parcel contains an area of approximately 1806m² and is located south of the Ravensdown Plant, between the Main South Railway, and the Otago Harbour. It is currently occupied by the Otago Harbour shoreline and the Dunedin to Maia Cycleway.

Background

Agreements are in place for Ravensdown Limited to acquire formal ownership of the northern parcel off Port Otago Limited due to longstanding occupation and that was expected to be undertaken by way of a transfer as investigation into OT249/279 by Abercrombie and Associates indicated only the northern parcel remained in OT249/279.

LT 514183 was prepared defining the northern parcel as Lot 2 LT 514183. Please note that Lot 1 LT 514183 was also defined but that land has no bearing on this application and it is itself proceeding through a prescriptive title application process. LT 514183 was approved as to survey by LINZ in 2017.

During the legal transfer process, Land Information NZ identified that in addition to the Northern parcel, the Southern parcel also remained in OT249/279 as a result of survey DP 16674.

Subsequently to enable the transfer of the Northern parcel being Lot 2 LT 514183 to Ravensdown Limited, a subdivision must take place to separate the northern parcel from the southern parcel.

A pre-application meeting was held in April 2021 with John Sule (senior planner at the time), Lianne Darby (proposed processing planner), Angus Robertson (Parks and Reserves Planner) and Karilyn Canton (inhouse legal counsel) to discuss the matter and the best approach. The proposal reflects that discussion with further information in the "Consultation section".

Since that time the entering of the necessary sales and purchase agreement had been progressing and we are now ready to proceed with a consent application.

Proposal

Terramark Plan 5893-1 details the proposal to subdivide the two sites from one another to allow the respective transfers to occur. Both parcels have been shown in relation to one another for completeness. An inset shows the dimensions of Lot 2 LT 514183 for clarity.

Northern Parcel - Lot 2 LT 514183

Lot 2 LT 514183 (80m²) is and will remain an un-serviced parcel continuing to be occupied as part of the Ravensdown Plant upon subdivision. Lot 2 is proposed to amalgamate with the adjoining Ravensdown title being OT5A/1198, and as such we request that the Registrar General of Lands be requested to confirm the practicality that;

"Lot 2 LT 514183 be transferred to the owner of Lot 1 DP 3938 (RT OT5A/1198) and that one certificate of title be issued to include both parcels."

Southern Parcel

The southern parcel will remain as balance title upon subdivision. It will comprise approximately 1806m². The subdivision will retain the status quo of this parcel in terms of its use for the Dunedin-Maia Cycle lane.

The provisions of the 2GP require a 20m esplanade reserve to be vested over this southern parcel as it abuts the Otago Harbour. As the parcel is less than 20m wide at its narrowest point, the reserve encompasses the whole balance title.

Given that the survey plan has already been approved and does not define the southern parcel or an esplanade reserve thereover, we seek approval to waive the esplanade reserve provision in lieu of the balance title (OT249/279) being transferred in whole to the DCC after the subdivision has been completed. We have a signed sales and purchase agreement between Port Otago Limited and Dunedin City Council confirming this arrangement is acceptable to all parties involved upon issue of title for Lot 1.

Reasons for Application

Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (the "Operative District Plan", and the Proposed Second-Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.

Pursuant to section 88A, the activity status of the application is fixed by the provisions in place when the application was first lodged. For the assessment, the provisions of both district plans in force at the time of the decision must be considered. The Proposed Plan was notified on 26 September 2015, and some Proposed Plan rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

In this case, the application is lodged when the Proposed 2GP rules are already in effect. The relevant zone and rules of the Proposed Plan are mostly beyond challenge. Accordingly, the relevant rules of the Operative District Plan are considered to have been superseded.

Proposed 2GP

The 2GP identifies the following mapped planning provisions in respect of the Northern Parcel;

- Industrial zone,
- Ravensbourne Height mapped area, and
- Archaeological Alert Layer.

The 2GP identifies the following mapped planning provisions in respect of the Southern Parcel;

- Industrial zone,
- Noise mapped area – Stadium Noise,
- Ravensbourne Height mapped area,

- Archaeological Alert Layer,
- Contains part of Archaeological Site A039,
- Wahi Tupuna mapped area (Otakou Harbour), and
- Hazard 3 (coastal) Overlay Zone (subject to appeal).

The subject site is zoned Industrial 1 under the 2GP.

The activity status tables in rules 19.3.3 to 19.3.5 specify the activity status of land use activities, development activities and subdivision activities in the industrial zones and relevant overlay zones.

Subdivision Activity

Rule 19.3.5.1 lists subdivision activity as a restricted discretionary activity in the Industrial zone subject to the performance standards i-v in Rules 19.7.

- Rule 19.7.1 requires access to comply with Rule 6.8.1. Every resultant site must have legal and physical access to a formed road. Lot 2 LT 514182, the northern parcel will receive legal access by way of its amalgamation with OT5A/1198 which has legal access to Ravensbourne Road. Physical access to both Lot 2 LT 514182 and OT5A/1182 is currently provided by virtue that Ravensdown Limited owns the adjoining titles over which physical access to Ravensbourne Road is provided. The application fails to comply with the physical access provision which is a restricted discretionary activity.
- Rule 19.7.2 requires subdivision activities to comply with Rule 10.3.1 for Esplanade Reserves and Strips. The southern balance title land must provide for a 20m reserve. The provision cannot be complied with and a waiver is required.

The application fails to comply with the esplanade reserve provision which is a restricted discretionary activity.

- Rule 19.7.3 requires subdivision activities to comply with Rule 9.3.3 requiring resultant sites to comply with the fire-fighting provisions. The northern site is compliant as there are 4 hydrants located within 135m of the site. In addition, the site will join with the adjoining title and be managed as one. The southern site is used as a reserve and upon transfer to the DCC from Port Otago, would continue to be so hence fire-fighting provisions do not apply.
- Rule 19.7.4 requires subdivision activities to comply with Rule 9.3.7 service connections. In this instance the northern parcel (Lot 2 LT514183) is currently un-serviced and access to services is not required due to its amalgamation with the adjoining title. The southern site is used as a reserve and upon transfer to the DCC from Port Otago, would continue to be so hence service provisions do not apply.
- Rule 19.7.5 controls the shape of each resultant site. The northern parcel is already occupied by the Ravensdown operation, and upon subdivision will continue to be managed as part of the site. As such compliance with the shape provisions is not required. The southern site is used as a reserve and upon transfer to the DCC from Port Otago, will continue, subsequently the shape provisions do not apply.

The Subdivision Activity remains a *restricted discretionary* activity in accordance with activity status tables of Rule 19.7

Land Use Activity

No changes are proposed to the current land use activities undertaken on either the northern or southern parcels. Given that the existing parcels are unchanged in their area or boundaries other than in respect of their legal appellation and the titles they are held in, no further land use activity assessment has been undertaken.

Overall Activity Status

Overall, the proposal shall be assessed as a *restricted discretionary* activity and will be assessed in accordance with section 104 and 104C of the RMA. Only those matters to which Council has restricted its discretion will be considered, and Council may grant or refuse the application, and, if granted, may impose conditions with respect to matters over which it has restricted its discretion.

National Environmental Standards

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken.

Lot 2 LT 514183 is an industrial site which will continue to be used for industrial purposes. The site is considered a HAIL site due to the present industrial activity (fertiliser production) undertaken thereon. Hence, we seek consent as a **discretionary** activity pursuant to Clause 11 to transfer the ownership of the HAIL site whilst continuing the same activity thereon.

There are no other National Environmental Standards triggered by this application.

Statutory Considerations

This application must be considered in terms of Section 104 of the RMA. Subject to Part 2 of the RMA, Section 104(1) sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) any actual and potential effects on the environment of allowing the activity; and
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
- (b) any relevant provisions of:
 - (i) A national environmental standard;
 - (ii) Other regulations;
 - (iii) a national policy statement
 - (iv) a New Zealand coastal policy statement
 - (v) a regional policy statement or proposed regional policy statement
 - (vi) a plan or proposed plan; and
- (c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.

Effects on the Environment

Affected Persons

No persons are considered to be adversely affected by this proposal for the reasons outlined below.

