Council Meeting Agenda - 22 July 2020

Meeting is held in the Council Chamber, Level 2, Philip Laing House
144 Rattray Street, Dunedin

Members:

Cr Andrew Noone, Chairperson	Cr Carmen Hope
Cr Michael Laws, Deputy Chairperson	Cr Gary Kelliher
Cr Hilary Calvert	Cr Kevin Malcolm
Cr Michael Deaker	Cr Gretchen Robertson
Cr Alexa Forbes	Cr Bryan Scott
Hon Cr Marian Hobbs	Cr Kate Wilson

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Liz Spector, Committee Secretary

22 July 2020 09:00 AM

Agenda Topic — Page

1. APOLOGIES

No apologies were received prior to publication of the agenda.

2. ATTENDANCE

Staff present will be identified.

3. CONFIRMATION OF AGENDA

Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.

4. CONFLICT OF INTEREST

Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

5. PUBLIC FORUM

Members of the public may request to speak to the Council.

5.1 Raewynne Pedofski will speak to the Council about port noise and emissions.

6. PRESENTATIONS

6.1 ORC staff member Robyn Zink will present information about Enviroschools to the Council.

7. CONFIRMATION OF MINUTES 4

The Council will consider minutes of the 24 June 2020 and 8 July 2020 Council Meetings as true and accurate records, with or without changes.

7.1 Minutes of the 24 June 2020 Council Meeting 4

Minutes of an ordinary meeting of Council held in the Council Chamber on Wednesday 24 June 2020 at 10:00 a.m.

Membership

Hon Marian Hobbs	*(Chairperson)*
Cr Michael Laws	*(Deputy Chairperson)*
Cr Hilary Calvert	
Cr Alexa Forbes	
Cr Michael Deaker	
Cr Carmen Hope	
Cr Gary Kelliher	
Cr Kevin Malcolm	
Cr Andrew Noone	
Cr Gretchen Robertson	
Cr Bryan Scott	
Cr Kate Wilson	

Welcome

Hon Cr Marian Hobbs welcomed Councillors, members of the public and staff to the meeting at 10:05 a.m.

1. APOLOGIES

No apologies were received.

2. ATTENDANCE

Sarah Gardner	*(Chief Executive)*
Nick Donnelly	*(General Manager Corporate Services and CFO)*
Gavin Palmer	*(General Manager Operations)*
Sally Giddens	*(General Manager People, Culture and Communications)*
Richard Saunders	(*General Manager Regulatory)*
Gwyneth Elsum	*(General Manager Policy, Strategy and Science)*
Amanda Vercoe	*(Executive Advisor)*
Liz Spector	*(Committee Secretary)*

Other staff present included Mike Roesler (Manager Corporate Planning), Lisa Hawkins (Team Leader RPS, Air and Coast), Robert Body (Manager IT), Joanna Gilroy (Manager Consents), Peter Kelliher (Legal Counsel), Shayde Bain (Comms and Engagement Advisor), Anita Dawe (Manager Policy and Planning), Eleanor Ross (Manager Comms Channels), and Ryan Tippet (Media Comms Lead).

3. CONFIRMATION OF AGENDA

Cr Hobbs said Chief Executive Sarah Gardner had requested a late paper to be added to the agenda related to a request from Cr Laws. She then asked for a motion to accept the late paper.

Resolution

That the Council accept the late paper, RPS Reference Group Membership, for consideration.

Moved: Cr Wilson
Seconded: Cr Hope
CARRIED

4. CONFLICT OF INTEREST

No conflicts of interest were advised.

5. PUBLIC FORUM

Mr Stephen Dickson spoke to the Council about rabbit and possum control. The Councillors asked Mr Dickson questions and thanked him for speaking.

Ms Leslie Van Gelder spoke about a consortium comprised of community groups and other stakeholders that is working to address a predator-free Central Otago region. The group has asked that ORC partner with them, the Department of Conservation and QLDC to create a predator-free sanctuary and suggested a contribution of $11million over five years. The Councillors asked several questions and thanked Ms Van Gelder for her work.

A group of protesters interrupted the meeting and distributed a leaflet to the meeting members.

6. CONFIRMATION OF MINUTES

Resolution

That the minutes of the (public portion of the) Council meeting held on 27 May 2020 be received and confirmed as a true and accurate record, with or without corrections.

Moved: Cr Noone
Seconded: Cr Malcolm
CARRIED

7. ACTIONS (STATUS OF COUNCIL RESOLUTIONS)

The Councillors reviewed the outstanding actions.

8. CHAIRPERSON'S AND CHIEF EXECUTIVE'S REPORTS

8.1. Chairperson's Report and 8.2 Chief Executive's Report

A fire alarm was set off at 10:55 a.m. and the building was evacuated. The meeting resumed at 11:05 a.m.

Resolution

That the Chairperson's and Chief Executive's reports be received.

Moved: Cr Calvert
Seconded: Cr Noone
CARRIED

Resolution

That the Chief Executive thank volunteers and staff who responded to requests from Central Government under urgency related to COVID-19 funding.

Moved: Cr Malcolm
Seconded: Cr Calvert
CARRIED

9. MATTERS FOR COUNCIL DECISION

9.1. Adoption of Annual Plan 2020-2021

Mike Roesler (Manager Corporate Planning) and Nick Donnelly (GM Corporate Services) were present to speak to the Annual Plan adoption paper. The Councillors thanked the team for incorporating the changes discussed at the two previous Finance Committee meetings, noting there was no increase to General Rates, and a 3.9% increase to targeted rates. Cr Kelliher asked if staff thought anything critical had been eliminated from the annual plan. Chief Executive Sarah Gardner said she thought staff had put together a work program that responded to priorities of Council and its day to day demands. She said she would have liked to be able to do more, but fiscal responsibility is important especially noting the current uncertainties related to COVID-19.

Cr Hope requested a change to the Chair's foreword included in the Annual Plan to remove the word "hopes" from the fourth paragraph. Chairperson Hobbs said she was happy to make that

change. Cr Calvert suggested the schedule of fees and charges should state "actual and reasonable" in the section about consultant expenses. Richard Saunders (GM Regulatory) said the actual and reasonable test applies to all costs under the RMA. He said a reference to actual and reasonable could be included rather than change the section. He offered to work with Mr Roesler to give effect to Cr Calvert's suggestion.

After further discussion, Chairperson Hobbs asked for a motion.

Resolution

That the Council:

1) ***Receives*** *this report.*
2) ***Notes*** *the recommendations from the 3 June 2020 & 10 June 2020 Finance Committee meetings are reflected in the financial forecasts 2020-21 and associated work programme.*
3) ***Approves*** *the Revenue and Financing Policy.*
4) ***Adopts*** *the Otago Regional Council Annual Plan 2020-21 as circulated with this report, with changes as described.*

Moved: Cr Noone
Seconded: Cr Wilson
CARRIED

9.2. Adoption of Rating Resolution 2020-2021

Nick Donnelly (GM Corporate Services) was present to answer questions about the Rating Resolution. After a general discussion, Cr Calvert made a motion.

Resolution

That the Council:

1) ***Receives*** *this report.*
2) ***Adopts*** *the Rating Resolution for the 2020/2021 financial year*

Moved: Cr Calvert
Seconded: Cr Forbes
CARRIED

9.3. Procurement Policy Update

Nick Donnelly (GM Corporate Services) was present to speak to the report which was provided to update the Councillors on the ORC Procurement Policy. A discussion was held about a "buy local" requirement in the policy and the Councillors asked to amend the recommendation 2(a)(i) to say good and services. They also asked to add that the completed policy be circulated to the Council when finalised. Cr Calvert mentioned that language should be consistent throughout, such as the use of the words "will, must or might". Mr Donnelly said the updated policy will be circulated.

Resolution

That the Council:

1) ***Receives** this report.*
2) ***Endorses** the following additions to the procurement principles included in the Procurement Policy:*
    a. *Emphasise the requirement to buy local and provide examples of the expectation of what is required to meet the principle of buying local including:*
        i. *Require that a minimum of 50% of quotes used to procure goods and services above $5,000 are from local suppliers (where practical).*
        ii. *Include a local supplier component in the weighting of tender assessments.*
    b. *To define "local supplier" to ensure that intention of council to keep funds in the local economy is being met*
3) ***That** the completed policy be circulated to Councillors for information.*

Moved: Cr Calvert
Seconded: Cr Hope
CARRIED

Cr Laws left the meeting at 11:55 am.
Cr Laws returned to the meeting at 11:57 am.
Cr Hope left the meeting at 11:58 am.
Cr Hope returned to the meeting at 12:03 pm.

Meeting adjourned at 12:20 until 1 p.m. for lunch.

The meeting was called back into session at 1 p.m.

9.4. Consolidated Otago Regional Council Delegations Manual

Peter Kelliher (ORC Legal Counsel), Joanna Gilroy (Manager Consents) and Richard Saunders (GM Regulatory) were present to speak to the report. Mr Kelliher noted a correction to one of the delegations as presented to Council in section 18.1 of the proposed Delegations Manual, sec 268A. A discussion was held about the proposed change, with the Councillors indicating a desire to retain the original language. After further consideration and input from staff, it was decided to change sec 268A to read "settle a dispute or issues at stake at mediation or other alternative dispute resolution sessions where the agreements made are not inconsistent with previous Council resolutions". This change would also be carried through to the delegation for Consent Memoranda, draft Consent Orders and side agreements.

A discussion was then held about the delegation for Sec 18.2 and 18.3 of the manual addressing High Court, Court of Appeal and Supreme Court actions. The Councillors determined to amend this delegation to the Chief Executive in consultation with the Chairperson. Cr Laws asked that the finalised Delegations Manual be uploaded to the ORC website for public access.

Cr Deaker left the meeting at 01:48 pm.
Cr Deaker returned to the meeting at 01:52 pm.

There were no further discussions and Chairperson Hobbs asked for a motion.

Resolution
That the Council:

1) ***Notes*** *the contents of the report.*
2) ***Notes*** *the attached draft Otago Regional Council Delegations Manual ("the draft Manual").*
3) ***Notes*** *the draft Manual has been prepared by staff, and the regulatory delegations have been independently reviewed.*
4) ***Notes*** *the draft Manual consolidates all Council delegations into one document.*
5) ***Approves*** *the delegation of powers, functions and duties under the Building Act 2004 to staff (see paragraph 11); and*
6) ***Approves*** *the delegations as provided in the draft Manual with amendments:*
    a. *Change wording of Sec 268A delegations to read "…not inconsistent with previous Council Resolutions."*
    b. *Change delegation for High Court, Court of Appeals and Supreme Court appeals to: Chief Executive in consultation with the Chairperson.*
7) ***Notes*** *that should you require further information on the draft Manual, in the interim the current delegations will continue to be exercised.*

Moved: Cr Scott
Seconded: Cr Forbes
CARRIED

After a query from staff, Cr Calvert submitted the following secondary motion:

Resolution
That all current matters before mediation continue under existing delegation.

Moved: Cr Calvert
Seconded: Cr Forbes
CARRIED

9.5. Transfer of Building Consent Authority to ECan

Joanna Gilroy (Manager Consents) and Richard Saunders (GM Regulatory) were present to answer questions about the report which was provided to consider a Statement of Proposal for consultation to transfer Building Consent Authority functions to Environment Canterbury. There were no questions and Cr Laws submitted a motion.

Resolution

That the Council:

1) ***Approves*** *the proposed Statement of Proposal to transfer Otago Regional Council's Building Consent Authority functions under the Building Act 2004 to Environment Canterbury.*

Moved: Cr Laws
Seconded: Cr Wilson
CARRIED

10. MATTERS FOR NOTING

10.1. PWC Strategic Asset Review

Nick Donnelly (GM Corporate Services) was present to answer questions about the Strategic Asset Review that was undertaken by PWC. Cr Calvert asked to strike out the third recommendation which said the Council agreed to maintain the existing dividend policy as outlined in the Statement of Corporate Intent. Cr Noone said as the SCI wouldn't be adopted until September or October 2020, the existing policy would remain in place until that time. Cr Malcolm suggested that any questions of change in ownership percentage would form part of the Long Term Plan process. Mr Donnelly said any proposed changes to ownership would have to go through consultation. Cr Wilson said that Chalmers Properties was similar to a CCO and she indicated she may ask for a report to be provided to the Council on the pros and cons of such a designation. She later indicated she would withdraw her request for a report at this time.

Cr Laws queried if ORC should flag with the Port that the Council may be interested in having discussions about a potential separation of the Port operations and Chalmers Properties. Cr Malcolm said Port Otago Board Chair Paul Rea will meet with Council to explain the Port's current position, to talk about the SCI and to discuss ways forward. Cr Malcolm suggested to seek a review of structures before this discussion would not be beneficial. Cr Hope said she agreed with Cr Malcolm and asked that the entire Board of Directors come to the meeting. Cr Malcolm said he would arrange this. He then submitted a motion:

Resolution

That the Council congratulate the Port of Otago Board of Directors, their management, and staff for ensuring the strong financial position of the port and their ongoing support for the Otago Regional Council and the residents of Otago.

Moved: Cr Malcolm
Seconded: Cr Hope
CARRIED

Cr Malcolm then moved the following:

Resolution

That the Council:

1) ***Receives** this report.*
2) ***Notes** the significant returns generated by Port Otago Limited over the last 30 years.*
3) ***Agrees** to maintain Council's existing 100% ownership structure for Port Otago Limited.*
4) ***Notes** that discussion is ongoing with the Board of Port Otago regarding Council's desired level of dividends and that this will continue as the Statement of Corporate Intent and Long-Term Plan 2021-31 are progressed and finalised.*

Moved: Cr Malcolm
Seconded: Cr Deaker
CARRIED

10.2. COVID-19 Recovery - June 2020 Update

A general discussion was held about the COVID-19 Recovery update report and the Councillors thanked staff for the information. After the discussion, Chairperson Hobbs asked for a motion.

Resolution

That the Council:

1) ***Receives*** *this report.*
2) ***Notes*** *the Otago Regional Council remains actively engaged in progressing work related to COVID-19 recovery for Otago.*
3) ***Notes*** *resourcing for the green jobs focused work is being considered and is likely to be able to be met from existing budget.*
4) ***Notes*** *that as already has been happening, we will continue to seek engagement from Councillors on priorities and opportunities as the work progresses.*

Moved: Cr Hope
Seconded: Cr Forbes
CARRIED

10.3. ECO Fund reports

Shayde Bain (Communications and Engagement Advisor) was present to answer questions about the report. Cr Deaker thanked Ms Bain for her work with the ECO Fund and said the project has been valuable in promoting the work and image of the ORC. Cr Hope asked how the Council could further promote this good work. Cr Deaker said one of the conditions of accepting the grants was a requirement that each recipient must acknowledge ORC involvement in their projects.

Cr Scott noted the ECO Fund is strategic and enduring and asked when a review of the programme is due. Cr Deaker suggested it would be a good idea to do a formal Council review of the fund. Sally Giddens (GM People, Culture and Communications) said this would be a worthwhile conversation, but if the Council wants to move to a wider context of environmental activities and uptake of the fund, discussions would need to be conducted during Long Term Plan deliberations. Cr Forbes agreed with the idea of a review and said when moving into LTP work, ways to improve and learn from the previous two years would be crucial. Ms Bain said a survey will be submitted to each of this year's applicants which could become part of the review. Cr Robertson said a review should include looking at the Fund's criteria. She said the purpose of the fund is local government at its core, involving local people and the projects they are interested in. She noted the upcoming biodiversity report could help the ORC invest strategically. Cr Wilson reminded Council that not everyone is asking for money, some are asking for assistance or other kinds of help.

After the discussion was concluded, Chairperson Hobbs asked for a motion.

Resolution

That the Council:

1) ***Receives*** *this report with thanks.*
2) ***Notes*** *the Otago Regional Council remains actively engaged in progressing work related to COVID-19 recovery for Otago.*
3) ***Notes*** *resourcing for the green jobs-focused work is being considered and is likely to be able to be met from existing budget.*

4) ***Notes*** *that as already has been happening, we will continue to seek engagement from Councillors on priorities and opportunities as the work progresses.*

Moved: Cr Deaker
Seconded: Cr Forbes
CARRIED

10.4. Late Paper - RPS Reference Group Membership

A general discussion was held about the paper which was provided to inform the Council names of the applicants who had been appointed to the RPS Reference Groups along with the Councillor members. Anita Dawe (Manager Policy and Planning) and Lisa Hawkins (Team Leader RPS, Air and Coast) were available to answer questions. Cr Laws asked that Councillor names be added to the list and then the membership be published on the website. Ms Hawkins and Ms Dawe agreed to amend the attachment and circulate to the Councillors. Chairperson Hobbs then moved:

Resolution

That the Council:

1) ***Notes*** *this report.*

Moved: Cr Hobbs
Seconded: Cr Laws
CARRIED

11. RECOMMENDATIONS ADOPTED AT COMMITTEE MEETINGS

11.1 Recommendations of the Public Portion of the 3 June 2020 Finance Committee and 11.2 Recommendations of the Public Portion of the 10 June 2020 Finance Committee

Cr Wilson noted as part of a resolution made on 3 June to ensure community consultation on design, cost and intended outcomes for infrastructure schemes, her intent was flood and drainage, as opposed to just drainage. Staff and Councillors agreed this was understood.

Resolution

That recommendations of the public portion of the 3 June 2020 Finance Committee and 10 June 2020 Finance Committee are adopted.

Moved: Cr Noone
Seconded: Cr Malcolm
CARRIED

12. RESOLUTION TO EXCLUDE THE PUBLIC

Resolution

That the public be excluded from the following items:

1.1 Port Otago Board Appointment (LGOIMA 48(1)(a), 7(2)(a) and 7(2)(h))

1.2 Request increase to Chief Executive financial delegation in relation to construction of SH8 Tarras Stock Truck Effluent Disposal facility (LGOIMA 48(1)(a), 7(2)(h))

Moved: Cr Wilson
Seconded: Cr Hope
CARRIED

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act or section 6 or section 7 or section 9 of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.

13. CLOSURE

There was no further public business and Chairperson Hobbs declared the meeting closed at 03:12 pm.

_____ _____
Chairperson Date

Minutes of an extraordinary meeting of Council held in the Council Chamber at Level 2 Philip Laing House, 144 Rattray Street, Dunedin on Wednesday 8 July 2020 at 9:00 am

Membership

Hon Marian Hobbs	*(Chair)*
Cr Michael Laws	*(Deputy Chairperson)*
Cr Hilary Calvert	
Cr Michael Deaker	
Cr Alexa Forbes	
Cr Carmen Hope	
Cr Gary Kelliher	
Cr Kevin Malcolm	
Cr Andrew Noone	
Cr Gretchen Robertson	
Cr Bryan Scott	
Cr Kate Wilson	

Welcome

Deputy Chairperson Laws welcomed Councillors, members of the public and staff to the meeting at 09:02 am.

1. APOLOGIES
There were no apologies.

2. ATTENDANCE

Sarah Gardner	*(Chief Executive)*
Nick Donnelly	*(General Manager Corporate Services and CFO)*
Gavin Palmer	*(General Manager Operations)*
Sally Giddens	*(General Manager People, Culture and Communications)*
Richard Saunders	(*General Manager Regulatory)*
Gwyneth Elsum	*(General Manager Policy, Strategy and Science)*
Amanda Vercoe	*(Executive Advisor)*
Liz Spector	*(Committee Secretary)*

Also present were Eleanor Ross (Manager Communications Channels) and Ryan Tippet (Media Communications Lead).

3. CONFIRMATION OF AGENDA
The agenda was confirmed as published.

4. CONFLICT OF INTEREST
No conflicts of interest were advised.

5. PUBLIC FORUM
No public forum was held.

6. MATTERS FOR COUNCIL DECISION
6.1. Consider removal of Chairperson
Cr Laws opened discussion on the request to remove the Chairperson. Cr Laws read the motion that had been submitted via email from Cr Calvert and seconded by Cr Kelliher, which stated that "the Council removes the Hon Marian Hobbs from the Office of Chairperson of the Otago Regional Council". Cr Laws said he would enforce the 5-minute speaking rule as provided in Standing Orders, but asked that Cr Hobbs be allowed to speak to the motion immediately following the mover and seconder as well as last. The Councillors agreed to this.

Cr Laws then asked Cr Calvert if she wished to speak to the motion as she was the mover. Cr Calvert said the Councillors were elected by the people of Otago and in accepting their roles, and they agreed to work for the region using their best skills and judgements. She said those Councillors are given the authority to choose a leader from one of their own and said she would prefer that Cr Andrew Noone be elected Chairperson. She said she understood Cr Noone was prepared to put his name forward for the role. Cr Laws asked the motion seconder, Cr Kelliher to speak to the motion.

Cr Kelliher said although disappointed to do so, he supported the motion to replace the Chairperson. He said his reasons had nothing to do with water, but with governance and he would also support Cr Noone who he hopes will get the Council back on track.

Cr Laws then asked Cr Hobbs if she would like to speak to the motion. She said she would and said it was her hope that the Council continue the work on water quality. She said she had

asked for a response from the nine Councillors who had signed the letter requesting her removal, but as no responses were given, she could only surmise why. She said indications were that some thought she was too aligned to Central Government, some were concerned over her conversations with MfE about the possibility of commissioners being put in place, and some were concerned she was too close to ORC staff, and she had even heard rumours that some felt she was too old for the job. After speaking for her allotted five minutes, Cr Laws asked if she would like additional time and she said she would. Cr Laws asked the Councillors if they would approve granting Cr Hobbs additional time and it was agreed. Cr Malcolm said he did not agree and asked that his disagreement be noted. Cr Hobbs then continued speaking to the motion and ended by encouraging the Councillors to meet their promise to Minister Parker to notify the Regional Policy Statement before the end of the year. She also asked Cr Laws to lead the charge to rebuild a unified rural community in Central Otago.

Cr Laws then asked if any other Councillors wished to speak to the motion. Cr Deaker acknowledged the challenges that Cr Hobbs had taken on by agreeing to be Chair. He thanked her for all of the work she had put into the role, but said ultimately he supported the motion. Cr Forbes spoke to the motion. She said with Cr Hobbs as Chairperson, ORC was provided the opportunity to fast track environmental policy through her connections and capabilities. She said Cr Hobbs had been selfless in continuing with her work on water and urged the Councillors to find a way forward. Cr Scott also spoke against the motion. He said the role of Chairperson is challenging, particularly in these challenging environmental and economic times. He thanked Cr Hobbs for her achievements which included working constructively with staff, endeavouring to work with many stakeholders, and embracing the treaty obligations with iwi partners. Cr Robertson then spoke to the motion. She thanked Cr Hobbs for putting a renewed focus on the work ORC is undertaking. She said it is a challenging time for regional councils across New Zealand. Cr Robertson noted there are many different skills around the Council table and said the Councillors need to learn to work as a team to make lasting change. She said she would support Cr Noone if he were elected Chairperson as he would be a uniting influence. She also stated she hoped diversity will continue to be embraced around the table, including retaining women in key leadership roles. No other Councillors requested to speak to the motion.

Cr Laws then spoke. He said he rejected the view that Council is ignoring national standards and proposed a better way to implement policy less divisively. He urged inclusivity in partnering to improve the environment and said the work over the next two years would govern the next two decades. Cr Laws said the job of the Chairperson is to work with all of council and the others around the table can make this happen.

Cr Hobbs was granted a final speaking time. She noted frustrations by some of the Councillors that ORC policy work continued through the pandemic shutdown, however, she said she also had many reasons to stop engaging during that time, but she never stopped working for the environment. She said she would continue to fight against those who thought they owned the water and land and who felt they had no responsibility to others for what they did on their own land.

Cr Laws then put the motion:

Resolution

That the Council

*1) **Removes** the Hon. Marian Hobbs from the Office of Chairperson of the Otago Regional Council.*

Moved: Cr Calvert
Seconded: Cr Kelliher
CARRIED 9 - 2 (1 abstention)

Cr Scott called for a division. The results were:

FOR: Cr Calvert, Cr Deaker, Cr Hope, Cr Kelliher, Cr Laws, Cr Malcolm, Cr Noone, Cr Robertson, Cr Wilson
AGAINST: Cr Forbes, Cr Scott
ABSTAIN: Cr Hobbs

Several members of the public then began protesting loudly and refused to quiet down upon request of the Deputy Chairperson. Cr Laws moved to adjourn the meeting and Cr Wilson seconded the motion. The motion carried and the meeting was adjourned at 9:36 a.m. to allow time for the chamber to be cleared.

Cr Laws called the meeting back into session at 9:48 a.m.

6.2. Voting System for Election of Chairperson

Cr Laws asked for a motion to select a voting option to elect a Chairperson. Cr Wilson moved option A.

Resolution

That the Council:

1) ***Resolves Voting System A** for the election or appointment of chairperson, defined by the Local Government Act 2002.*

2) ***Agrees** that in the event of a tie under voting system A, the candidate to be excluded from the next round of voting shall be resolved by lot as described in paragraph 5*

Moved: Cr Wilson
Seconded: Cr Calvert
CARRIED

6.3. Election of Chairperson

Cr Deaker nominated Cr Noone to be Chairperson of the Otago Regional Council and Cr Malcolm seconded the motion. No further nominations were received. Cr Laws asked if there were questions for Cr Noone prior to the vote. Cr Hobbs asked that Cr Noone commit to getting the Regional Policy Statement through prior to the end of the year. Cr Noone said he was committed to the statement made to Minister Parker. Cr Scott asked Cr Noone for assurance that he would continue working with the community on the work to improve water quality in the region and Cr Noone said he would. Cr Forbes asked if Cr Noone would continue

to give a voice to iwi, local residents, environmentalists, and anyone concerned about water quality and land in Otago. Cr Noone said he would.

There were no further questions for Cr Noone and Cr Laws put the motion.

Resolution

That Cr Andrew Noone be elected Chairperson of the Otago Regional Council.

Moved: Cr Deaker
Seconded: Cr Malcolm
CARRIED

Cr Noone read the Chairperson's Declaration and his signature was witnessed by Chief Executive Gardner and Cr Noone took the chair. He thanked the Councillors for their vote of confidence and said he would work to ensure the Councillors worked as a team, taking into account each of their strengths. He said robust debate would make for stronger decisions and looked forward to the future work of the Council.

7. CLOSURE

There was no further business and Chairperson Noone declared the meeting closed at 10:04 am.

_____ ____8/7/2020_____
Chairperson Date

8.1. Actions

Outstanding Actions from Resolutions of the Council Meeting

REPORT TITLE	MEETING DATE	RESOLUTION	STATUS	UPDATE
9.1 Decision Making Structure	13 Nov 2019	That a review of the committee structure including membership be reviewed at 6-months.	IN PROGRESS – Governance	Report will be brought to Council in July 2020.
10.3 Ratifying Otago Local Authorities Triennial Agmt	29 January 2020	That issues for potential consideration by the Mayoral Forum be considered at the next Strategy and Planning meeting.	IN PROGRESS – Governance	Report will be included in an upcoming Strategy and Planning Committee Agenda.
GOV1921 COVID-19 Recovery Framework	27 May 2020	Develop a structure that sits below Council with iwi and governors from each ward to work on strategic priorities.	ASSIGNED – Corporate Services	
OPS1006 February 2020 Flood Recovery - Progress and Estimated Costs	27 May 2020	Develop options for addressing flood scheme reserve deficits, including use of the ORC Emergency Response Fund and the Kuriwao Fund for consideration by Council.	ASSIGNED – Operations	Update: Awaiting advice from government on ORC's applications for funding contribution. (Gavin Palmer)
Notice of Motion - Commerce Commission Submission on Aurora Energy price increase	27 May 2020	Cr Laws to prepare a submission to the Commerce Commission on the proposal by Aurora Energy to increase regional electricity supply prices between 16% and 23% and circulate draft to Councillors prior to submission.	IN PROGRESS – Cr Laws	

PWC Strategic Asset Review	24 June 2020	Cr Malcolm to alert the Port Otago Board Chair of ORC desire to discuss various ownership strategies between Port Otago and ORC in the near future.	ASSIGNED – Cr Malcolm	
Procurement Policy Update	24 June 2020	Circulate the updated Procurement Policy post edits discussed at the meeting.	ASSIGNED – Nick Donnelly, Corporate Services	
Port Otago Director appointment	24 June 2020 (PE meeting)	The Chief Executive produce a policy covering governance appointments within the next two months.	ASSIGNED – Governance	

9.1. Chairperson's Report

Prepared for: Council

Activity: Governance Report

Author: Cr Andrew Noone, Chairperson

Date: 15 July 2020

TRANSPORT

[1] Regional Relationship South Island Director, Jim Harland, has made contact providing an update on the Connecting Dunedin project, business case studies around Otago, and Passenger Transport matters.

OTAGO MAYORAL FORUM

[2] Correspondence from Mayor Boult (on behalf of the Mayoral Forum) outlining a potential Economic Recovery Manager role for Otago, possibly a joint Otago/Southland role now that there is doubt over the future of Tiwai Point. This is to be discussed at the next Mayoral Forum on 31 July.