A preapplication meeting was had with DCC – John Sule, Lianne Darby, Angus Robertson and Karilyn Canton at which this proposal was presented and it was discussed that the option of transferring the land to the DCC in lieu of the esplanade reserve would be an appropriate method to achieve the same outcome given the extraordinary circumstances. It was advised by DCC that it be best to include a sales and purchase agreement between Port Otago and DCC to provide assurance that the transfer will occur upon deposit of the plan and titles issued because it cannot be included as a subdivision consent condition. The said sales and purchase agreement is subsequently included for record.

Assessment of Environmental Effects

Section 104(1)(a) requires consideration of the actual and potential effects on the environment of the activity.

Permitted Baseline and Receiving Environment

Under sections 95D(b) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of the activity on the environment if the district plan or a national environmental standard permits an activity with that effect. In this instance, there is no subdivision permitted as of right and no permitted baseline to be applied to this application with respect to the subdivision component.

When considering the receiving environment, the subject site is 1012m² and contains a single existing residential unit. The 2GP anticipates a density of one residential unit per 500m² and in this case two residential units could be established on the site as a permitted activity provided the relevant performance standards for land use and development were met.

Whilst there is no permitted baseline for subdivision as complying subdivisions are restricted discretionary activities, it is likely that a restricted discretionary subdivision that meet the relevant performance standards would normally be granted consent on a non-notified basis.

The existing and reasonably foreseeable receiving environment is made up of:

- The existing environment and associated effects from lawfully established activities;
- Effects from any consents on the subject site (not impacted by proposal) that are likely to be implemented;
- The existing environment as modified by any resource consents granted and likely to be implemented; and
- The environment as likely to be modified by activities permitted in the district plan.
- For the subject site, the receiving environment comprises low density residential development. For surrounding land, the existing and reasonably foreseeable receiving environment comprises low density residential development and others to an average density of 1 per 500m².
- It is the effects arising from the proposal, beyond the permitted baseline and existing and lawfully established receiving environment that are the crucial elements for consideration, and which form the basis of this assessment of effects.

Assessment Matters

We consider any actual or potential adverse effects on the environment by allowing the changes to this proposal to proceed will be no more than minor.

This unique subdivision intends to facilitate the transfer of ownership of the northern parcel Lot 2 LT 514183 in order to formalise long standing occupation. Both parcels are existing in their size and shape and are disjoint having been balance land from previous dealings. Their size and dimension in this instance is not changing upon subdivision and their underlying uses will remain unchanged.

Neither site is serviced and there is no intention to service either. Subsequently there is no additional demand placed on the existing infrastructure networks and thus there are no adverse effects arising from this proposal.

Equally the transportation network is not affected by this proposal as there is no change to the physical status quo of access to either parcel. The landlocked status of the southern parcel from a physical and legal access perspective is existing and upon transfer the site will continue to be used for reserve and access thereto is via the adjoining reserve parcels.

Resultant transfer of the balance title from Port Otago to DCC will achieve the same aim as the creation of an esplanade reserve but saves the unnecessary duplication of a Land Transfer Plan to achieve this. Thus the adverse effects of waiving the esplanade reserve requirement at the time of subdivision are only temporary until the transfer to the DCC takes place at which time the outcome is equivalent to having granted an esplanade reserve.

Offsetting or Compensation Measures

In accordance with Section 104(1)(ab) of the Resource Management Act 1991, there are no offsetting or compensation measures offered nor are any deemed necessary.

Relevant Provisions

2GP Objective and Policy Analysis

Objectives	Supporting Policies	Assessment
Objective 6.2.3 Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.	Policy 6.2.3.9 Only allow land use and development activities or subdivision activities that may lead to land use or development activities, where: adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated; and any associated changes to the transportation network will be affordable to the public in the long term.	The lots will continue to be accessed in conjunction with their existing activities. In the case of the northern parcel Lot 2 LT 514183, it will become part of the wider Ravensdown title by virtue of the amalgamation condition. The southern parcel will continue to be used as part of the cycleway and will facilitate legal connection between existing parts of that cycleway already in place. The proposal is therefore considered consistent with this objective and the relevant policies.
Objective 9.2.1 Land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure.	Policy 9.2.1.1 Only allow land use or subdivision activities that may result in land use or development activities where: a. in an area with public water supply and/or wastewater infrastructure, it will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone.	The two titles will not require any infrastructure connections as the northern parcel Lot 2 will remain with adjoining title and the balance title – northern parcel is reserve and does not require servicing. The proposal is assessed as consistent with this objective and policy.

Having regard to the relevant objectives and policies individually, and considering these holistically, the above assessment indicates that the application is consistent with those provisions set out in the Proposed 2GP.

Assessment of Regional Policy Statements

Section 104(1)(b)(v) of the Act requires that any relevant regional policy statements be considered. The Regional Policy Statement for Otago (RPS) was reviewed in respect of this proposal. No policies specifically relevant to this proposal were identified. Overall, the proposal is considered consistent with the operative Regional Policy Statements for Otago.

Other Planning Instruments

Section 104(1)(b) requires consideration of other relevant planning instruments. There are no other planning instruments considered relevant to this proposal.

Notification and Affected Parties

With regard to notification:

- The applicant does not request notification.
- The proposal does not relate to the exchange of reserves land, does not involve a statutory acknowledgement area and does not involve an affected protected customary rights group.
- There are no rules in the District Plans or NES which require notification.
- It is considered that there are no special circumstances relating to the application.
- It is assessed above that the effects of the proposal on the wider environment are less than minor.

We acknowledge that to waive an esplanade provision as part of subdivision application a committee must hear and approve the request given that delegated authority to the planning department does not exist for esplanade waivers.

Conclusion

The proposal is unique in that it is dealing with old disjoint balance land parcels in an existing title. The subdivision has arisen to enable the deposit of a plan to facilitate the transfer of ownership to the long standing occupant when it was unknown that there was a second area of land involved.

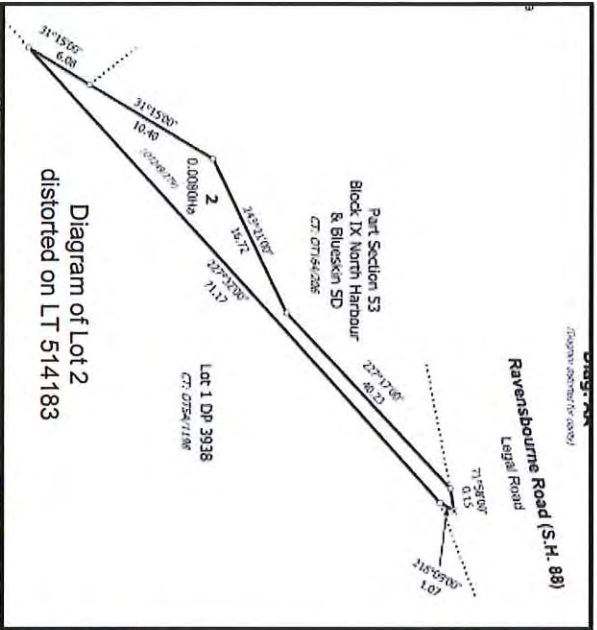
The subdivision does not create any additional parcels and is effectively a boundary adjustment. Accordingly, we ask for Council's favourable consideration to the approval of this unusual subdivision proposal.

If you have any questions please feel free to contact the undersigned.