REGIONAL SECTOR GROUP

[3] I attended the Regional Sector Group meeting in Wellington with Sarah Gardner on 17 July. The topics for discussion were:

1. Water Reform – Essential Freshwater / Action for Healthy Waterways
2. Regional CEO update
3. Biodiversity / Biosecurity update
4. Transport
5. Jobs for Nature

DRAFT COMMITTEE STRUCTURE

[4] Councillors Robertson, Laws, myself and the CEO met last week to progress the new Committee structure. Our thoughts at this stage are:

[5] ***Standing Committees***

- Regulatory (Subcommittees Objection/Commissioner Appointment).
- State of the Environment/Economy.
- Community Implementation.
- Finance (Subcommittees Audit and Risk/Port Liaison) Public Transport.
- Strategy and Planning.
- Resilience.
- Governance/Community Engagement.

[6] ***Committees of Council***

- Mana to Mana.
- Employment Committee.
- Regional Transport Committee (Connecting Dunedin/Way to Go), Emergency Management Otago.

[7] Please note the Infrastructure Committee is disestablished, with papers going to either State of Environment, Strategy and Planning, Community Implementation, or straight to Council if it is an urgent matter such as flood response.

[8] The plan would be to workshop this proposal, settle on structure, roles and responsibilities for Councillors, and adoption at the 26 August Council meeting.

OTHER

[9] Over the next 6-8 weeks I intend to spend time throughout the region connecting with our Treaty partners, local iwi, and a cross-section of groups and individuals, urban and rural, so I have a better understanding of the issues and challenges that the region is confronted with. I will liaise with Councillors and Sarah to sort out a list. My hope is for the constituency Councillor(s) to accompany me.

RECOMMENDATION

That the Council:

1) ***Receives*** *this report.*

ATTACHMENTS

Nil

9.2. Chief Executive's Report

Prepared for: Council

Activity: Governance Report

Author: Sarah Gardner, Chief Executive

Date: 15 July 2020

KEY MEETINGS ATTENDED

[1] 25 June – met with Ian Hadland, Chief Executive, Fish & Game Otago

[2] 2 July – met with Department of Conservation's Director General, Lou Sanson and Deputy Director General of Corporate Services, Rachel Bruce and Aaron Fleming, Regional Director to discuss Jobs for Nature

[3] 2 July – catch-up meeting with Cr Gretchen Robertson and Cr Kate Wilson

[4] 3 July – Employment Committee

[5] 7 July – Extraordinary Council meeting

[6] 7 July – Strategy and Planning Committee meeting

[7] 8 July – met with Warren Ulusele and team, Department of Internal Affairs re Caring for Communities

[8] 8 July – Regulatory Committee meeting

[9] 14 July – met with Daniel Harmes from Platinum Recruitment

[10] 14 July –meeting with Mandy Bell from Wai Wanaka

[11] 15 July – catch-up meeting with Chair Cr Andrew Noone

[12] 15 July – met with Cr Andrew Noone, Cr Michael Laws and Cr Gretchen Robertson re ORC Governance Structure Review

[13] 16 July – met with Otago Southland Employers Association (OSEA) CEO Virginia Nicholls

[14] 17 July – attended Regional Sector Group meeting in Wellington

RECOMMENDATION

That the Council:

1) ***Receives*** *this report.*

UPDATES

Jobs for Nature/Green Projects

[15] Work continues in a number of agencies on the development of projects to achieve jobs and environmental outcomes that may be candidates for government funding. The first tranche of funding from the Ministry for the Environment was awarded last week and

there is more to follow. Otago did not have a specific bid for funding in that round hence did not receive funding. There is no word as of 15 July on progress on the $31 million sought on behalf of catchment groups, iwi partners and other stakeholders.

[16] Clarity is yet to be determined how funds will be administered to various groups, although there are existing models that may provide pathways such as the Freshwater Improvement Fund and Wilding Pines funding from Government, where ORC effectively is the holder of funds and administers them on behalf of Government. I discussed these possible models with the Department of Conservation who are looking at options on this.

[17] The benefit of the discussions and the bids made so far is the joining up of various groups and networks across Otago. This is resulting in further discussions about what might be possible and how future models might work in partnership with ORC and others to progress environmental work in areas such as riparian planting and wilding pine management. As flagged to Council previously, it will be important through the LTP process this year to determine how Council would like to realise these opportunities and what that might look like in terms of the role Council could play.

[18] My Caring for Communities discussion with the Department of Internal Affairs also considered these opportunities, the connections being made across Otago and how employment issues might be assisted by different proposals. As part of that discussion I raised a potential gap in the system related urban proposals and job opportunities.

Flood Protection Funding

[19] The award of $5 million to Otago for flood protection works last week is significant for our communities. Our flood protection schemes are imperative for the safety of our communities. They prevent the devastating harm flood damage can cause to lives and property.

[20] This funding is 64% of the total cost of the projects for which funding has been awarded. A not insubstantial contribution and saving to targeted scheme ratepayers, who would have had to meet the total cost. It allows for an accelerated programme of works that could assist in providing job certainty, if not job creation for some contractors and suppliers.

[21] My thanks to Dr Gavin Palmer, Michelle Mifflin and team for their dedication during lock down to put this proposal together and enable this funding bid to be made.

Departure of Chief Executive, Sue Bidrose from Dunedin City Council

[22] I note that Sue Bidrose departed her role at Dunedin City Council last week and wish her every happiness in her new role in Canterbury. Dr Bidrose has been a willing collaborator and contributor to the various joint work programmes and initiatives we have in Otago. I have appreciated her inclusiveness, her creativity around managing common areas e.g. the Connecting Dunedin partnership and her support for Emergency Management Otago and the Mayoral Forum.

[23] I look forward to developing a relationship with the new Chief Executive for Dunedin City when announced.

ATTACHMENTS

Nil

10.2. NESAQ Amendments Submission

Prepared for:	Council
Report No.	P&S1861
Activity:	Regulatory: Policy Development
Author:	Lisa Hawkins, Team Leader RPS, Air and Coast
Endorsed by:	Gwyneth Elsum, General Manager Strategy, Policy and Science
Date:	22 July 2020

PURPOSE

[1] To seek approval to submit the attached submission on the revised National Environmental Standard for Air Quality (NESAQ) on behalf of Council.

EXECUTIVE SUMMARY

[2] The Government is currently consulting on proposed amendments to the NESAQ – specifically around improving management of particulate matter and prohibiting mercury emissions from listed industrial processes.

[3] At the Strategy and Planning Committee meeting on 8 July 2020, Committee resolved to make changes to the proposed submission to the NESAQ, and to receive an updated submission at the July Council meeting.

RECOMMENDATION

That the Council:

1) ***Receives** this report.*
2) ***Approves** the attached submission to be submitted to the Ministry of the Environment, by 31 July 2020.*

BACKGROUND

[4] The proposed amendments to NESAQ have been brought about to bring the regulations in line with current World Health Organisation recommendations as they relate to air quality and public health.

[5] In particular, the following proposed amendments are of interest to ORC:

a. Reducing the emission standard for new solid-fuel burners to no more than 1.0g/kg2 (down from 1.5g/kg);
b. All types of new, domestic solid-fuel burners will be included under the wood-burner regulations for emission limits and thermal efficiency.
c. Retaining the existing 65% thermal efficiency standard of solid-fuel burners;
d. PM2.5 as the primary regulatory tool to manage ambient particulate matter.
e. Establishing a daily and annual standard for PM2.5; and
f. Determining polluted air sheds by comparing against daily and annual PM2.5 standards.

ISSUE

[6] In seeking to improve air quality, the proposed amendments to NESAQ will have implications for Council to address in areas of policy, monitoring and communications.

DISCUSSION

[7] A detailed overview of the amendments to NESAQ and implications for Council is provided in the report to Strategy and Planning Committee on the 8th July.

[8] Discussion at the committee meeting covered the following elements which have now been incorporated into the submission:

a. Air quality is a complex issue and in Otago it won't be resolved by regulation alone. It will need to involve a multi-agency approach across a range of parameters. For example, insulation standards for building in New Zealand are behind those set in more temperate climates and need review for improved standards, and an older housing stock with poor or under-insulated houses result in cold homes that are difficult to heat. If homes are inadequately insulated, there will be a heavy reliance on home heating in Otago and coupled with high electricity prices and issues around reliability of supply; many see wood burners as the best option. To really address air quality, particularly in the regions with colder climates, an all of government approach should be investigated.

b. Energy poverty is also a concern and barrier to many Otago communities switching to cleaner heating options. Access to free or low-cost fuels for multi-fuel or wood burners reduces the reliance on electricity. However, there may be an opportunity to address energy poverty by tackling air quality from a multi-agency perspective. For example, energy poverty would be reduced if higher building standards (e.g. insulation requirements) are implemented.

c. Providing subsidies on energy costs is an intervention which could be utilised to improve Air Quality. Through the response to Covid-19 recovery, the Government has recently announced a doubling of the Winter Energy Payment for 2020 for those on a Government benefit. Whilst being implemented in response to a pandemic, an intervention such as this may be applicable to Otago in the long term, to help combat the extreme cold and enable households to consider alternative heating options to wood burners.

d. Whilst not included in the current NESAQ, emissions from ships remain[1] excluded from NESAQ. A question as to why this remains the case is asked of MfE.

OPTIONS

[9] Attached to this report is a draft submission on the NESAQ amendments. Two versions are attached: 1) clean version for submission to MfE; 2) tracked changes version identifying amendments. It has been updated to reflect the above discussion points, and as such covers the following elements agreed at the Strategy and Planning Committee meeting:

- ORC supports the introduction of PM 2.5, as the primary regulatory tool to manage ambient particulate matter.
- ORC supports the transition to polluted airsheds being classified through PM2.5 standards.
- ORC supports the change in definition for domestic solid fuel burners.

[1] Emissions from ships are managed under the Resource Management (Marine Pollution) Regulations 1998.

- ORC supports the propose amendment off the NESAQ to reduce the emission rate for new solid-fuel burners to no more than 1.0g/kg, while noting that for our most polluted air sheds, ORC has already introduced stringency.
- ORC notes in its submission that the amendments will not result in significant improvements to air quality in Otago without implementing, non-regulatory methods and addressing existing non-compliant burners. The change to PM2.5 as the regulatory tool will result in a significant increase in exceedances of the standards in many Otago towns.
- ORC supports retaining the 65% thermal efficiency standard of solid-fuel burners.
- While Otago has not identified issues from industrial mercury emissions, it is cognisant of the issues associated with such discharges and therefore ORC supports the proposal to prohibit mercury from listed sources.

[10] Changes or further considerations are also requested of MfE, and reflect the following:

- Request for a lower emission standard for solid fuel burners to be considered in order to encourage the installation of ULEB.
- Set expectations about 'end of life' of non-compliant burners.
- That a transition period of at least two years is implemented to allow Councils to set up a monitoring programme of PM2.5 and to begin to build an appropriate dataset.
- Support from MfE to provide appropriate information that will support community education of NESAQ amendments, particularly around the likely increase in exceedances once PM2.5 is being measured.
- MfE leads a broader piece of work to address air quality which covers a multi-agency approach which includes updated building regulations, energy subsidies and education programmes.

CONSIDERATIONS

Policy Considerations

[11] The creation of, and any subsequent changes to, a National Environmental Standard will have immediate effect. Therefore, when an updated NESAQ is gazetted, ORC must, without unnecessary delay, make any necessary changes to its relevant plans. We are still in the consultation process and the latest information from MfE indicates any changes are likely to be gazetted in the first quarter of 2021.

[12] The changes to the NESAQ may require an update to the Regional Plan Air (RPA) or can simply sit over the top of the RPA. If they are required to be introduced to the RPA, this is done via an administrative process, with no community consultation required to be undertaken.

[13] The proposed amendments to NESAQ raise several issues which ORC will need to consider moving forward as part of the Air Plan review. It is proposed that these issues will form part of future workshops with Council on air quality issues for the region.

Financial Considerations

[14] Changes to the RPA to implement the NESAQ are outside of the current policy budgets however, the process will be relatively low cost. The latest induction from MfE is the updated standards are likely to be gazetted in the first quarter of 2021. Any required changes to the air plan are not budgeted nor in the policy work programme for 2020/21.

[15] Implications for compliance resourcing and processes will need to be considered further due to the implementation of more stringent standards. ORC have already begun to replace the PM10 network with PM2.5 monitoring, with installation planned to be completed by 2021, pending the purchase of two additional instruments.

Significance and Engagement

[16] While a plan change process would usually trigger the Significance and Engagement Policy, this will be administrative only, with no opportunity for public input. The change may affect a wide section of the community.

Legislative Considerations

[17] Once gazetted, any changes required to the air plan will be undertaken in accordance will all relevant regulations

Risk Considerations

[18] Any risk from options and decisions to manage issues outside those directed by the NESAQ will be assessed as part of any full plan review of the RPA.

[19] Improvements to Air Quality for Otago requires a multi-faceted approach and as such, implementation of NESAQ alone won't improve Air quality in Otago. For instance, the lack of requirement under the NESAQ for a householder to be compelled to replace appliances that are non-compliant will hinder ORC's ability to comply with the NESAQ.

[20] Monitoring for $PM_{2.5}$ will result in an increase in the frequency in which exceedances are recorded. The compliance risk will need to be managed in both a regulatory and communications response for ORC.

NEXT STEPS

[21] The next steps are:

a) Once approved, staff will lodge the submission with MfE by 31 July 2020.
b) Commence discussions with Council on the strategic approach and key drivers to addressing Air Quality for Otago, which will begin to form the basis of a future Air Plan review.

ATTACHMENTS

1. ORC NESAQ submission July 2020 [**10.2.1** – 7 pages]
2. Track changes version ORC NESAQ Submission July 2020 [**10.2.2** – 7 pages]

Date: 13 July 2020

Ministry for the Environment
PO Box 103623
Wellington 6143

Emailed: AirQualityNESsubmissions@mfe.govt.nz

Dear Sir / Madam,

Submission on the revised National Environmental Standard for Air Quality (NESAQ)

Thank you for providing the Otago Regional Council the opportunity to consider the proposed NESAQ revisions.

Managing and improving air quality is an important outcome for the Otago Regional Council. Good air quality is critical to community health and wellbeing. And whilst it may be true that air quality is good in most places in Aotearoa, some towns in Otago experience very poor air quality, particularly in winter.

The combined factors of the Otago climate, geography, and population growth means that improving air quality for our communities is a complex problem. It requires a more holistic approach rather than reliance on regulation and education to reduce the frequency of breaches of the standards, and ultimately improve human health and well-being. So, whilst ORC welcomes the release of a revised NESAQ and supports the aim to improve air quality, the ORC is very aware that regulation alone will not result in improved air quality for Otago.

Otago Air Quality Challenges

Achieving good air quality in Otago is complex. Air quality in Otago is very good most of the year. However, Air Zone 1 towns, and the Air Zone 2 towns of Milton and Mosgiel experience high levels of PM_{10} (and likely $PM_{2.5}$) in winter when home heating needs peak. The extreme cold of Otago's winters, access to free or cheap fuel, rising energy prices and poor quality insulation in many homes result in a reliance on burning wood and coal for home heating. These impacts are further exacerbated by the frequency of inversion layers in Central Otago and the rapid growth of these towns situated in areas affected by temperature inversions.