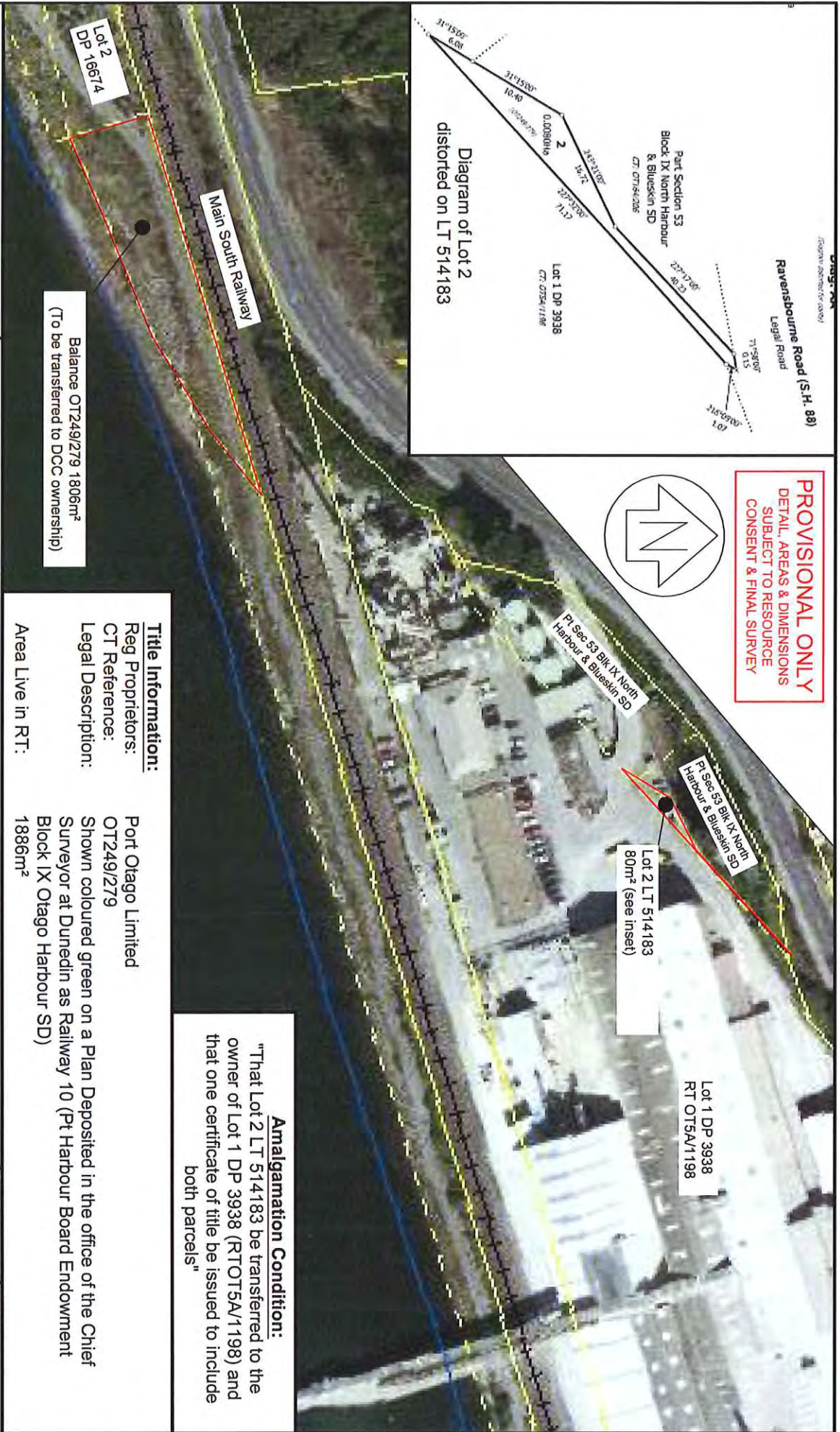
Yours faithfully,
Terramark Ltd



Maaika Duncan
Licensed Cadastral Surveyor
maaike@terramark.co.nz



PROVISIONAL ONLY
 DETAIL, AREAS & DIMENSIONS
 SUBJECT TO RESOURCE
 CONSENT & FINAL SURVEY



Amalgamation Condition:
 "That Lot 2 LT 514183 be transferred to the owner of Lot 1 DP 3938 (RTOT5A/1198) and that one certificate of title be issued to include both parcels"

Title Information:
 Reg Proprietors: Port Otago Limited
 CT Reference: OT249/279
 Legal Description: Shown coloured green on a Plan Deposited in the office of the Chief Surveyor at Dunedin as Railway 10 (Pt Harbour Board Endowment Block IX Otago Harbour SD)
 Area Live in RT: 1886m²

terramark
setting new boundaries
 Surveying, Resource Management & Engineering
 Dunedin 03-4774783 Mosgiel 03-4897107 Balclutha 03-4180470

Proposed Subdivision of Land Remaining In OT249/279

Scale:	1:1500 @ A4	Job No:	D5893
Date:	April 2021	Plan No:	D5893-1a

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: 21 October 2022

VENDOR: Port Otago Limited

PURCHASER: Dunedin City Council

and/or nominee

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:

Yes/No

PROPERTY

Address: Ravensbourne Cycleway

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):

1806 m2

Lot/Flat/Unit:

Part Railway 10 more particularly shown outlined on the proposed subdivision plan and aerial attached

Record of Title (unique identifier):

Part 249/279

PAYMENT OF PURCHASE PRICE

Purchase price: \$ 1.00

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): \$NIL

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

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

OR

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

Interest rate for late settlement:

10 % p.a.

CONDITIONS (refer clause 9.0)

Finance required (subclause 9.1):

Yes/No

OIA consent required (subclause 9.6):

Yes/No

Finance date:

OIA date (subclause 9.8):

LIM required (subclause 9.3):

Yes/No

Land Act consent required (subclause 9.7):

Yes/No

Building report required (subclause 9.4):

Yes/No

Land Act date (subclause 9.8):

Toxicology report required (subclause 9.5):

Yes/No

TENANCIES

Yes/No

Name of Tenant(s): Vacant Possession

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

SALE BY:

Private Sale

Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 2, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

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

- (35) "Unit title" means a unit title under the Unit Titles Act.
- (36) "Unit Titles Act" means the Unit Titles Act 2010.
- (37) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - (b) If Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of subclause 9.3(2) the 15th day of January) in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

- 1.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (1) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
 - (2) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.
- 1.3 Time for Performance
 - (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
 - (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
 - (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.3(2).
- 1.4 Notices

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

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

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 and/or at such other time as is specified in this agreement.

- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
- (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and
 - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
 - (3) where the property is a unit title:
 - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act; and
 - (b) an additional disclosure statement under section 148 of the Unit Titles Act (if requested by the purchaser within the time prescribed in section 148(2)),
 have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act to postpone the settlement date until after the disclosure statements have been provided; or
 - (4) this agreement is:
 - (a) cancelled pursuant to:
 - (i) subclause 6.2(3)(c); or
 - (ii) sections 36 or 37 of the Contract and Commercial Law Act 2017; or
 - (b) avoided pursuant to subclause 9.10(5); or
 - (5) where the property is a unit title and the purchaser, having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act, has cancelled this agreement pursuant to that section, or has elected not to cancel by giving notice to the vendor, or by completing settlement of the purchase.
- 2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to subclause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing after the effect of the same is explained to the purchaser by the agent or by the purchaser's lawyer or conveyancer.
- 3.0 Possession and Settlement**
- Possession**
- 3.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall 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.
- 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 subclause 3.12 or 3.13, or for any deduction allowed to the purchaser under subclause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to subclause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to subclause 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 subclause 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 subclause 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 subclause 3.8 are interdependent.

3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

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 subclause, 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 subclause 3.12(1).
- (3) If the parties are unable to agree upon any amount payable under this subclause 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 subclause 3.13:

- (a) the default period means:
 - (i) in subclause 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 subclause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 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 subclause 3.13(2)(b) during the default period. A purchaser in possession under this subclause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 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 subclause 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 incomes 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 incomes, 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 subclause 3.13(2)(b) during the default period.
- (6) The provisions of this subclause 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 subclause 3.13, either party may make a claim under clause 10.0.

Deferment of Settlement and Possession

- 3.14 If
 - (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
 then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.16 If
 - (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.14 or subclause 3.15; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 8.2(3),
 then the vendor may extend the settlement date:
 - (a) where there is a deferment of the settlement date pursuant to subclause 3.14, to the tenth working day following 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 subclause 3.15, to the tenth working day following 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 following 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) Subclause 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 subclause 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 subclause 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 subclause 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 subclause 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 subclause 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 subclause 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) In the case of a property 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 subclause 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:
- 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;
 - 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;
 - 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 subclause 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:
- In the case of a cross-lease title:
 - alterations to the external dimensions of any leased structure; or
 - 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;
 - 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 subclause 6.2 requiring the vendor;
 - 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
 - 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:
- received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - from any local or government authority or other statutory body; or
 - under the Resource Management Act 1991; or
 - from any tenant of the property; or
 - from any other party; or
 - 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:
- The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure to do so shall only create a right of compensation.
 - 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.
 - 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.
 - Where an allowance has been made by the vendor in the settlement statement for incomes receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
 - Where the vendor has done or caused or permitted to be done on the property any works:
 - any permit, resource consent, or building consent required by law was obtained; and
 - to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - where appropriate, a code compliance certificate was issued for those works.
 - Where under the Building Act, any building on the property sold requires a compliance schedule:
 - 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;
 - 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:
- from any local or government authority or other statutory body; or
 - under the Resource Management Act 1991; or
 - from any tenant of the property; or
 - 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 subclause 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:
- 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;
 - the building has a current building warrant of fitness; and
 - 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:
- 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.
 - 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.
 - 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.
 - Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 8.0 Unit title and cross-lease provisions**
- Unit Titles**
- 8.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 8.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
 - Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
 - Not less than five working days before the settlement date, the vendor will provide:
 - a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and
 - a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
 - There are no other amounts owing by the owner under any provision of the Unit Titles Act.
 - There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Unit Titles Act.
 - The vendor has no knowledge or notice of any fact which might result in:
 - the owner or the purchaser incurring any other liability under any provision of the Unit Titles Act; or
 - any proceedings being instituted by or against the body corporate; or
 - any order or declaration being sought against the body corporate or the owner under any provision of the Unit Titles Act.
 - The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
 - No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - the transfer of the whole or any part of the common property;
 - the addition of any land to the common property;
 - the cancellation of the unit plan; or

- (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,
which has not been disclosed in writing to the purchaser.
- (11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 8.3 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of subclause 8.2(3), then in addition to the purchaser's rights under sections 149 and 150 of the Unit Titles Act, the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date.
- 8.4 If the property is a unit title, each party specifies that:
- (1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act; and
 - (2) If that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.
- 8.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Unit Titles Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.
- 8.6 Unauthorised Structures – Cross-Leases and Unit Titles
- (1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
 - (a) in the case of a cross-lease title, any required lessors' consent; or
 - (b) in the case of a unit title, any required body corporate consent,
 the purchaser may demand within the period expiring on the earlier of:
 - (i) the tenth working day after the date of this agreement; or
 - (ii) the settlement date,
 that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
 - (2) Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in subclauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under subclause 8.6(1) being deemed to be an objection and requisition.
- 9.0 Conditions and mortgage terms
- 9.1 Finance condition
- (1) If the purchaser has identified that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.
 - (2) If the purchaser avoids this agreement for failing to arrange finance in terms of subclause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.
- 9.2 Mortgage terms
- (1) Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 9.3 LIM condition
- (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
 - (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
 - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - (c) this agreement is conditional upon the purchaser approving that LIM, provided that such approval must not be unreasonably or arbitrarily withheld.
 - (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 9.10(5) shall apply.
 - (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
 - (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 9.10(5) shall apply.
 - (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.

9.4 Building report condition

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

9.5 Toxicology report condition

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

9.6 OIA consent condition

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

9.7 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date shown on the front page of this agreement.**9.8 If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from 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 a date 20 working days from the date of this agreement, whichever is the sooner.****9.9 Resource Management Act condition**

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

9.10 Operation of conditions

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

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

10.0 Claims for compensation**10.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.****10.2 The provisions of this clause apply if:**

- (1) the purchaser claims a right to compensation for:
 - (a) a breach of any term of this agreement; or
 - (b) a misrepresentation; or
 - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986; or
 - (d) an equitable set-off, or

- (2) there is a dispute between the parties regarding any amounts payable:
 - (a) under subclause 3.12 or subclause 3.13; or
 - (b) under subclause 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 (except for claims made after the settlement date for amounts payable under subclause 3.12 or subclause 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 the agreement, or the claim under subclause 3.12, subclause 3.13 or subclause 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.
- 10.4 If the claimant is unable to give notice under subclause 10.3 in respect of claims under subclause 10.2(1) or subclause 10.2(2)(b) by the settlement date by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under subclause 11.1.
- 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 subclause 10.2(1) but the vendor disputes the purchaser's right to make that claim, then:
 - (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under subclause 10.3, time being of the essence; and
 - (2) the purchaser's right to make the claim 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 New Zealand Law Society. The appointee's costs shall be met by the party against whom the determination is made.
- 10.7 If the purchaser makes a claim for compensation under subclause 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 right to make that claim.
- 10.8 If it is accepted, or determined under subclause 10.6, that the purchaser has a right to claim compensation under subclause 10.2(1) but the amount of compensation claimed is disputed, or if the claim is made under subclause 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 New Zealand Law Society;
 - (3) the interim amount must be a reasonable sum having regard to all of the circumstances, except that where the claim is under subclause 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;
 - (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 subclause 5.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally 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 New Zealand 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;
 - (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 subclause 10.6(2) or subclause 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 subclauses, 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.
- 10.10 The procedures prescribed in subclauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of the contract.
- 10.11 A determination under subclause 10.6 that the purchaser does not have a right to claim compensation under subclause 10.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by a person appointed under either subclause 10.6 or subclause 10.8, that person 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.

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 either in all material respects ready, able, and willing to proceed to settle in accordance with clauses 3.0 and 10.0 or is not so ready, able, and willing 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 subclause 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 subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice with a notice under this subclause.
- (4) For the purpose of this subclause 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 subclause 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 subclause 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; and
- (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
- (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
- (4) Any surplus money arising from a resale shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
- (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

12.0 Non-merger

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

13.0 Goods and Services Tax

- 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 subclause 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 subclause 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 subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

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 subclauses 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 subclause 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 subclause 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 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 any person enters into this agreement as trustee of a trust and if that person has no right to or interest in any assets of the trust, except in that person's capacity as a trustee of the trust, then that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount").
- 16.2 If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

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 subclause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

19.0 Collection of Sales Information

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to the Real Estate Institute of New Zealand Incorporated (REINZ).
- 19.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 1993.
- 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 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.

FURTHER TERMS OF SALE**1. Condition**

This Agreement is subject to and conditional upon a Resource Consent for subdivision of the land in RT OT249/279 being granted by the Territorial Authority, which firstly enables a separate certificate of title to issue for that part of RT OT249/279 which is contained in Lot 2 LT 514183, and secondly, enables the balance of RT OT249/279 to be dealt with separately, whether as a balance title, or by way of a new separate certificate of title, by 31 March 2023, and the Territorial Authority waiving any provision of its District Plan which would require an Esplanade Reserve to be vested over the Property.

2. Settlement Date

If Further Term 1 is confirmed, the Settlement Date will be 30 working days after the later of the deposit of LT 514183, and the deposit of any survey plan required as a result of the grant of the Resource Consent specified in Further Term 1.

3. Purchaser Capacity

The Vendor acknowledges that the Purchaser does not enter into this Agreement in its regulatory capacity, and nothing in this Agreement shall bind the Purchaser in its regulatory capacity. For the purposes of this clause, "regulatory capacity" means any duties and obligations and powers incumbent upon the Purchaser as a "Territorial Authority" (as defined in section 5(1) of the Local Government Act 2002) or any other capacity under any statutory or regulatory provision under the laws of New Zealand. The Vendor further acknowledges that a consent by the Purchaser in its regulatory capacity shall not be treated as a consent by the Purchaser, and vice versa.

4. Aurora Easement

The Purchaser acknowledges that the vendor has agreed to grant to Aurora Energy Ltd, the Easement across the Property specified as "C" on LT 54613, (copy Initiated Plan attached), and will take title to the Property subject to that Easement, and if not registered prior to the Settlement Date, agrees to have that Easement created once the Purchaser owns the Property.

SCHEDULE 1

(GST Information – see clause 14.0)

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

Section 1 Vendor	
1(a) The vendor's registration number (if already registered): 070-621-266	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop".)	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
2(c) The purchaser's details are as follows:	
(i) Full name: Dunedin City Council	
(ii) Address: PO Box 5045, Moray Place, Dunedin 9058	
(iii) Registration number (if already registered): 051-997-891	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop".)	Yes/No

SCHEDULE 2

List all chattels included in the sale
(strike out or add as applicable)

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

Nil - Bare Land

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:

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

This is a binding contract. Read the information set out on the back page before signing.

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.

Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act.