In addition to the climate, geographical and population challenges listed above, non-compliant burners are also a contributing factor to air quality issues in Otago. It is suspected that these are burners which may have been installed prior to the current NESAQ taking affect and have not been replaced, or have been installed illegally. The lifespan, or continued maintenance, of these burners continues to exacerbate the problem and prolongs the action of replacement to cleaner options.

We can achieve clean air throughout Otago if cleaner heating options are widely adopted in our communities. We know that continuing to use solid fuel burners, even those that meet current standards, will not deliver clean enough heating and will take some time to result in improvements in

air quality. Our communities will need to go a step further and choose low-impact heating, which may include ultra-low emission burners (ULEB), electricity or gas heating, pellet fires, emission control devices and other innovative low-emission heating options. Even then, there are wider issues that will result, including problems such as energy poverty.

Until such time that many of the factors above are addressed, and a more holistic approach to managing air quality for health reasons is adopted, the amendments to NESAQ will not be a silver bullet for Otago. Otago will continue to have a reliance on wood burners for home heating and will therefore continue to report exceedances of PM, with $PM_{2.5}$ simply further highlighting an already bad situation. We set out later in our submission the need for a multi-agency, collaborative, approach to assist in addressing the unique air quality issues in cold climates such as Otago.

ORC Support for NESAQ Amendments

ORC is encouraged by, and supportive of, the following features of the proposed NESAQ amendments, and make the following comments on these amendments:

- *Introducing $PM_{2.5}$ as a primary regulatory tool* – ORC acknowledge that this approach will assist in managing the different health effects resulting from short term and long term exposure to particulate matter. This change also reflects best practice and adopts the current recommendations from the World Health Organisation. We also support the requirements to apply both a daily and annual standard for $PM_{2.5}$.
- *Reduction in the emission design standard for domestic burners to no more than 1.0g/kg* – In principal a move to lowering the emission design standards for domestic burners is supported. However, as set out in following sections of this submission, ORC's position is that it might not go far enough. ORC would support consideration of a more precautionary approach. On this basis, the retention of the ability for Councils to set more stringent requirements is supported.
- *Broadening of the standard to apply to all domestic, solid-fuel burners* – The Regional Plan: Air for Otago (RPA) already contains a definition of 'domestic heating appliances' which is similar to that which is proposed within NESAQ. This will result in the RPA being more closely aligned to the NESAQ, and therefore the implications of this change (on its own) on Otago are minimal.
- *Polluted airshed classification* – classifying airsheds as polluted if they breach either annual or daily $PM_{2.5}$ standards is a logical approach and maintains consistency with the shift to managed to $PM_{2.5}$. ORC supports this.
- *Mercury emissions* –ORC understand the effects that mercury has on air quality but has no identified issues from industrial mercury emissions. Despite this, ORC supports the proposal to prohibit mercury from listed sources due to the adverse environmental effects
- *Timing, implementation and transitional provisions*- ORC supports a transitional approach to measuring $PM_{2.5}$ to allow Councils the time to set up an appropriate monitoring programme. It would seem reasonable to give Councils at least 2 years from the amendments to NESAQ being gazetted to have a monitoring programme in place, at least in Air Zone 1 towns that experience the poor air quality.

ORC concerns regarding NESAQ amendments

In addition to the points above, ORC has the following comments in relation to other parts of the NESAQ.

- *Retaining PM_{10} standard with reduced mitigation requirements for breaches* – in principal, retaining the PM_{10} standard from a monitoring perspective is supported. However, the

reasoning for requiring mitigation for both PM_{10} and $PM_{2.5}$ is unclear. It is Councils position that if you are focusing on $PM_{2.5}$ and mitigate and enforce compliance to that level, then PM_{10} will also improve as a natural consequence. Therefore, the addition benefit from requiring mitigation methods, even in a reduced capacity, of PM_{10} is questioned.

- *Thermal efficiency* - ORC acknowledge that with current technology, thermal efficiency is a trade off against a burner's emission rate. Anecdotal reports suggest that a reduction in emission of PM results in a decrease in thermal efficiency. In some instances, it is understood that a small reduction in thermal efficiency can result in significant reduction in emission rates. Whilst ORC doesn't oppose thermal efficiency remaining at 65%, a blanket approach such as this would appear to reduce the opportunity to support and encourage improved technologies to be developed that may result in a reasonable trade-off between emission rates and thermal efficiency.
- *Polluted airsheds and resource consents* – whilst applying the existing approach (five percent of the proposed standard) to calculate the minimum discharge of $PM_{2.5}$ may provide consistency with the current regulations, ORC are concerned that this may not give due consideration to the implementation of the regulation. Whilst ORC hasn't undertaken any research to determine what an acceptable discharge is, any new proposal will need to ensure it doesn't result in a less robust compliance process that is open to challenge or an increased cost to Council to undertake monitoring with little or no benefit. Further, additional clarity is sought as to the expectations around consenting and compliance processes required to review existing consents under the PM_{10} regime that would now exceed the $PM_{2.5}$ discharge limits. With regard to offsets within polluted airsheds, ORC is mindful that whilst in principal offsets can be supported, they are not always appropriate. To date there are no examples of such off-setting in Otago for ORC to draw comparison to. However, anecdotally they can be complex and onerous processes for both council and applicant.

Implications of NESAQ amendments for ORC

ORC also wish to draw your attention to the likely impacts of the revised NESAQ, and anticipate all regional councils will be similarly affected.

Compliance with NESAQ:

The main source of $PM_{2.5}$ for Otago is burning wood and coal for home heating during winter. As such many Otago towns are already failing to meet the requirements of the current NESAQ. ORC's monitoring of PM_{10} levels in Air Zones 1 and some Air Zone 2 towns[1], particularly during winter, confirm they experience poor air quality, with multiple breaches of the daily PM_{10} limit in all Air Zone 1 areas, and some of Air Zone 2. Based on existing data, a move to $PM_{2.5}$ will result in a higher number of exceedances recorded in Otago. Contained in Appendix 1 is a table comparing monitoring data for PM_{10} and synthetic $PM_{2.5}$ during 2019 for the Air Zone 1 and 2 towns that are monitored. This table shows that in 2019 a total of 68 exceedances of PM_{10} were recorded. Applying the proposed new standard of $PM_{2.5}$ the number of exceedances would increase to 232.

Monitoring implications:

ORC has already commenced a programme to begin monitoring for $PM_{2.5}$, reflecting the expected change which now forms part of the proposed amendment. This programme covers the Air Zone 1 and 2 towns which currently breach PM_{10} standards and therefore likely to exceed the $PM_{2.5}$ standard.

[1] Air Zone one towns – Alexandra, Arrowtown, Clyde and Cromwell; Air zone two towns – Dunedin, Mosgiel and Milton.

The programme will be fully implemented by the end of 2021. The programme does not include the monitoring of any new towns which may end up breaching $PM_{2.5}$ standards. Therefore, the current monitoring program may need to be expanded in coming years.

Policy implications:

As with any update to regulation, an administrative plan change will need to be undertaken to reflect the changes to NESAQ.

Further policy changes may be required to review and update Air Zone classification pending monitoring results of $PM_{2.5}$. This would also apply to determining polluted airsheds for the purposes of Regulation 17 of NESAQ. This work would form part of the future Air Plan Review.

ORC requested changes and support

To assist in addressing some of the implications set out above and to have a meaningful impact on the air quality of Otago, the following changes to NESAQ or additional assistance beyond that of regulation from MfE are requested.

- *Lower emission standard* - whilst the change to 1.0g/kg is supported, it is unlikely to have significant effect on improving the air quality of Otago. ORC has already introduced stringency, with the standard in our RPA for domestic heating in Air Zone One set at 0.7g/kg. To have a meaningful impact on air quality in Otago, as a minimum, ultra-low emission burners (ULEB) need to be encouraged. To support this requirement, ORC encourage more stringency in the NESAQ, to set a lower emission standard than proposed.
- *Timing, implementation and transitional provisions* - Whilst the changes to NESAQ will have immediate effect, and changes to the RPA will need to be made without necessary delay, ORC currently has a large policy improvement programme underway. Therefore, ORC request consideration for the changes to be made under section 44A(6) of the Resource Management Act 1991. This would be most efficient.
- *Set expectations around 'end of life' burners and phaseout* – to assist with the replacement of non-compliant burners, it is requested MfE set expectations around the 'end of life' timeline for wood burners and encourage their phase out.
- *Community Education* – the change to $PM_{2.5}$will result in a higher number of exceedances in towns across Otago, although the air quality itself hasn't actually worsened. It will be incumbent on ORC to educate the community about these changes. Such work is outside of ORC's current work programme. In order to effectively implement these changes, ORC requests MfE make resources available at the same time as the adoption of the revised NESAQ. This will assist local authorities to inform the community about the guidelines and its implications. In addition to community education regarding the change to PM2.5, there will also be a need for education related to the new emission standards for domestic solid-fuel burners.
- *Emissions from ships* – ORC is aware that emissions from ships is addressed through the Resource Management (Marine Pollution) Regulations 1998 however given the levels of discharges from ships, ORC suggests that this framework requires consideration to see if this is still appropriate. The contribution of ship emissions to air quality is an issue that ORC would like to be further considered.

Whilst outside of the scope of amendments to NESAQ, given the complex nature of addressing air quality, particularly in colder climates such as Otago, ORC request MfE take a lead role in a multi-agency, collaborative, approach to improving air quality. Such an approach needs to cover parameters

such as building regulation, barriers to the uptake of 'cleaner' fuels, subsidies and financial support, education programmes and public health response. Such an approach may include:

- Changes to the Building Act and Code. Insultation standards in New Zealand are behind those set in Countries with more temperate climates. Housing stock with poor or under insulated houses leads to cold homes which are difficult to heat and at the same time reinforce a reliance on a heating source. In Otago the reliance on home heating coupled with high electricity prices and issues around reliability of supply leads many to see wood burners as the best fit option.
- Energy poverty is also a concern and a barrier to many Otago communities switching to cleaner heating options. Access to free or low-cost fuels for multifuel or wood burners reduces the reliance on electricity. However, addressing energy poverty may lie in tackling air quality from a multi-agency approach. For example, energy poverty could be reduced if higher building standards (insulation requirements) are implemented.
- Interventions such as subsidies for energy costs, particularly electricity, could assist people in moving away from a reliance on wood-burner. Through the response to Covid19 recovery, the Government have recently announced a doubling of the Winter Energy Payment for 2020 for those on a Government benefit. Whilst being implemented in response to a pandemic, an intervention such as this may be applicable to Otago, in the long term to help combat the extreme cold and enable households to consider alternative heating options to wood burners.

Summary

In summary ORC provides the following response to the amendments to the NESAQ:

- Support for $PM_{2.5}$ to replace the PM_{10} standard as the primary standard for managing particulate matter.
- Support for polluted air sheds to be determined by $PM_{2.5}$ standards, however consideration to the discharge threshold needs to give consideration to the consenting and compliance implications for councils and ensure that the threshold set will have actual benefit to air quality.
- Support for the amendment to reduce emission standard to no more than 1.0g/kg but request the consideration of a lower emission standard to support ULEB take up.
- Support for allowing councils to set more stringent standards with regard to emission standards for domestic burners.
- Support the amendments to the definition of solid-fuel burners.
- Support for retaining the 65% thermal efficiency standard of solid-fuel burners, but look to provide the opportunity for industry improvements which may require a small reduction in thermal efficiency standards to achieve greater reductions in emission rates.
- Support prohibiting mercury emissions from listed sources.

In addition, ORC seeks the following:

- Support to educate the community on changes to monitoring $PM_{2.5}$
- A two year transitional period to allow councils to set up an appropriate monitoring period for $PM_{2.5}$

- Support in NESAQ and through Government initiatives to help address the impact of existing non-compliant burners and to conversion to more efficient domestic burners.
- Acknowledge the considerable work loads of Regional Councils to update policy frameworks in light of the large amount of new central government direction currently being released.
- Consideration by MfE for a multi-agency, collaborative, programme to address air quality across a range of parameters outside of the NESAQ regulations. This may include building regulation, barriers to uptake of 'cleaner' fuels, subsidies and funding, education programmes and public health support.

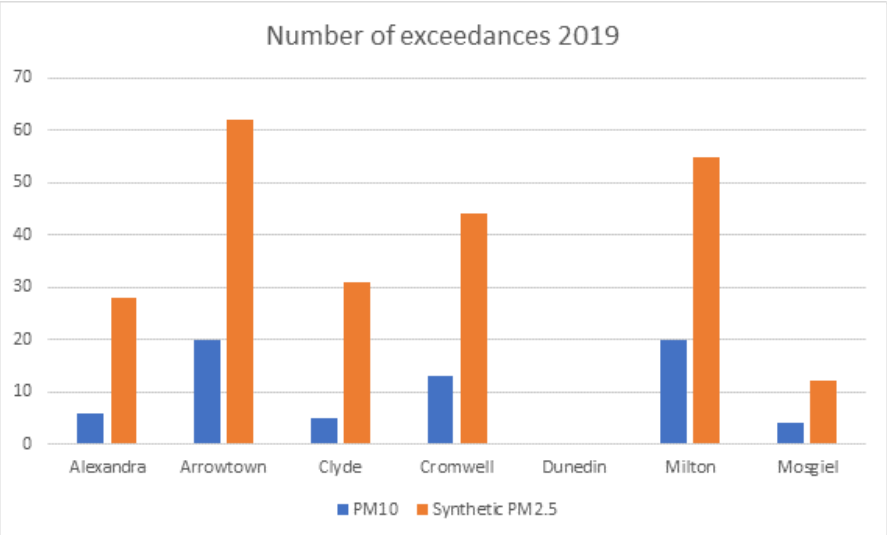
Appendix one: Comparison of PM10 and PM2.5 based on 2019 monitoring

The table below compares monitoring data for PM_{10} and synthetic $PM_{2.5}$ during 2019 for the Air Zone 1 and 2 towns. This shows the significant increase in exceedances when measuring $PM_{2.5}$, with an increase from 68 exceedances (PM_{10}) to 232 ($PM_{2.5}$). Only Dunedin would meet the proposed NESAQ 24-hour standards. In 2019 it is likely that Alexandra and Dunedin would have met the proposed annual average limit for $PM_{2.5}$ of 10µg/m3.

The synthetic $PM_{2.5}$ data was calculated using $PM_{2.5}$ to PM_{10} ratios, which vary depending on the source of particulate matter; in many places in Otago this is seasonal. The ratios used were developed based on information from New Zealand studies where $PM_{2.5}$ and PM_{10} were monitored concurrently, with adjustments made for Otago locations.

<table>
<tr><th rowspan="2">Site</th><th colspan="2">$PM_{2.5}/_{10}$ ratio</th><th colspan="2">Number of Exceedances</th><th colspan="2">Annual average</th></tr>
<tr><th>May-Aug (winter)</th><th>Sep-Apr (summer)</th><th>PM_{10}</th><th>Synthetic $PM_{2.5}$</th><th>PM_{10}</th><th>Synthetic $PM_{2.5}$</th></tr>
<tr><td>Alexandra</td><td rowspan="3">0.9</td><td rowspan="3">0.55</td><td>6</td><td>28</td><td>13.6</td><td>9.9</td></tr>
<tr><td>Arrowtown</td><td>20</td><td>62</td><td>16.3</td><td>13.1</td></tr>
<tr><td>Clyde</td><td>5</td><td>31</td><td></td><td></td></tr>
<tr><td>Cromwell</td><td colspan="2" rowspan="2"></td><td>13</td><td>44</td><td></td><td></td></tr>
<tr><td>Dunedin</td><td colspan="2">0.48</td><td>0</td><td>0</td><td>12.1</td><td>5.5</td></tr>
<tr><td>Milton</td><td>0.9</td><td>0.55</td><td>20</td><td>55</td><td></td><td></td></tr>
<tr><td>Mosgiel</td><td colspan="2">0.68</td><td>4</td><td>12</td><td>16.8</td><td>11.3</td></tr>
<tr><td colspan="3">Total number of exceedances</td><td>68</td><td>232</td><td rowspan="2"></td><td rowspan="2">10</td></tr>
<tr><td colspan="3">Limit</td><td>50 µg/m³
1 per year</td><td>25 µg/m³
3 per year</td></tr>
</table>

The number of 2019 exceedances for PM_{10} and synthetic $PM_{2.5}$ is also shown in the graph below.



Date: 13 July 2020

Ministry for the Environment
PO Box 103623
Wellington 6143

Emailed: AirQualityNESsubmissions@mfe.govt.nz

Dear Sir / Madam,

Submission on the revised National Environmental Standard for Air Quality (NESAQ)

Thank-you for providing the Otago Regional Council the opportunity to consider the proposed NESAQ revisions.

Managing and improving air quality is an important outcome for the Otago Regional Council. Good air quality is critical to community health and wellbeing. And whilst it may be true that air quality is good in most places in Aotearoa, some towns in Otago experience very poor air quality, particularly in winter.

The combined factors of the Otago climate, geography and population growth means that improving air quality for our communities is a complex problem. It requires a more holistic approach rather than just relying on regulation and education in order to reduce the frequency of breaches of the standards, and ultimately improve human health and well-being. So, whilst ORC welcomes the release of a revised NESAQ and supports the aim to improve air quality, the ORC is very aware that regulation alone will not result in improved air quality for Otago.

Otago Air Quality Challenges

Achieving good air quality in Otago is complex. Air quality in Otago is very good most of the year. However, Air Zone 1 towns, and the Air Zone 2 towns of Milton and Mosgiel experience high levels of PM_{10} (and likely $PM_{2.5}$) in winter when home heating needs peak. The extreme cold of Otago's winters, access to free or cheap fuel, rising energy prices and poor quality insulation in many homes results in a reliance on wood and coal burning for home heating. These impacts are further exacerbated by the frequency of inversion layers in Central Otago and the rapid growth of these towns situated in areas affected by temperature inversions.

In addition to the climate, geographical and population challenges listed above, non-compliant burners are also a contributing factor to air quality issues in Otago. It is suspected that these are burners which may have been installed prior to the current NESAQ taking affect and have not been replaced, or have been installed illegally. The lifespan, or continued maintenance, of these burners continues to exacerbate the problem and prolongs the action of replacement to cleaner options.

We can achieve clean air throughout Otago if cleaner heating options are widely adopted in our communities. We know that continuing to use solid fuel burners, even those that meet current standards, will not deliver clean enough heating and will take some time to result in improvements in

air quality. Our communities will need to go a step further and choose low-impact heating, which may include ultra-low emission burners (ULEB), electricity or gas heating, pellet fires, emission control devices and other innovative low-emission heating options. Even then, there are wider issues that will result, including problems such as energy poverty.

Until such time that many of the factors above are addressed, and a more holistic approach to managing air quality for health reasons is adopted, the amendments to NESAQ will not be a silver bullet for Otago. Otago will continue to have a reliance on wood burners for home heating and will therefore continue to report exceedances of PM, with $PM_{2.5}$ simply further highlighting an already bad situation. We set out later in our submission the need for a multi-agency, collaborative, approach to assist in addressing the unique air quality issues in cold climates such as Otago.

ORC Support for NESAQ Amendments

ORC is encouraged by, and supportive of, the following features of the proposed NESAQ amendments, and make the following comments on these amendments:

- *Introducing $PM_{2.5}$ as a primary regulatory tool* – ORC acknowledge that this approach will assist in managing the different health effects resulting from short term and long term exposure to particulate matter. This change also reflects best practice and adopts the current recommendations from the World Health Organisation. We also support the requirements to apply both a daily and annual standard for $PM_{2.5}$.
- *Reduction in the emission design standard for domestic burners to no more than 1.0g/kg* – In principal a move to lowering the emission design standards for domestic burners is supported. However, as set out in following sections of this submission, ORC's position is that it might not go far enough. ORC would support consideration of a more precautionary approach. On this basis, the retention of the ability for Councils to set more stringent requirements is supported.
- *Broadening of the standard to apply to all domestic, solid-fuel burners* – The Regional Plan: Air for Otago (RPA) already contains a definition of 'domestic heating appliances' which is similar to that which is proposed within NESAQ. This will result in the RPA being more closely aligned to the NESAQ, and therefore the implications of this change (on its own) on Otago are minimal.
- *Polluted airshed classification* – classifying airsheds as polluted if they breach either annual or daily $PM_{2.5}$ standards is a logical approach and maintains consistency with the shift to managed to $PM_{2.5}$. ORC supports this.
- *Mercury emissions* –ORC understand the effects that mercury has on air quality but has no identified issues from industrial mercury emissions. Despite this, ORC supports the proposal to prohibit mercury from listed sources due to the adverse environmental effects
- *Timing, implementation and transitional provisions*- ORC supports a transitional approach to measuring $PM_{2.5}$ to allow Councils the time to set up an appropriate monitoring programme. It would seem reasonable to give Councils at least 2 years from the amendments to NESAQ being gazetted to have a monitoring programme in place, at least in Air Zone 1 towns that experience the poor air quality.

ORC concerns regarding NESAQ amendments

In addition to the points above, ORC has the following comments in relation to other parts of the NESAQ.

- *Retaining PM_{10} standard with reduced mitigation requirements for breaches* – in principal, retaining the PM_{10} standard from a monitoring perspective is supported. However, the

reasoning for requiring mitigation for both PM_{10} and $PM_{2.5}$ is unclear. It is Councils position that if you are focusing on $PM_{2.5}$ and mitigate and enforce compliance to that level, then PM_{10} will also improve as a natural consequence. Therefore, the addition benefit from requiring mitigation methods, even in a reduced capacity, of PM_{10} is questioned.

- *Thermal efficiency* - ORC acknowledge that with current technology, thermal efficiency is a trade off against a burner's emission rate. Anecdotal reports suggest that a reduction in emission of PM results in a decrease in thermal efficiency. In some instances, it is understood that a small reduction in thermal efficiency can result in significant reduction in emission rates. Whilst ORC doesn't oppose thermal efficiency remaining at 65%, a blanket approach such as this would appear to reduce the opportunity to support and encourage improved technologies to be developed that may result in a reasonable trade-off between emission rates and thermal efficiency.
- *Polluted airsheds and resource consents* – whilst applying the existing approach (five percent of the proposed standard) to calculate the minimum discharge of $PM_{2.5}$ may provide consistency with the current regulations, ORC are concerned that this may not give due consideration to the implementation of the regulation. Whilst ORC hasn't undertaken any research to determine what an acceptable discharge is, any new proposal will need to ensure it doesn't result in a less robust compliance process that is open to challenge or an increased cost to Council to undertake monitoring with little or no benefit. Further, additional clarity is sought as to the expectations around consenting and compliance processes required to review existing consents under the PM_{10} regime that would now exceed the $PM_{2.5}$ discharge limits. With regard to offsets within polluted airsheds, ORC is mindful that whilst in principal offsets can be supported, they are not always appropriate. To date there are no examples of such off-setting in Otago for ORC to draw comparison to. However, anecdotally they can be complex and onerous processes for both council and applicant.

Implications of NESAQ amendments for ORC

ORC also wish to draw your attention to the likely impacts of the revised NESAQ, and anticipate all regional councils will be similarly affected.

Compliance with NESAQ:

The main source of $PM_{2.5}$ for Otago is burning wood and coal for home heating during winter. As such many Otago towns are already failing to meet the requirements of the current NESAQ. ORC's monitoring of PM_{10} levels in Air Zones 1 and some Air Zone 2 towns[1], particularly during winter, confirm they experience poor air quality, with multiple breaches of the daily PM_{10} limit in all Air Zone 1 areas, and some of Air Zone 2. Based on existing data, a move to $PM_{2.5}$ will result in a higher number of exceedances recorded in Otago. Contained in Appendix 1 is a table comparing monitoring data for PM_{10} and synthetic $PM_{2.5}$ during 2019 for the Air Zone 1 and 2 towns that are monitored. This table shows that in 2019 a total of 68 exceedances of PM_{10} were recorded. Applying the proposed new standard of $PM_{2.5}$ the number of exceedances would increase to 232.

Monitoring implications:

ORC has already commenced a programme to begin monitoring for $PM_{2.5}$, reflecting the expected change which now forms part of the proposed amendment. This programme covers the Air Zone 1 and 2 towns which currently breach PM_{10} standards and therefore likely to exceed the $PM_{2.5}$ standard.

[1] Air Zone one towns – Alexandra, Arrowtown, Clyde and Cromwell; Air zone two towns – Dunedin, Mosgiel and Milton.

The programme will be fully implemented by the end of 2021. The programme does not include the monitoring of any new towns which may end up breaching $PM_{2.5}$ standards. Therefore, the current monitoring program may need to be expanded in coming years.

Policy implications:

As with any update to regulation, an administrative plan change will need to be undertaken to reflect the changes to NESAQ.

Further policy changes may be required to review and update Air Zone classification pending monitoring results of $PM_{2.5}$. This would also apply to determining polluted airsheds for the purposes of Regulation 17 of NESAQ. This work would form part of the future Air Plan Review.

ORC requested changes and support

To assist in addressing some of the implications set out above and to have a meaningful impact on the air quality of Otago, the following changes to NESAQ or additional assistance beyond that of regulation from MfE are requested.

- *Lower emission standard* - whilst the change to 1.0g/kg is supported, it is unlikely to have significant effect on improving the air quality of Otago. ORC has already introduced stringency, with the standard in our RPA for domestic heating in Air Zone One set at 0.7g/kg. To have a meaningful impact on air quality in Otago, as a minimum, ultra-low emission burners (ULEB) need to be encouraged. To support this requirement, ORC encourage more stringency in the NESAQ, to set a lower emission standard than proposed.
- *Timing, implementation and transitional provisions* - Whilst the changes to NESAQ will have immediate effect, and changes to the RPA will need to be made without necessary delay, ORC currently has a large policy improvement programme underway. Therefore, ORC request consideration for the changes to be made under section 44A(6) of the Resource Management Act 1991. This would be most efficient.
- *Set expectations around 'end of life' burners and phaseout* – to assist with the replacement of non-compliant burners, it is requested MfE set expectations around the 'end of life' timeline for wood burners and encourage their phase out.
- *Community Education* – the change to $PM_{2.5}$ will result in a higher number of exceedances in towns across Otago, although the air quality itself hasn't actually worsened. It will be incumbent on ORC to educate the community about these changes. Such work is outside of ORC's current work programme. In order to effectively implement these changes, ORC requests MfE make resources available at the same time as the adoption of the revised NESAQ. This will assist local authorities to inform the community about the guidelines and its implications. In addition to community education regarding the change to PM2.5, there will also be a need for education related to the new emission standards for domestic solid-fuel burners.
- *Emissions from ships* – ORC is aware that emissions from ships is addressed through the Resource Management (Marine Pollution) Regulations 1998 however given the levels of discharges from ships, ORC suggests that this framework requires consideration to see if this is still appropriate. The contribution of ship emissions to air quality is an issue that ORC would like to be further considered.

Whilst outside of the scope of amendments to NESAQ, given the complex nature of addressing air quality, particularly in colder climates such as Otago, ORC request MfE take a lead role in a multi-agency, collaborative, approach to improving air quality. Such an approach needs to cover parameters

such as building regulation, barriers to the uptake of 'cleaner' fuels, subsidies and financial support, education programmes and public health response. Such an approach may include:

- Changes to the Building Act and Code. Insultation standards in New Zealand are behind those set in Countries with more temperate climates. Housing stock with poor or under insulated houses leads to cold homes which are difficult to heat and at the same time reinforce a reliance on a heating source. In Otago the reliance on home heating coupled with high electricity prices and issues around reliability of supply leads many to see wood burners as the best fit option.
- Energy poverty is also a concern and a barrier to many Otago communities switching to cleaner heating options. Access to free or low-cost fuels for multifuel or wood burners reduces the reliance on electricity. However, addressing energy poverty may lie in tackling air quality from a multi-agency approach. For example, energy poverty could be reduced if higher building standards (insulation requirements) are implemented.
- Interventions such as subsidies for energy costs, particularly electricity, could assist people in moving away from a reliance on wood-burner. Through the response to Covid19 recovery, the Government have recently announced a doubling of the Winter Energy Payment for 2020 for those on a Government benefit. Whilst being implemented in response to a pandemic, an intervention such as this may be applicable to Otago, in the long term to help combat the extreme cold and enable households to consider alternative heating options to wood burners.

Summary

In summary ORC provides the following response to the amendments to the NESAQ:

- Support for $PM_{2.5}$ to replace the PM_{10} standard as the primary standard for managing particulate matter.
- Support for polluted air sheds to be determined by $PM_{2.5}$ standards, however consideration to the discharge threshold needs to give consideration to the consenting and compliance implications for councils and ensure that the threshold set will have actual benefit to air quality.
- Support for the amendment to reduce emission standard to no more than 1.0g/kg but request the consideration of a lower emission standard to support ULEB take up.
- Support for allowing councils to set more stringent standards with regard to emission standards for domestic burners.
- Support the amendments to the definition of solid-fuel burners.
- Support for retaining the 65% thermal efficiency standard of solid-fuel burners, but look to provide the opportunity for industry improvements which may require a small reduction in thermal efficiency standards to achieve greater reductions in emission rates.
- Support prohibiting mercury emissions from listed sources.