Signature of Purchaser(s):



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

Sandy Graham

Chief Executive

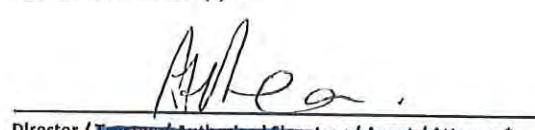
Tumu Whakarae

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

Signature of Vendor(s):



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

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); or
- (iii) where the attorney signs for a trustee, a Certificate in the relevant form in Schedule 4 to the Trustee Act 1956.

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].



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



R.W. Muir
Registrar-General
of Land

Identifier OT249/279
Land Registration District Otago
Date Issued 15 August 1931

Part-Cancelled

Prior References
W 5 95

Estate	Pec Simple
Aren	2,1995 hectares more or less —
Legal Description	shown coloured green on a Plan deposited in the office of the Chief Surveyor at Dunedin as Railway 10

Registered Owners
Port Otago Limited

Interests

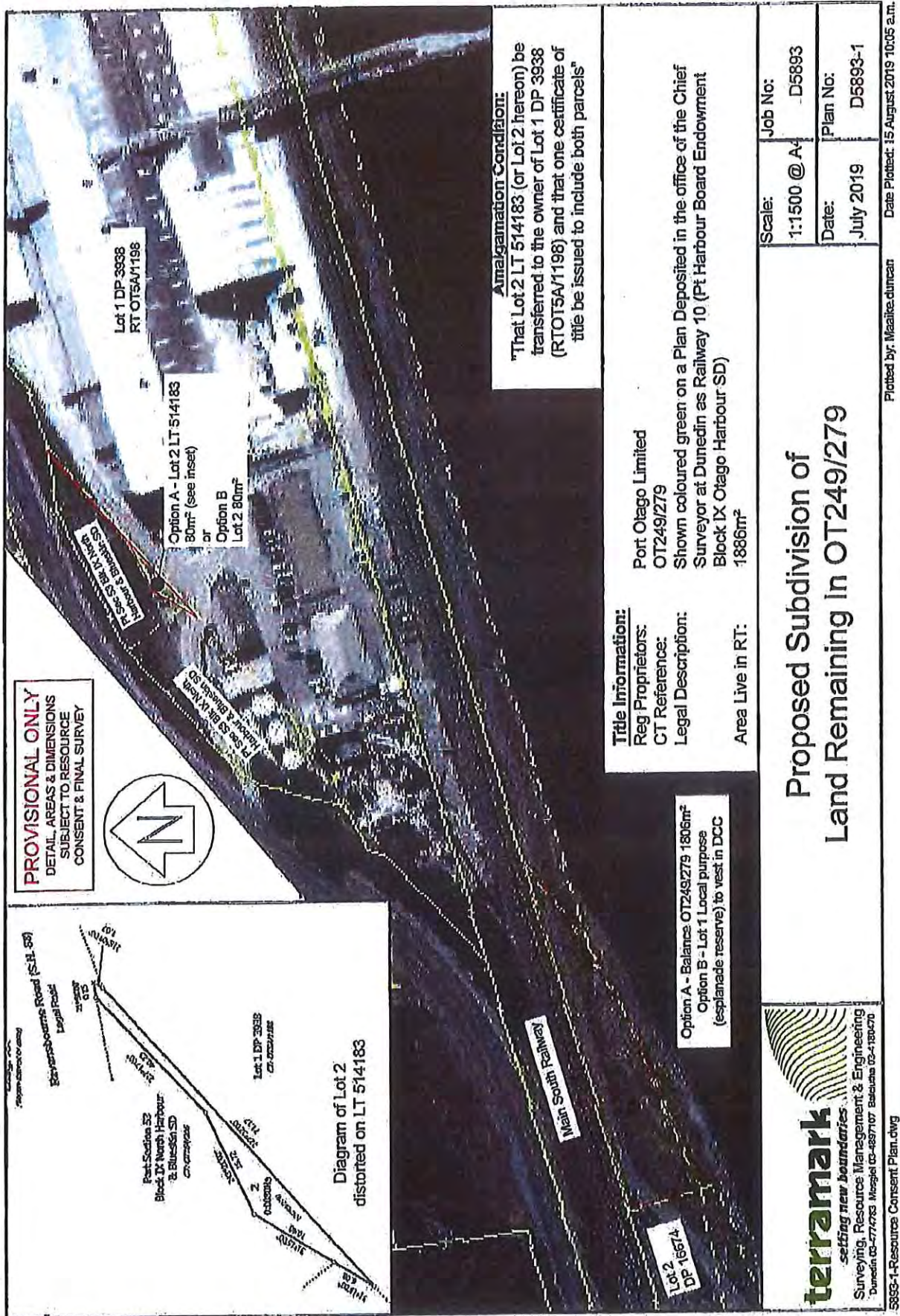
CT OT1D/923 issued for DP 11007

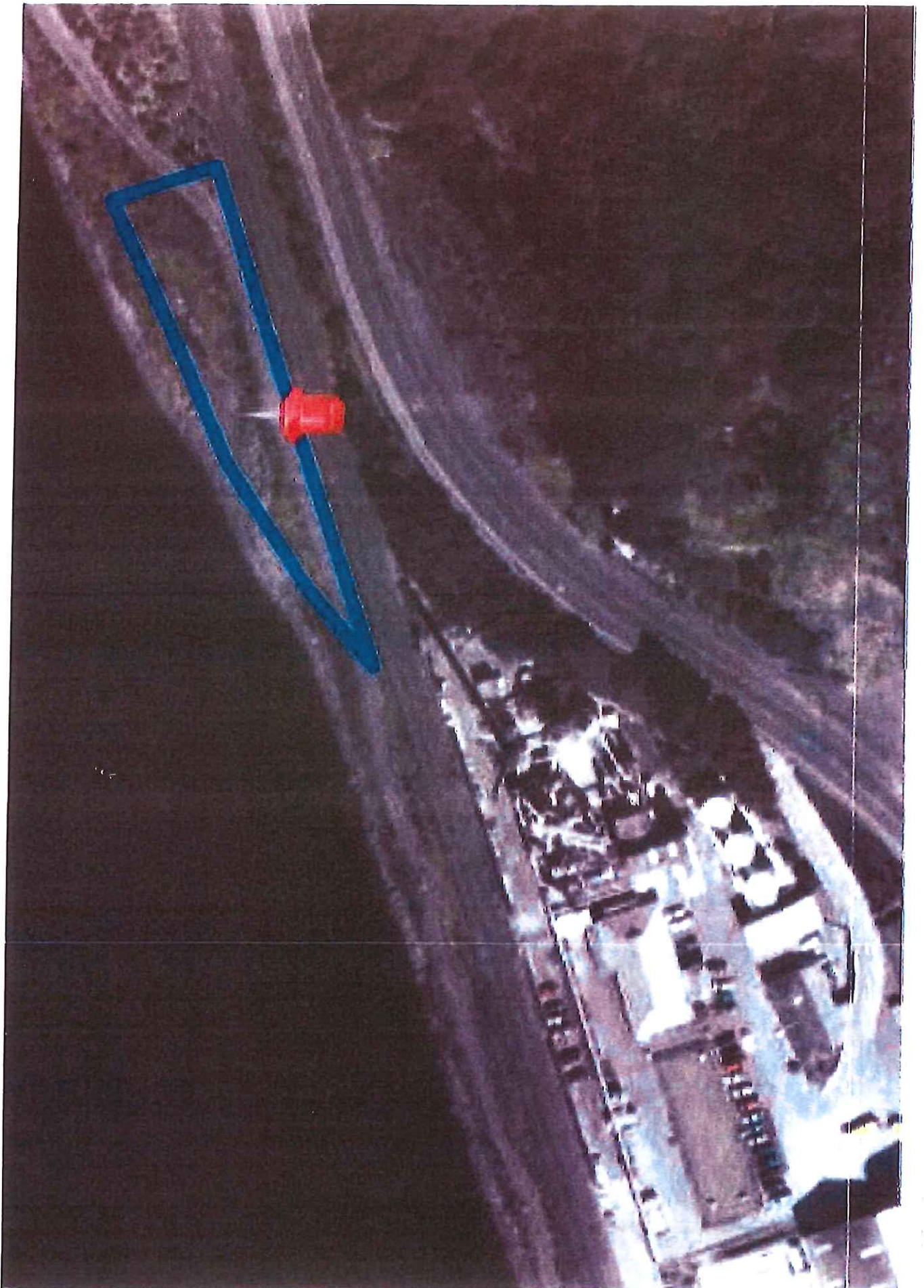
CT OT5A/1198 issued for part Lot 1 DP 3938

CsT OT7C/260 - OT7C/261 issued for Lot 1 and 2 respectively on DP 16674

Transfer 109194 of the part coloured burnt sienna and edged red and said within land marked (a) and (b) on plan 3938 to The Mayor Councillors and Burgesses of the Borough of West Harbour for the purposes of a road -
13.6.1932 at 3.00pm

at Maake 15-8-19.







Title Plan - LT 514183

Survey Number	LT 514183
Surveyor Reference	D5893
Surveyor	Scott Kenneth Cookson
Survey Firm	Termmark Ltd
Surveyor Declaration	I Scott Kenneth Cookson, 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 the Rules for Cadastral Survey 2010, and (b) the survey was undertaken by me or under my personal direction. Declared on 03 Nov 2017 08:33 AM

Chas Milburn

Survey Details

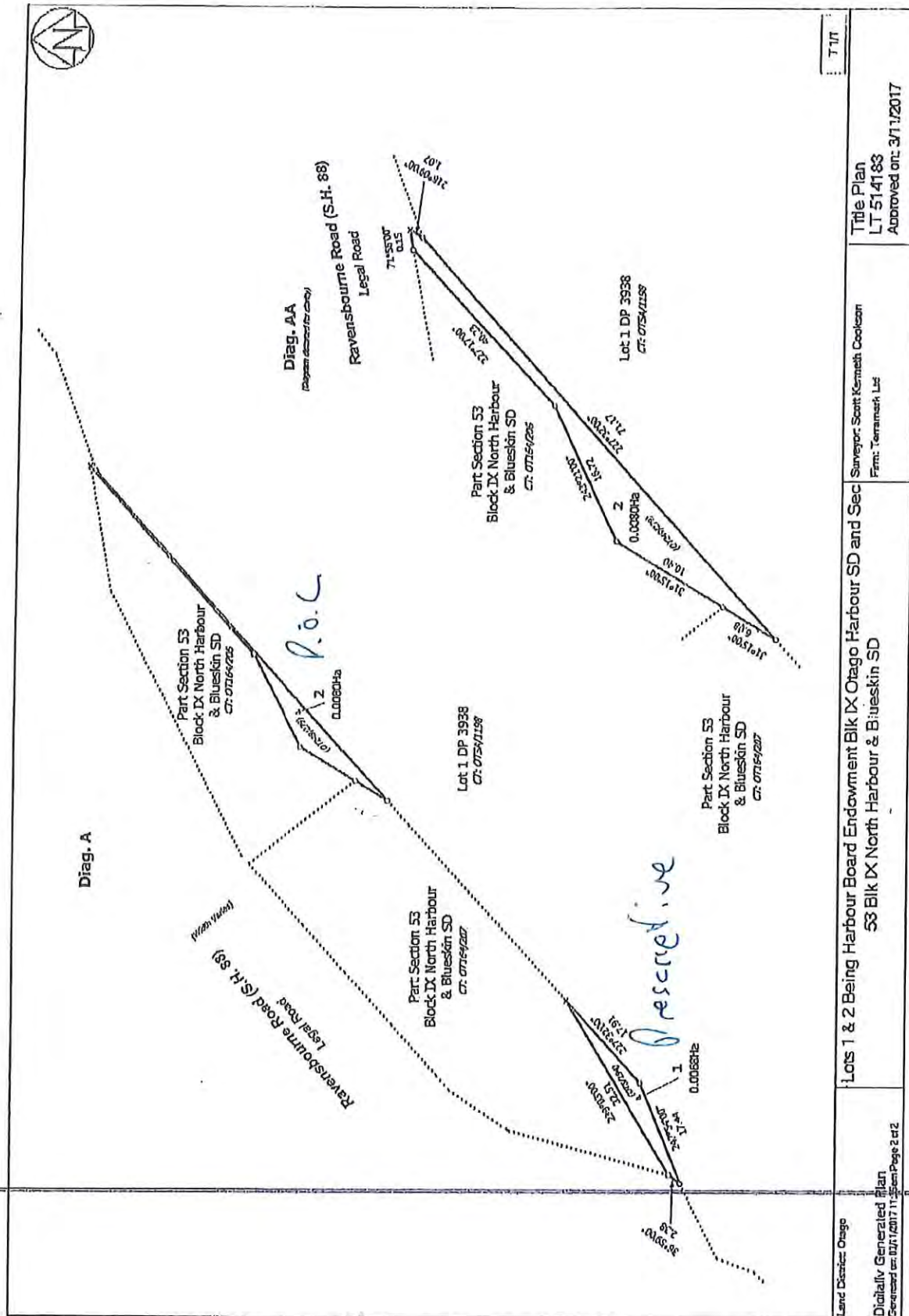
Dataset Description	Lots 1 & 2 Being Harbour Board Endowment Blk IX Otago Harbour SD and Sec 53 Blk IX North Harbour & Blueskin SD		
Status	Approved as to Survey		
Land District	Otago	Survey Class	Class A
Submitted Date	03/11/2017	Survey Approval Date	03/11/2017
		Deposit Date	

Territorial Authorities
Dunedin City

Comprised In
CT OT249/279
CT OT8/194

Created Parcels

Parcels	Parcel Intent	Area	CT Reference
Lot 1 Deposited Plan 514183	Fee Simple Title	0.0068 Ha	
Lot 2 Deposited Plan 514183	Fee Simple Title	0.0080 Ha	
Total Area		0.0148 Ha	





Title Plan - LT 546130

Survey Number	LT 546130
Surveyor Reference	17047 Cycleway
Surveyor	Kurt Alistair Bowen
Survey Firm	Peterson Pitts Partners Ltd (Dunedin)
Surveyor Declaration	

Survey Details

Dataset Description	Easements over Lots 1 and 2 DP 16674, Otago Harbour Board Endowment, Lot 1 DP 22138 and Main South Line		
Status	Initiated	Survey Class	Class A
Land District	Otago	Survey Approval Date	
Submitted Date		Deposit Date	

Territorial Authorities
Dunedin City

Comprised In
RT OT13C/693
RT 95148
RT OT249/279

Created Parcels

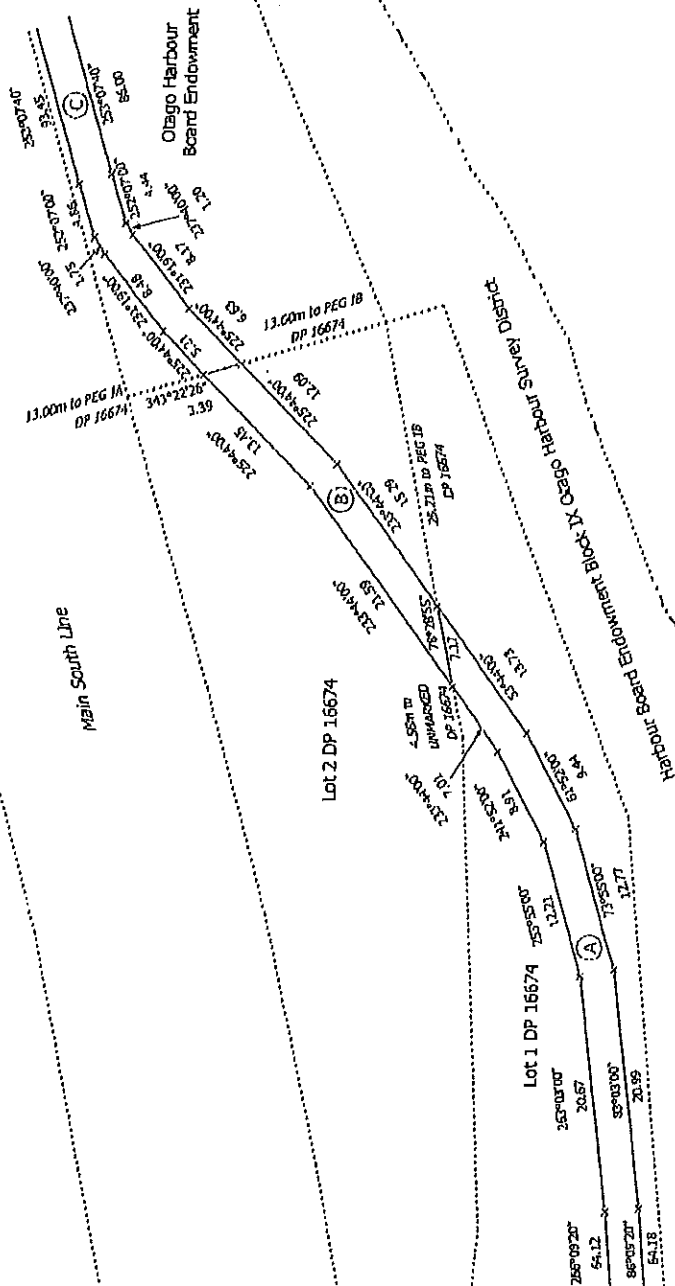
Parcels	Parcel Intent	Area	RT Reference
Area A Deposited Plan 546130	Easement		
Area B Deposited Plan 546130	Easement		
Area C Deposited Plan 546130	Easement		
Area D Deposited Plan 546130	Easement		
Area E Deposited Plan 546130	Easement		
Area F Deposited Plan 546130	Easement		
Area G Deposited Plan 546130	Easement		
Total Area		0.0000 Ha	