In addition, ORC seeks the following:

- Support to educate the community on changes to monitoring $PM_{2.5}$
- A 2 year transitional period to allow councils to set up an appropriate monitoring period for $PM_{2.5}$

- Support in NESAQ and through Government initiatives to help address the impact of existing non-compliant burners and to conversion to more efficient domestic burners.
- Acknowledge the considerable work loads of Regional Councils to update policy frameworks in light of the large amount of new central government direction currently being released.
- Consideration by MfE for a multi-agency, collaborative, programme to address air quality across a range of parameters outside of the NESAQ regulations. This may include building regulation, barriers to uptake of 'cleaner' fuels, subsidies and funding, electricity pricing, education programmes and public health support.

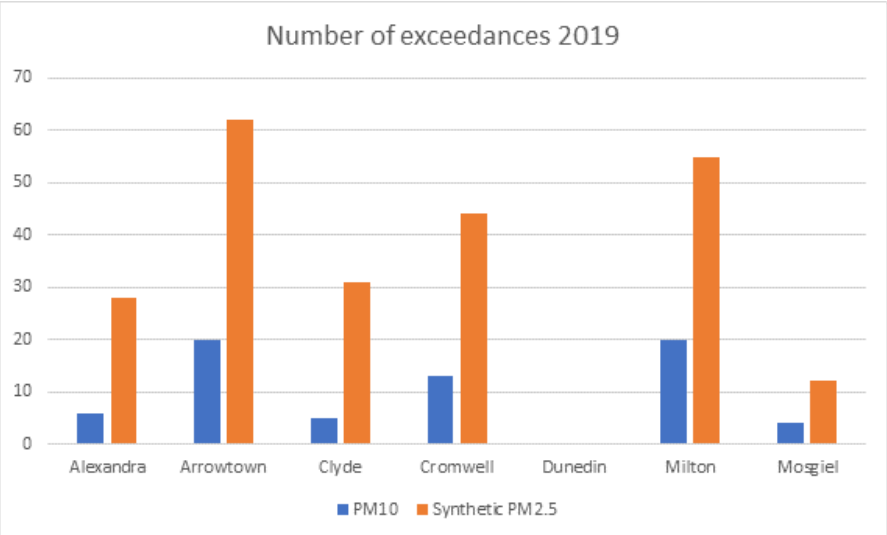
Appendix one: Comparison of PM10 and PM2.5 based on 2019 monitoring

The table below compares monitoring data for PM_{10} and synthetic $PM_{2.5}$ during 2019 for the Air Zone 1 and 2 towns. This shows the significant increase in exceedances when measuring $PM_{2.5}$, with an increase from 68 exceedances (PM_{10}) to 232 ($PM_{2.5}$). Only Dunedin would meet the proposed NESAQ 24-hour standards. In 2019 it is likely that Alexandra and Dunedin would have met the proposed annual average limit for $PM_{2.5}$ of 10µg/m3.

The synthetic $PM_{2.5}$ data was calculated using $PM_{2.5}$ to PM_{10} ratios, which vary depending on the source of particulate matter; in many places in Otago this is seasonal. The ratios used were developed based on information from New Zealand studies where $PM_{2.5}$ and PM_{10} were monitored concurrently, with adjustments made for Otago locations.

<table>
<tr><th rowspan="2">Site</th><th colspan="2">$PM_{2.5}/_{10}$ ratio</th><th colspan="2">Number of Exceedances</th><th colspan="2">Annual average</th></tr>
<tr><th>May-Aug (winter)</th><th>Sep-Apr (summer)</th><th>PM_{10}</th><th>Synthetic $PM_{2.5}$</th><th>PM_{10}</th><th>Synthetic $PM_{2.5}$</th></tr>
<tr><td>Alexandra</td><td rowspan="3">0.9</td><td rowspan="3">0.55</td><td>6</td><td>28</td><td>13.6</td><td>9.9</td></tr>
<tr><td>Arrowtown</td><td>20</td><td>62</td><td>16.3</td><td>13.1</td></tr>
<tr><td>Clyde</td><td>5</td><td>31</td><td></td><td></td></tr>
<tr><td>Cromwell</td><td></td><td></td><td>13</td><td>44</td><td></td><td></td></tr>
<tr><td>Dunedin</td><td colspan="2">0.48</td><td>0</td><td>0</td><td>12.1</td><td>5.5</td></tr>
<tr><td>Milton</td><td>0.9</td><td>0.55</td><td>20</td><td>55</td><td></td><td></td></tr>
<tr><td>Mosgiel</td><td colspan="2">0.68</td><td>4</td><td>12</td><td>16.8</td><td>11.3</td></tr>
<tr><td colspan="3">Total number of exceedances</td><td>68</td><td>232</td><td rowspan="2"></td><td rowspan="2">10</td></tr>
<tr><td colspan="3">Limit</td><td>50 µg/m³
1 per year</td><td>25 µg/m³
3 per year</td></tr>
</table>

The number of 2019 exceedances for PM_{10} and synthetic $PM_{2.5}$ is also shown in the graph below.



10.3. Appoint Hearings Commissioner for Bus Fare Submissions

Prepared for:	Council
Report No.	PT1908
Activity:	Transport: Public Passenger Transport
Author:	Garry Maloney, Manager Transport
Endorsed by:	Gavin Palmer, General Manager Operations
Date:	17 July 2020

PURPOSE

[1] This paper seeks a decision from Council to appoint a Hearings Commissioner to hear submitters and make a recommendation on the proposal to change the maximum bus fares in Dunedin for an interim trial period to ease and speed up the introduction of the new electronic ticketing system.

EXECUTIVE SUMMARY

[2] In May 2020, the Council approved a proposal to safely return to charging bus fares in Dunedin and Queenstown by implementing earlier than had been scheduled, the new electronic bus ticketing system (known as RITS and the Bee card). To do that, Council agreed to seek the community's view on trialling simplified interim bus fares in Dunedin.

[3] Submissions on that proposal closed on 2 July 2020 and there is a need to appoint a confirm the hearings process so that Council can decide the matter.

[4] The Council has received a fantastic response from its community, with over 1,400 submissions and a significant number that wish to be heard (about 7%). It is recommended that Council appoint a Hearings Commissioner with a view to them hearing and deliberating on the submissions in late-July/early August 2020, with Council making a final decision in mid-August. That will enable a return to fare collection in Dunedin at the end of August.

RECOMMENDATION

That the Council:

1) ***Receives*** *this report.*
2) ***Appoints*** [redacted] *hearings commissioner to hear, deliberate and make a recommendation(s) to Council on its proposal to implement an interim trial simplified bus fares for Dunedin to enable the earlier deployment of the Bee card electronic ticketing system.*

BACKGROUND

[5] On 27 May 2020, Council considered a paper that had as its primary objective a proposal to safely return to charging fares by implementing earlier than had been scheduled the new electronic bus ticketing system to help manage the risk associated with people interactions, both from accepting cash on buses and validating concessions.

[6] Council resolved to:

2) *"**Adopts** in principle the following implementation approach to reintroduce fares and concessions in Dunedin and Queenstown:*

- *Phase 1 (transitional) – implement discounted interim fares for all users such that high rates of concession registration and validation are not required prior to system launch (removes concession registration from the critical path).*
- *Phase 2 - implement normal fares and concession entitlements by January 2021, or such other time as agreed by Council.*

3) ***Adopts** in principle, Options D3 and Q2 as outlined in the report noting that both will incur additional loss in fares above that resulting from the current patronage decrease arising from COVID-19.*

4) ***Approves** consulting the public on Option D3 as outlined in the report."*

[7] The May 2020 report noted that any increase in the maximum fares required public consultation in accordance with the principles of the Local Government Act 2002.

[8] As the approved Option D3 proposed to increase the maximum Zone 1 fares for Dunedin it required Council to consult the Dunedin public before making a final decision. As part of that process, Council must provide for those that were consulted to make submissions and be heard, if so desired. That means Council will now need to establish a hearings process as this step was not decided in May.

[9] The Council needs to complete the consultation process in order to re-commence fare charging using the new electronic ticketing system in Dunedin. As Council didn't need to consult on the changes to the Queenstown bus fares, the deployment of the new system in that centre is not affected by this process.

DISCUSSION

[10] Council has received over 1,400 submissions with about 90 submitters wanting to be heard. That is an outstanding response that nonetheless will create some logistical challenges regarding completing the hearings process in a timely manner.

[11] The indicative timeframe that staff had proposed in May for the consultation process was:

- Submission period – 1 June to 30 June 2020
- Hearing – 7 July 2020
- Deliberations – 14 July 2020
- Council decision - 22 July 2020

[12] Taking in to account the level of feedback Council has now received and the need to to progress the hearing's process means that it is necessary to adjust that timeline. The new timeline proposed is:

- hearing – to be scheduled between 27 July and 7 August 2020;
- recommendations to 12 August 2020 Council meeting (may be circulated as a late report depending on the actual timing of the previous step).

[13] [redacted]

[14] The critical step in the above process is that Council confirms its process to hear the submissions.

CONSIDERATIONS

Policy Considerations

[15] There are no policy considerations.

Financial Considerations

[16] The financial implications of simplifying the Dunedin and Queenstown bus fares and implementing the new electronic ticketing system ahead of the proposed schedule were considered in the Agenda paper for the 27 May 2020 Council meeting.

[17] Since that time, Councils and the New Zealand Transport Agency have been working together to address fare revenue shortfalls that are expected for the next six months as a result of the Covid-19 pandemic.

[18] Councils were advised on 14 July by the Regional Council Sector lead that the Agency has agreed to fund at 100% July to December 2020 – the fare revenue shortfall and direct operating cost increases for public transport services, as a result of the COVID-19 disruptions.

[19] This 100% funding is conditional on Councils contributing at least their planned 2020/21 local share into public transport services (which we are).

[20] Council also received advice on that same date that the Agency supported in principle the Council staying fare-free until the new ticketing system was installed; for Dunedin that will be until the end of August 2020 and for Queenstown that until mid-September 2020.

Risk Considerations

[21] The risk considerations have been outlined in this paper.

[22] The primary objective of the proposal is to safely return to charging fares by implementing earlier than had been scheduled the new ticketing system to help manage the risk associated with people interactions, both from accepting cash on buses and validating concessions.

[23] The proposal creates implementation risk (changing the current roll out process) and revenue risk (not being able to charge fares).

[24] Implementation risk already exists and was being managed in the current roll out process. That risk is not materially different, and it is still proposed to switch Council's on progressively which allows for ongoing testing and review as each Council is added.

[25] Revenue risk is mitigated by the expected low patronage and the advice received from the Agency in mid-July 2020 regarding it funding the fare revenue shortfall.

NEXT STEPS

[26] The next steps (assuming the recommendations in this report are adopted) are:

- hold the hearings and deliberations meetings;
- Council meets on 12 August to consider the recommendations from the hearings panel/sub-committee and decide the matter; and
- Council staff will continue to work on the Bee card deployment process.

ATTACHMENTS

Nil

10.4. Freeholding Kuriwao Lease S327

Prepared for:	Council
Report No.	CS1947
Activity:	Environmental: Land
Author:	Peter Kelliher, Legal Counsel
Endorsed by:	Nick Donnelly, General Manager Corporate Services
Date:	14 July 2020

PURPOSE

[1] The Lessees for Kuriwao leases S327 and S328 have requested Council sell land currently leased to the Lessees under the Otago Regional Council (Kuriwao Endowment Lands) Act 1994.

[2] Each Lessee has accepted the Council's valuer's assessment of the freeholding value of the land and agreed to terms.

[3] This report seeks Council's endorsement the terms and conditions provided in the proposed Sale and Purchase Agreements.

RECOMMENDATION

That the Council:

1) ***Receives** this report.*
2) ***Approves** the terms and conditions.*
3) ***Approves** Council's contribution of the cost of fencing the areas of land subject to the covenants.*
4) ***Authorises** the Chief Executive or the General Manager Corporate to execute the proposed Sale and Purchase Agreements (attached).*
5) ***Authorises** the Chief Executive and General Manager Corporate to sign an authority and instruction form for the sale of the land.*

BACKGROUND

[4] The Otago Regional Council (Kuriwao Endowment Lands) Act 1994 ("the Act") was enacted to:

a. Confirm the vesting of land[1] in the Otago Regional Council and
b. Redefine the purposes for which the land is held by the Council; and
c. Recognise existing leases of the land; and
d. Transfer the lessor's interest in leases of the land to the Council; and
e. Empower the Council to dispose of the land; and
f. Define the purposes for which any of the proceeds from the sale of the land may be used.

[5] Under the Act, responsibility for administering the land was passed from the Crown to the Otago Regional Council.

[1] 16,718 hectares within 18 leases.

[6] The Act includes a mechanism for Council to sell the freehold interest in the leased land (or any part of that land) to the current lessee. The sale is under the Land Act 1948 and a contract to sell the freehold interest is formed when the lessee gives notice of the intention to purchase. The Land Act contains the mechanism for determining the price for the freehold interest. Other terms and conditions can be agreed by the Council and the lessee.

[7] In 1994, there were 18 Kuriwao Endowment Leases. 12 (66%) of these have since been sold to the respective lessees. We have four leases (including the two subject to this report) that are currently in the sale process. Kuriwao Endowment Leases are renewable leases, renewable in perpetuity.

[8] The Council, at its March 1995 meeting, passed a resolution endorsing a nine-step administrative procedure for responding to requests for selling any part of the Kuriwao Endowment Lands. The administrative procedure for freeholding any part of the Kuriwao Endowment Lands as follows:

a. The Council receives a formal written request to freehold and agrees to initiate the administrative process.
b. Council staff establish contact with the Lessee and view the property.
c. Council staff make a preliminary identification of matters that warrant particular consideration.
d. Council staff confer with the relevant Fish and Game Council and Department of Conservation, seeking advice on the values for which they have statutory involvement.
e. Council staff confer with the Lessee about any conservation or other matters identified that in the Council's opinion warrant particular consideration and review with the Lessee ways in which such matters might be handled. Likely survey and valuation requirements reviewed with the Lessee.
f. Negotiations be undertaken between the Lessee and the Council to obtain draft terms and conditions of sale.
g. Draft terms and conditions be approved by Council.
h. Agreement and freeholding concluded.
i. If the procedure falters at any stage, then the Council must be informed of the reasons and decide where and how to continue the process.

[9] In 1998, the Council arranged for each leased area to be surveyed and new freehold and leasehold titles were created.

[10] The Lessees of the following leases have requested to freehold the land in accordance with the Act:

Lease number	Lessees	Address	Hectares
S328	Blue Cliff Trust	623 Slopedown Road, Clinton	842.7
S327	Pearce Kuriwao Trust	495 Slopedown Road, Clinton	796.1921

[11] A map showing the leased areas for S327 and S328 is attached.

Consultation

[12] Staff have conferred with Otago Fish & Game Council and the Department of Conservation on the proposed freeholding of these leases.