Schedule / Memorandum

Supporting Document

Plan Type & No:	LT 546130	PATERSONPITTSGROUP Surveying * Planning * Engineering Your Land Professionals www.ppgroup.co.nz 0800 PPGROUP
Lodging Surveyor:	Kurt Alistair Bowen	
Firm:	Paterson Pitts Group (Dunedin)	
Surveyors Reference:	17047 Cycleway	
RMA Reference:		
Survey Description:	Easements over Lots 1 and 2 DP 16674, Otago Harbour Board Endowment, Lot 1 DP 22138 and Main South Line	

SCHEDULE OF EASEMENTS IN GROSS			
PURPOSE	SHOWN	SERVIENT TENEMENT Burdened Land	GRANTEE
Right to convey electricity.	A	Lot 1 DP 16674 (RT 95148)	Aurora Energy Limited
Right to convey electricity.	B	Lot 2 DP 16674 (RT 95148)	
Right to convey electricity.	C	Otago Harbour Board Endowment (OT249/279)	
Right to convey electricity, Right to transform electricity.	D	Lot 1 DP 22138 (OT13C/693)	
Right to convey electricity.	E	Main South Line (No current RT)	
Right to convey electricity.	F	Lot 1 DP 22138 (OT13C/693)	
Right to convey electricity.	G	Lot 1 DP 22138 (OT13C/693)	



Land District: Otago

Land District: Otago
Dataset Type: Parcels without Survey Information

Digitally Generated Plan

Easements over Lots 1 and 2 DP 16674, Ottago Harbour Board Endowment, Lot 1 DP 22138 and Main South Line

Surveyor: Kurt Alistair Bowen

Firm: Peterson Pitts Partners Ltd (Dunedin).

Title Plan
LT 546130
DRAFT



Diag. AD
Non Primary

Lot 1 DP 3938

Main South Line

Lot 1 DP 22138

Harbour Board Endowment Block IX Otago Harbour Survey District

T 4/5

Land District: Otago	Easements over Lots 1 and 2 DP 16674, Otago Harbour Board Endowment Lot	Surveyor: Kun Alstair Bowen	Title Plan
Deed Type: Permit without Survey Information	1 DP-22138 and Main South Line	Firm: Paterson Pitts Partners Ltd (Dunedin)	LT 546130
Digitally Generated Plan			DRAFT
Generated on: 14/02/2021 08:58am Page 8 of 7			

BEFORE SIGNING THE AGREEMENT

- Note: the purchaser is entitled to a copy of any signed offer at the time it is made.
- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - the purchaser is not a New Zealand citizen. There are strict controls on the purchase of a property in New Zealand by persons who are not New Zealand citizens.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross-lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weather-tightness and soundness of construction of any dwellings or other buildings on the land.
- Both parties may need to have customer due diligence performed on them by their lawyer or conveyancer in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 which is best done prior to the signing of this agreement.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross-lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- 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 purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long-term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long-term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 8.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels' list in Schedule 2 is accurate.
- Both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

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

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AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE:

VENDOR:
Port Otago Limited
Contact Details:

VENDOR'S LAWYERS:
Firm: Anderson Lloyd
Individual Acting: Alistair Moore
Email: alistair.moore@al.nz
Contact Details:
Private Bag 1959
Dunedin 9054
P: 03 477 3973
F: 03 477 3184

Email Address for Service of Notices:
(subclause 1.4)
alistair.moore@al.nz

PURCHASER:
Dunedin City Council

Contact Details:

PURCHASER'S LAWYERS:
Firm: In-house Lawyer
Individual Acting: Karilyn Canton
Email: Karilyn.Canton@dcc.govt.nz
Contact Details:
PO Box 5045
Moray Place
Dunedin 9058
P: 03 477 400

Email Address for Service of Notices:
(subclause 1.4)
Karilyn.Canton@dcc.govt.nz

LICENSED REAL ESTATE AGENT:

Agent's Name:
Manager:
Salesperson:
Contact Details:



Title Plan - LT 514183

Survey Number	LT 514183
Surveyor Reference	D5893
Surveyor	Scott Kenneth Cookson
Survey Firm	Terramark Ltd
Surveyor Declaration	I Scott Kenneth Cookson, 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 the Rules for Cadastral Survey 2010, and (b) the survey was undertaken by me or under my personal direction. Declared on 03 Nov 2017 08:33 AM