[13] For Lease S327, an ecological assessment was undertaken by Ahika Consulting Limited of a wetland complex situated on the subject property. The assessment recommended various actions in order to protect the wetlands.

[14] For Lease S328, ecological assessments were undertaken by Ryder Consulting and Ahika Consulting Limited. The lease includes parts of two wetlands identified in Schedule 9 of the Regional Plan: Water for Otago as Regionally Significant Wetlands and Wetland Management Areas. The assessments identified measures to protect the natural environment.

[15] Both Lessee's have offered to apply a voluntary covenant on the part of the land identified by the Consultants as having ecological values worthy of protection.

[16] There is no obligation on a lessee to apply such a covenant and we are grateful for both Lessee's willingness to do so. A copy of the terms of the proposed covenants are included in the attached Agreements for Sale and Purchase.

Freehold valuation

[17] The sale price of the freehold interest in the land is required to be set by a registered valuer in accordance with the Land Act.

[18] The freehold interest is subject to the leasehold interest in the renewable lease and the value of the freehold is therefore much less than if the land were sold unencumbered by the lease.

[19] Council's valuers have assessed the sale value of the land as follows:

a. Lease S328 - $747,262.05 plus GST (if any); and
b. Lease S327 - $775,000 plus GST (if any).

[20] The Lessees have accepted the valuations.

[21] It is proposed that the Council contribute, for each lease, 50% of the cost of fencing the areas subject to the covenants. Council's contribution would be $6,357.98 (plus GST) for Lease S328 and $2,989.69 (plus GST) for Lease S327.

[22] These costs are unbudgeted expenditure. Accordingly, we seek Council's endorsement of the same.

Terms and Conditions

[23] The negotiation process with the Lessees has extended over several years, predating the legal team's involvement in these matters.

[24] The terms and conditions agreed with the Lessees are consistent with prior sales of Kuriwao land.

[25] We seek Council endorsement of the terms and conditions of sale.

Proceeds of Sale

[26] The Act defines the purposes for which any of the income (including the proceeds from the sale of land) may be used.

[27] Such proceeds are held upon trust:

a. To pay firstly the costs, charges, and expenses reasonably incurred by the Council in administering the land, any leases of the land, or any funds obtained by the sale.
b. To use the balance for, as the Council, in its absolute discretion, thinks fit:
    i. Works for the benefit of the Lower Clutha District[2].
    ii. Servicing any loans raised for works for the benefit of the Lower Clutha Special Rating District.
    iii. Carrying out the functions, performing the duties, and exercising the powers of the Council under section 5 of the Act for the benefit of the Lower Clutha District, including the Council's general administration expenses incurred in respect of the Lower Clutha District.

CONSIDERATIONS

Policy Considerations

[28] Since 2010, Council has actively promoted selling the Kuriwao Endowment leased land to lessees.

Financial Considerations

[29] Once the land is sold, Council will no longer receive the annual rental from the leases being $38,250 (S327) and $32,850 (S328) per annuum.

[30] The Act defines the purposes for which any of the income (including the proceeds from the sale of land) may be used.

Significance and Engagement

[31] The Lessees have a right to freehold the land. The Significance and Engagement policy is not triggered.

Legislative Considerations

[32] The freeholding and sale procedure is regulated by the Otago Regional Council (Kuriwao Endowment Lands) Act 1994 and the Land Act 1948.

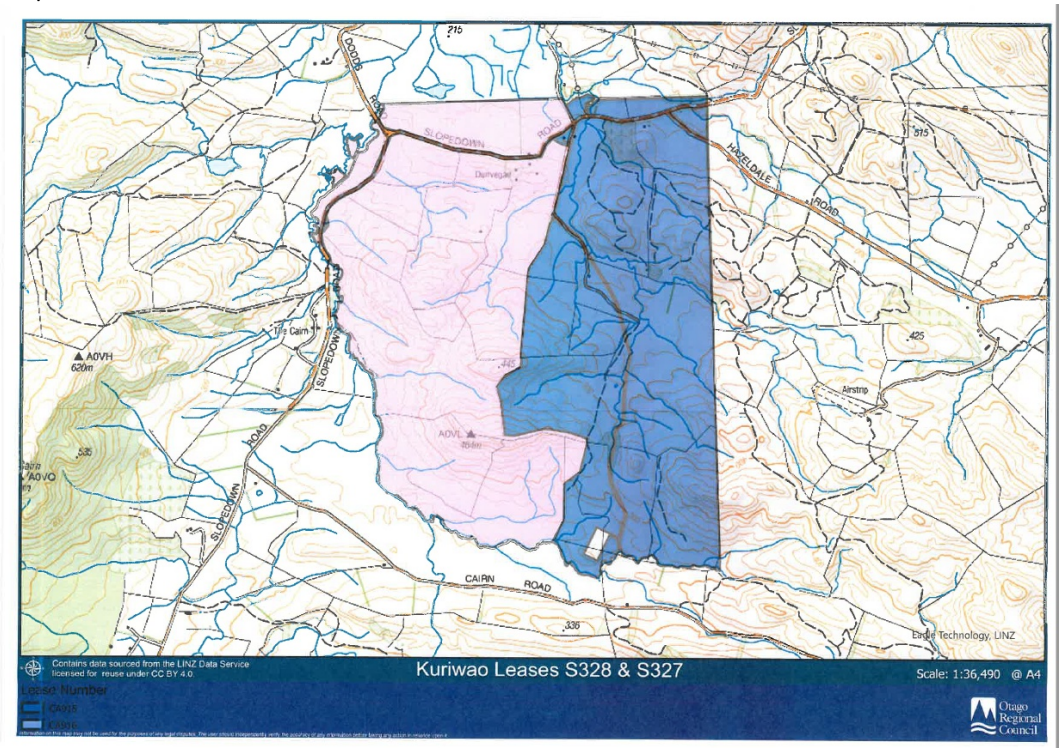
[33] Nothing in the Local Government Act 2002 alters this procedure.

Risk Considerations

[34] The Lessees have a right of acquisition of the freehold interest in the land. The delivery of notice of the intention to purchase constituted a contract between the Council and the Lessees. Council cannot refuse to sell the Lessees the freehold interests in the leased land.

[2] The Lower Clutha District is defined in the Act under five subdivisions – Balclutha, Kaitangata, Inch-Clutha, Matau and Otanomomo.

Map – Leases S327 and 328



ATTACHMENTS

1. Agreement for Sale and Purchase - Blue Cliff Trust [**10.4.1** - 49 pages]
2. Agreement for Sale and Purchase, G Pearce, Slopedown Road, Clinton_ [**10.4.2** - 45 pages]

Ninth Edition 2012 (8)

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: 2020

VENDOR: Otago Regional Council

PURCHASER: Timaru Michael Morris and Caroline Millo Morris as trustees of the Blue Cliff Trust **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: 623 Slopedown Road, Slopedown, Clinton 9583

Estate: **FEE SIMPLE** ~~**LEASEHOLD**~~ ~~**STRATUM IN FREEHOLD**~~ ~~**STRATUM IN LEASEHOLD**~~
~~**CROSSLEASE (FEE SIMPLE)**~~ ~~**CROSSLEASE (LEASEHOLD)**~~ (fee simple if none is deleted)

Legal Description:

Area (more or less):	***Lot/Flat/Unit:***	***DP:***	***Record of Title (unique identifier):***
842.7000 hectares	Section 1-7	Survey Office Plan 300167	2539

PAYMENT OF PURCHASE PRICE

Purchase price: $747,262.05 **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 14.0):

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:** 12 **% p.a.**

~~**CONDITIONS (refer clause 10.0)**~~

Finance condition	**LIM required: (refer clause 10.2)** Yes/No
Lender:	**Building report required: (refer clause 10.3)** Yes/No
Amount required:	**OIA Consent required: (refer clause 10.4)** Yes/No
~~**Finance date:**~~	~~**Land Act/OIA date:**~~

TENANCIES (if any)
Name of tenant: (if any) The purchaser owns the leasehold estate in the computer register 45787 ("the Leasehold Estate")

Bond:	**Rent:**	**Term:**	**Right of renewal:**

SALE BY:

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) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
(3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
(4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
(5) "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.
(6) "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.
(7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
(8) "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.
(9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
(10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
(11) "LINZ" means Land Information New Zealand.
(12) "Local authority" means a territorial authority or a regional council.
(13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
(14) "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.
(15) "Property" means the property described in this agreement.
(16) "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.
(17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
(18) "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.
(19) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
(20) "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.
(21) "Settlement date" means the date specified as such in this agreement.
(22) "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.
(23) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
(24) "Unit title" means a unit title under the Unit Titles Act 2010.
(25) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
(26) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
(27) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
(28) The term "title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
(29) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
(30) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
(31) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
(32) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
(33) "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 10.2(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.
(34) Unless a contrary intention appears on the front page or elsewhere in this agreement:
  (a) 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
  (b) 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.

1.2 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 1.2(2).

1.3 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 facsimile; or
    (iv) by email; or
    (v) 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 1.3(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 facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
  (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

(e) 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;
(f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.

(5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
(6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

1.4 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 2010; and
(b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (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 2010 to postpone the settlement date until after the disclosure statements have been provided; or
(4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.8(5) or, 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 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

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 on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and 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 3.14);
(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.

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).

3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
(1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
(2) the interim amount must be a reasonable sum having regard to all of the circumstances;
(3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer 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;
(4) the stakeholder shall lodge the interim amount on 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;
(5) 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;
(6) the amount determined to be payable shall not be limited by the interim amount; and
(7) 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.

Vendor Default: Late Settlement or Failure to Give Possession

3.14 (1) For the purposes of this subclause 3.14:
(a) the default period means:
(i) in subclause 3.14(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 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
(iii) in subclause 3.14(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 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
(4) Notwithstanding the provisions of subclause 3.14(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 3.14(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
(5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period.
(6) The provisions of this subclause 3.14 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) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
(a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
(b) the interim amount shall be the lower of:
(i) the amount claimed; or
(ii) 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.
(c) the stakeholder shall lodge the interim amount on 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;
(d) 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;
(e) the amount determined to be payable shall not be limited by the interim amount; and
(f) 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.

Deferment of Settlement and Possession

3.15 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).

3.16 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.

3.17 If
(1) the property is a unit title;
(2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; 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 9.2(3),
(4) then the vendor may extend the settlement date:
(a) where there is a deferment of the settlement date pursuant to subclause 3.15, 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 3.16, 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

3.18 (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,
(c) 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 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

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 untenantable and it is untenantable 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 untenantable 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 untenantable 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 8.4 for when an amount of compensation is disputed.~~

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

6.0 Title, boundaries and requisitions

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

6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
(a) the tenth working day after the date of this agreement; or
(b) the settlement date.

(2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.

(3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
(a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
(b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
(c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.

(4) 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.

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

(2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.

6.4 Except as provided by sections 36 to 42 of the Contract and Commercial Law Act 2017, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.

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

7.0 Vendor's warranties and undertakings

7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
(1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
(a) from any local or government authority or other statutory body; or
(b) under the Resource Management Act 1991; or
~~(c) from any tenant of the property; or~~
(d) from any other party; or
(2) given any consent or waiver,
which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.

7.2 The vendor warrants and undertakes that at settlement:
~~(1) The chattels 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 so to deliver them shall only create a right of compensation.~~
~~(2) All electrical and other installations on the property are free of any charge whatsoever.~~
~~(3) There are no arrears of rates, water rates or charges outstanding on the property.~~
(4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
~~(5) Where the vendor has done or caused or permitted to be done on the property any works:~~
~~(a) any permit, resource consent, or building consent required by law was obtained; and~~
~~(b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and~~
~~(c) where appropriate, a code compliance certificate was issued for those works.~~
~~(6) Where under the Building Act, any building on the property sold requires a compliance schedule:~~
~~(a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;~~
~~(b) the building has a current building warrant of fitness; and~~
~~(c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.~~
(7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
(8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
(a) from any local or government authority or other statutory body; or
(b) under the Resource Management Act 1991; or
(c) from any tenant of the property; or
(d) from any other party,
has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
(9) Any chattels included in the sale are the unencumbered property of the vendor.

7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
(1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
(2) the building has a current building warrant of fitness; and
(3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.

~~7.4 The vendor warrants and undertakes that on or immediately after settlement:~~
~~(1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.~~
~~(2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.~~
~~(3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.~~
~~(4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.~~

7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

8.0 Claims for compensation

8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:
(1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
(2) the notice must:
(a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
(b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
(c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
(d) be particularised and quantified to the extent reasonably possible as at the date of the notice.

8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 11.1.

8.3 If the amount of compensation is agreed, it shall be deducted on settlement.

8.4 If the amount of compensation is disputed:
(1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
(2) the interim amount must be a reasonable sum having regard to all of the circumstances;
(3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer 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;
(4) the stakeholder shall lodge the interim amount on 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;
(5) 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;
(6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
(7) 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.

8.5 The procedures prescribed in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract.

~~9.0 Unit title and cross lease provisions~~

~~Unit Titles~~

~~9.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act 2010 ("the 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.~~

~~9.2 If the property is a unit title, the vendor warrants and undertakes as follows:~~

~~(1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.~~

~~(2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.~~

~~(3) Not less than five working days before the settlement date, the vendor will provide:~~

~~(a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and~~

~~(b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.~~

~~(4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.~~

~~(5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.~~

~~(6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.~~

~~(7) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:~~

~~(a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or~~

~~(b) any proceedings being instituted by or against the body corporate; or~~

~~(c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.~~

~~(8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.~~

~~(9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.~~

~~(10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:~~

~~(a) the transfer of the whole or any part of the common property;~~

~~(b) the addition of any land to the common property;~~

~~(c) the cancellation of the unit plan; 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.~~

~~9.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 9.2(3), 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.~~

~~9.4 If the property is a unit title, each party specifies that:~~

~~(1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the 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 Act.~~

~~9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.0(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.~~

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

~~9.6 (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 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.~~

10.0 Conditions and mortgage terms

Particular Conditions

10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

10.2 (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 10.8(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 10.8(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.

10.3 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 tenth 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. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. 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. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.

10.4 (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 Land Act/OIA date shown on the front page of this agreement, 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.

10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.

10.6 If the Land Act/OIA date is not shown on the front page of this agreement, that date shall be the settlement date or a date 95 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.

10.7 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.

Operation of Conditions

10.8 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.

Mortgage Terms

10.9 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.

10.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

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 this agreement 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 as aforesaid 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 giving 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 Agent

13.1 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 appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

13.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

14.0 Goods and Services Tax

14.1 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).

14.2 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.

14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, 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.

15.0 Zero-rating

15.1 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 is correct at the date of this agreement.

15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.

15.3 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.

15.4 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.

15.5 If any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 1 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added 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.

15.6 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,
the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.

15.7 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 15.3 and 15.4 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.

16.0 Supply of a Going Concern

16.1 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 herein:
(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%.

16.2 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 14.0 of this agreement shall apply.