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		Deposit Date	

Territorial Authorities

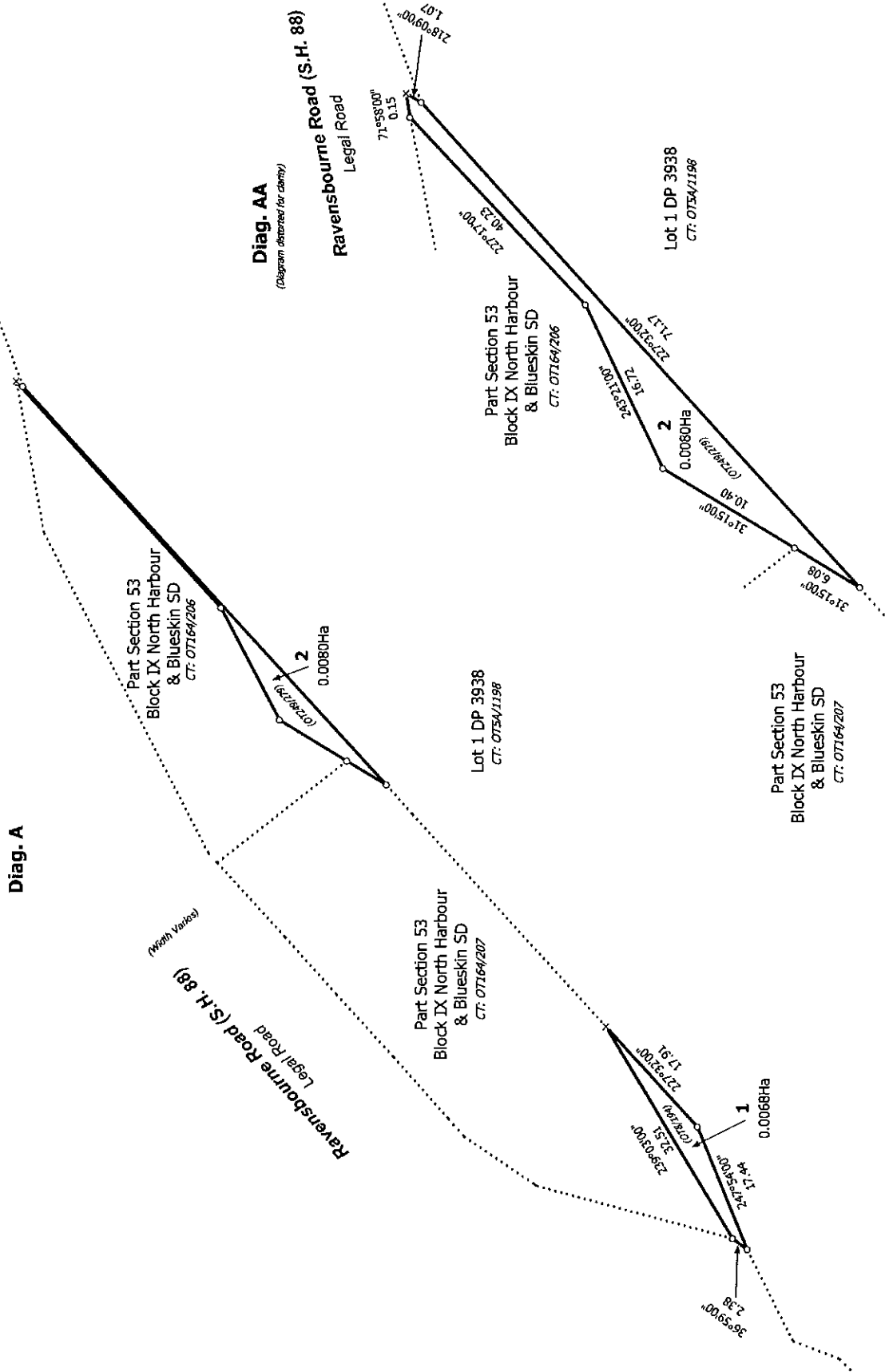
Dunedin City

Comprised In

CT OT249/279
CT OT8/194

Created Parcels

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Lot 1 Deposited Plan 514183	Fee Simple Title	0.0068 Ha	
Lot 2 Deposited Plan 514183	Fee Simple Title	0.0080 Ha	
Total Area		0.0148 Ha	





**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



Identifier
Land Registration District
Date Issued

OT249/279
Otago
15 August 1931

Part-Cancelled

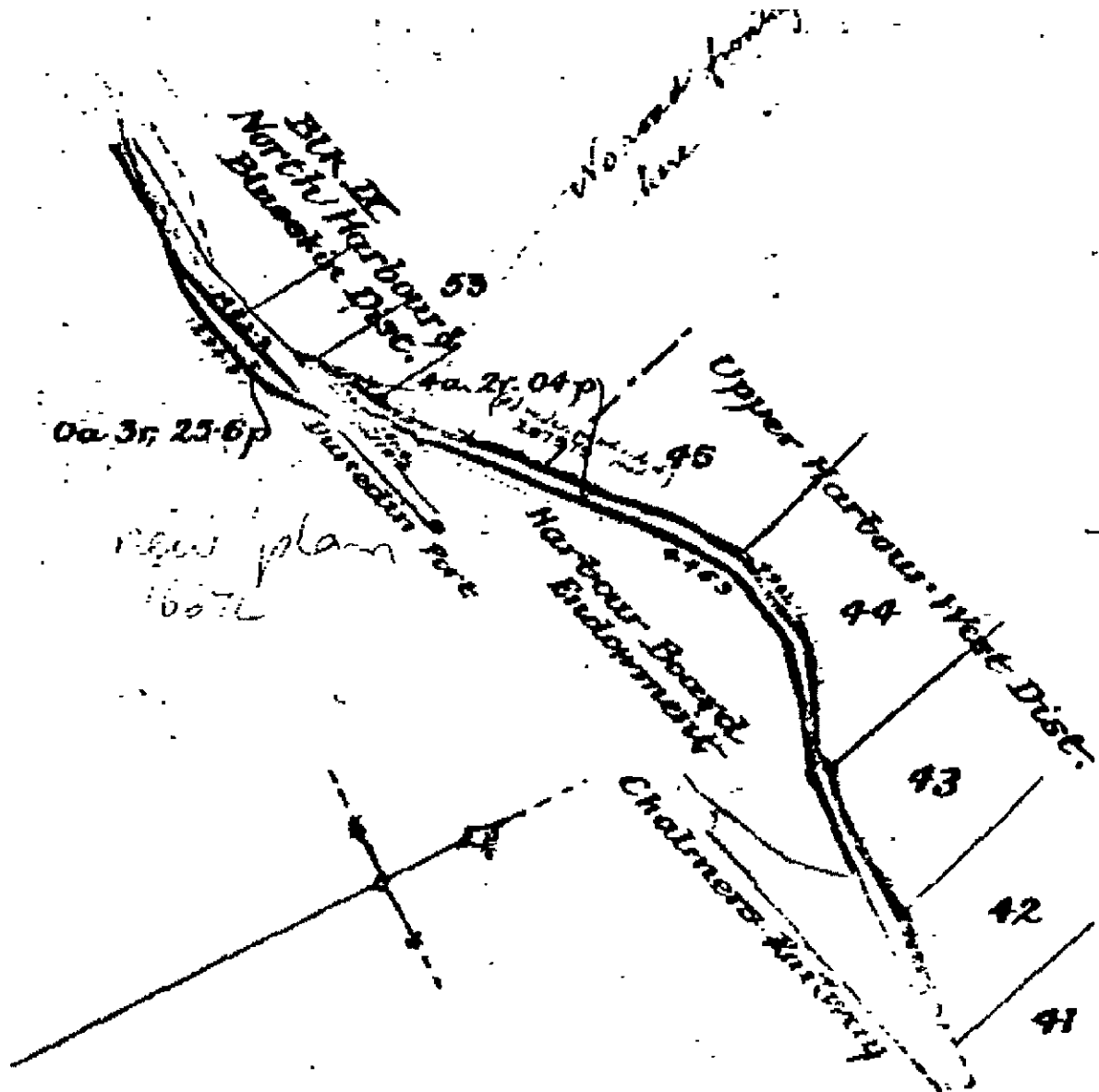
Prior References
W 5 95

Estate	Fee Simple
Area	2.1995 hectares more or less
Legal Description	shown coloured green on a Plan deposited in the office of the Chief Surveyor at Dunedin as Railway 10

Registered Owners
Port Otago Limited

Interests

CT OT1D/923 issued for DP 11007
CT OT5A/1198 issued for part Lot 1 DP 3938
CsT OT7C/260 - OT7C/261 issued for Lot 1 and 2 respectively on DP 16674
Transfer 109194 of the part coloured burnt sienna and edged red and said within land marked (a) and (b) on plan
3938 to The Mayor Councillors and Burgesses of the Borough of West Harbour for the purposes of a road -
13.6.1932 at 3.00pm



APPENDIX TWO: COUNCIL OFFICERS EVIDENCE

Memorandum

TO: Lianne Darby, City Planning

FROM: Andrew Mactier, Parks and Recreation

DATE: 16 November 2022

SUBJECT: **SUB-2022-156 102 RAVENSBOURNE ROAD DUNEDIN**

Hi Lianne,

Thank you for the opportunity to comment on the consent for subdivision of Title OT249/279 (Part Cancelled) so as to affect a boundary adjustment between titles.

As I understand the proposal, the applicant proposes to have the esplanade reserve requirement waived on the basis that the land is going to be transferred into Council ownership, as identified in the sales and purchase agreement between the applicants and the Dunedin City Council attached to the application.

The proposal to waive the esplanade reserve requirement will contravene Rule 10.3.1.1.X of the 2GP and is therefore assessed as a restricted discretionary activity.

Parks and Recreation Services (PARS) have an interest in this resource consent as any land taken for esplanade reserve purposes would be owned and managed by the Dunedin City Council (DCC), with PARS as the administering body of the reserve.

PARS supports the waiver of the esplanade reserve requirements on the basis the southern parcel will be transferred to the ownership of DCC. This will formalise an existing arrangement where the southern parcel is currently managed by a combination of the DCC Transport department (the formed Dunedin-Port Chalmers pedestrian/cycle path), with the balance of the area being managed by PARS (see **Figure 1**). The same management regime applies to land to the east and west of the site subject to the application. Ownership of the land parcels to the east and west of the application site sits with the DCC.

Transfer of the application site to DCC will help to ensure key components an esplanade reserve is created for is achieved, as set out below;

- provision of public access to and through the application site is secured
- enables public recreational use of the application site
- protects the natural character of the coastal margin



Figure 1: Site subject to SUB-2022-156, showing area currently managed by PARS shaded in light green and olive.

Please do not hesitate to contact me if you have any questions.

Regards,
 Andrew Mactier
 Parks and Recreation Planner
 Parks and Recreation Services