17.0 Limitation of Liability

17.1 If any person enters into this agreement as trustee of a trust, then:
(1) That person warrants that:
(a) the person has power to enter into this agreement under the terms of the trust;
(b) the person has properly signed this agreement in accordance with the terms of the trust;
(c) the person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
(d) all of the persons who are trustees of the trust have approved entry into this agreement.
(2) 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, 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"). 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.

18.0 Counterparts

18.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

FURTHER TERMS OF SALE

See Annexure

ANNEXURE – FURTHER TERMS OF SALE

623 Slopetown Road, Clinton (RT 2539)

19 **Legislation** – The parties enter into this agreement pursuant to section 14 of the Otago Regional Council (Kuriwao Endowment Lands) Act 1994 and part VII of the Land Act 1948 ("Act"). In the event of inconsistency between the provisions of this agreement and the mandatory provisions of the Act, the Act shall prevail.

20 **No deferred payments** – Under section 122(10) of the Lands Act 1948 the purchaser purchases for cash and not upon deferred payments.

21 **Payment of rent** – The purchaser shall at the same time as and in addition to payment of the purchase price pay all rent and other sums plus GST due by the purchaser to the vendor with respect to the leasehold estate up to and including the settlement date.

22 **Merger of leasehold** – The leasehold estate of the purchaser and the fee simple estate to be transferred from the vendor to the purchaser under this agreement, shall merge upon transfer and the transfer to be prepared under clause 3.6 shall provide for this.

23 **Conservation covenant** – The vendor and the purchaser shall contemporaneously with payment of the purchase price, and as an interdependent obligation, enter into a conservation covenant in the form attached to this agreement as Appendix A ("covenant").

24 **No breach** – From the date of this agreement the purchaser must not cause or permit anything to be done which would breach the covenant.

25 **Fencing contribution** – The vendor's contribution of $7,311.68 (being 50%) of the cost of fencing the areas subject to the covenant shall be set off against the purchase price payable on the settlement date. The invoice for the fencing is at Appendix B.

26 **Council approval** – This agreement is subject to the approval of the Otago Regional Council, or its duly authorised delegate, within 20 working days from the date of this agreement. This condition is for the benefit of, and may only be waived by, the vendor. To avoid doubt, whether or not approval is given is at the absolute discretion of the Otago Regional Council.

27 **Settlement date** - The settlement date is 20 working days after the fulfilment of the Otago Regional Council approval condition in clause 26.0.

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SCHEDULE 1

(GST Information – see clause 15.0)

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

1.	The vendor's registration number (if already registered):	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	~~Yes~~/No
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/~~No~~
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/~~No~~

If the answer to either or both of questions 3 and 4 is "No", go to question 7

5.	The purchaser's details are as follows:	
	(a) Full name: Blue Cliff Trust	
	(b) Address: 623 Slope Down Road RD 1 Clinton	
	(c) Registration number (if already registered): 076 193 002	
6.	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). **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: the main farm house (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No Yes/~~No~~
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	~~Yes~~/No

If the answer to question 7 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

8.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
9.	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 8 and 9 is "No", there is no need to complete this Schedule any further.

10.	The nominee's details (if known to the purchaser) are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
11.	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). **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 Yes/No

SCHEDULE 2

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

~~Stove~~ ~~Fixed floor coverings~~ ~~Blinds~~ ~~Curtains~~ ~~Light fittings~~

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 Agents 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 2010.

Signature of Purchaser(s):

~~Director~~ / Trustee / ~~Authorised Signatory / 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~~ / ~~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 / 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 / Attorney*
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

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

Also insert the following wording for the Attorney's Signature above:
Signed by [full name of the donor] by his or her Attorney [attorney's signature]

APPENDIX A

DATED

BETWEEN **OTAGO REGIONAL COUNCIL**

AND **TIMARU MICHAEL MORRIS AND CAROLINE MILLO MORRIS** as trustees of the Blue Cliff Trust

CONSERVATION COVENANT

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

SJA-266090-882-8-V4

THIS DEED is dated

PARTIES

1 **OTAGO REGIONAL COUNCIL** a body corporate under the Local Government Act 2002 ("Council")

2 **TIMARU MICHAEL MORRIS AND CAROLINE MILLO MORRIS** as trustees of the Blue Cliff Trust ("Covenantor")

BACKGROUND

A. The Covenantor is the registered proprietor of an estate in fee simple of 842.7000 hectares more or less legally described as sections 1-7 Survey Office Plan 3000167 ("Land").

B. The Council is a local authority within whose region the Land is situated.

C. The Council is authorised by section 77 of the Reserves Act 1977 ("the Act") to obtain conservation covenants in respect of land for the purposes of managing such land to preserve the natural environment, or landscape amenity, or wildlife or fresh-water life or marine life habitat or historical value, and such covenants are deemed to be an interest in land capable of registration under the Land Transfer Act 1952.

D. The Covenantor has agreed to grant the Council a conservation covenant over the Land.

OPERATIVE PART

1 Definitions

1.1 **Council** includes the successors of Council and, for the purposes of exercising the rights and powers of Council under this deed, the members, officers, employees, agents, contractors (and their sub-contractors) of the Council;

1.2 **Covenantor** includes any person named in this deed as the covenantor and that person's successors (as defined in section 40 (5) of the Public Works Act 1981); and also includes any person who holds any right, estate or interest in the Land;

1.3 **Freeholding Agreement** means an agreement for sale and purchase of real estate between the Council as vendor and the Covenantor as purchaser, by

which the Council sold the fee simple estate in the Land to the Covenantor, dated [date];

1.4 **Working Day** means any day of the week other than Saturday, Sunday or a public holiday at Dunedin, New Zealand; and

1.5 **Written Notice** means notice in writing served on a party by:

1.5.1 Personal delivery;

1.5.2 Posting by ordinary mail to that parties last known or usual place of residence of business, in which case it shall be deemed to have been served on the second Working Day following the date of posting; or

1.5.3 Facsimile transmission to that parties last known or usual facsimile number, in which case it shall be deemed to have been served when the sender's facsimile machine reports that the notice has been transmitted.

2 Grant of covenant

2.1 In consideration of the entry by Council into the Freeholding Agreement and this deed, the Covenantor grants to the Council a covenant over the parts of the Land marked A, B, C, D, E and F on the plan attached to this deed as Schedule A ("Conservation Areas"), which areas are approximate and subject to survey.

3 Covenants

3.1 The Covenantor covenants with the Council with respect to the Conservation Areas that the Covenantor shall at its own cost:

3.1.1 Manage the Conservation Areas so as to maintain and enhance the natural environment (including the ecology and natural character) of the Conservation Areas and to encourage the regeneration of native plants and the natural environment of the Conservation Areas.

3.1.2 Not undertake any physical works (including, without limitation, earthworks, drainage works and building works) within the Conservation Areas without the prior written consent of the Council.

3.1.3 Maintain drains and waterways on the Land so as to preserve the quality of water within the Conservation Areas, and use best endeavours to prevent any contamination.

Cmm.

3.1.4 Permit Council access over the Land to the Conservation Areas to monitor their status.

3.1.5 Use best endeavours to keep the Conservation Areas free of pest plants and animals (including gorse, broom, rabbit, possum and any other plant or animal determined by Council for the purposes of this covenant to be a pest).

3.1.6 Not transfer mortgage, lease or otherwise deal with the Land without first giving written notice of this deed and its terms to the other party and giving written notice to Council of the transfer, mortgage, lease or other dealings.

3.1.7 Maintain all fences surrounding the Conservation Areas in a good stock proof condition.

3.1.8 Subject to clause 3.1.9, prevent stock from entering the Conservation Areas, and in the event that any of stock enters the Conservation Areas immediately remove the stock and do all things necessary to prevent re-entry.

3.1.9 Graze its stock in Areas C, D, E and F only to the extent of its current grazing practice (which is intermittent light grazing) and only to the extent that this does not cause any material detrimental effects to the conservation values recorded in the ecological assessment prepared by Ryder Consulting and dated 11 May 2016, a copy of which is attached to this deed.

3.1.10 Prepare a weed management plan with respect to Area A to achieve clearance of invasive weed and pest plants within fifteen years after the date of this deed, obtain the Council's approval of that plan, and implement that plan.

3.1.11 Keep Area A (after performance of clause 3.1.10) and Area B free of all weed and pest plants. To avoid doubt, the Council acknowledges that regrowth of cleared weed and pest plants will occur, and such regrowth will not be a breach of this clause if the Covenantor periodically clears regrowth in accordance with best management practices for weed control.

4 Registration

4.1 The Council may at any time require this covenant to be registered against the title to the Land.

4.2 The Covenantor shall immediately when called upon the do so sign all documents (including an instrument recording the terms of this covenant other than those superseded by registration) and do all things required of it by the Council to enable the Council to give effect to clause 4.1 and to register the covenant granted under this deed.

4.3 The Council shall be permitted access to the Land to enable the preparation of a survey plan (at the expense of the Council) so as to enable registration of the covenant against the title to the Land.

5 Compensation

5.1 The Covenantor acknowledges that the entry by the Council into the Freeholding Agreement and this deed is full compensation for the grant of the covenant under this deed and that the Covenantor shall not be entitled to any further compensation for any matter connected with this covenant.

5.2 The Council may register a compensation certificate under section 19 of the Public Works Act 1981 against the Land, pending registration of the covenant instrument in accordance with clause 4 of this deed.

6 Default

6.1 If one party alleges that the other is in breach of its obligations under this deed then:

6.1.1 The party alleging the default may serve on the other party Written Notice requiring the defaulting party to remedy the breach; the notice must state the term of this deed which is alleged to have been breached and the grounds upon which the party serving the notice contends that a breach has occurred. The notice must give the other party five Working Days from service of the notice to remedy the breach.

6.1.2 If after the expiry of five Working Days from the date of service of the notice, the party served with the notice has not remedied its breach, or given notice of dispute, the other party may:

6.1.2.1 Enter the land to which the breach relates; and/or

6.1.2.2 Remedy the breach; and/or

6.1.2.3 In the case of the Council, exercise its power of attorney under clause 8.

6.2 The party in breach is liable to pay to the party serving the notice the costs of preparing and serving the notice and the costs incurred in remedying the breach.

6.3 The other party may recover from the party in breach, as a liquidated debt, any money payable under this clause.

6.4 Nothing in this clause limits any other rights and remedies available to the party alleging breach.

7 Disputes

7.1 If any party considers that a dispute has arisen under clause 6, then:

7.1.1 The party which claims the dispute exists may serve Written Notice on the other party giving full particulars of the dispute.

7.1.2 The parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques which may include negotiation, mediation, independent expert appraisal or any other technique that might be agreed between the parties.

7.1.3 If the dispute is not resolved within ten Working Days of the service of notice of the dispute, or such longer period as the parties may agree, the dispute must be referred to arbitration in accordance with the Arbitration Act 1996 for determination by a single arbitrator to be appointed by the parties, or failing agreement to be appointed by the president of the Otago branch of the New Zealand Law Society or his or her nominee.

8 Power of attorney

8.1 The Covenantor irrevocably appoints the Council as the Covenantor's attorney in relation to this deed.

8.2 The Council, as attorney:

8.2.1 May sign any documents on behalf of the Covenantor including, without limitation, documents required to be signed under clause 4.2 of this deed; but

8.2.2 Is not obliged to do so.

9 Surrender

9.1 The Council must surrender the covenants in this deed if the Covenantor enters into an open space covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1977 under which the Conservation Areas are protected to at least the same extent as is provided for in this deed.

10 Costs

10.1 Each party shall meet its own legal and other costs with respect to this deed.

11 Counterparts

11.1 This deed may be executed:

11.1.1 In two or more counterparts, all of which are deemed originals, but which together constitute one deed; and

11.1.2 By facsimile or scanned copies signed by the parties, provided that immediately after transmission of the executed agreement each party will forward to the others the original executed copies for the purpose of forming the counterparts referred to in 11.1.1 above.

12 Further assurances

12.1 Each party covenants to execute such further instruments and do such further acts as may be necessary or desirable to carry out the covenants made herein, including to;

12.1.1 Promptly execute and deal with such documents as shall be reasonably be required;

12.1.2 Promptly complete all electronic transactions as shall reasonably be required;

12.1.3 Convey promptly to each party all material notifications, orders and demands and other communications received by any governmental or other authority in relation to this deed;

12.1.4 Comply with all applicable laws of New Zealand; and

12.1.5 Promptly take all necessary steps in its part to give full effect to the terms and conditions of this deed.

13 Compliance with Laws

To avoid doubt nothing in this deed shall:

13.1 Limit the obligations of the Covenantor under any regional plan or proposed regional plan or other regulatory instrument promulgated by the Council; nor

13.2 Oblige the Council to exercise any right or power under this deed to comply with any obligation of the Covenantor under any regional or district plan or proposed regional or district plan or any other law; nor

13.3 Fetter or restrict in any way the Council's statutory functions, duties, discretions and powers.

EXECUTED as a deed

SIGNED by **OTAGO REGIONAL COUNCIL**
by its duly authorised officers:

_____
Signature

_____
Name

_____
Position

_____
Signature

_____
Name

_____
Position

SIGNED by
TIMARU MICHAEL MORRIS (Trustee)
as Covenantor in the presence of:

Timaru Michael Morris

Witness:

Signature of witness

Full name

Occupation R.J.B. (JOHN) BANNERMAN SOLICITOR GORE

Place of residence

SIGNED by
CAROLINE MILLO MORRIS (Trustee)
as Covenantor in the presence of:

Caroline Millo Morris

Witness:

Signature of witness

Full name

Occupation R.J.B. (JOHN) BANNERMAN SOLICITOR GORE

Place of residence

SCHEDULE A
Area A
Area B
Area C
Area D
Area E
Area F
Dunvegan Lease
1:14,470
@ A3
Otago Regional Council
Contains data sourced from the LINZ Data Service licensed for reuse under CC BY 4.0.
Information on this map may not be used for the purposes of any legal disputes. The user should independently verify the accuracy of any information before taking any action in reliance upon it.

APPENDIX B

T.M & C.M Morris

T.M & C.M Morris

623 Slopedown Rd
RD 1
Clinton 9583

Tel: [redacted]
Mobile: [redacted]
Email: [redacted]

Otago Regional Council

Tax Invoice # 32 (Original)

GST No. 51-845-064

Page: 1 of 1

Date: 30 May 2018

Description	Quantity	Price	Value
Posts	[redacted]		
Strainers			
6" posts			
Stays			
2.5mm wire			
no 8 wire			
14 ft gates			
gudgeons			
Claw insulators			
Staples			
Tisdale Contracting			
Ross Burnet Contracting			
TM&CMMorris 2 men tractor&trailor for 8h			
RTL (transport)			

To pay by Direct credit, the bank account number is [redacted] reference 'ORC'

Sub total	12,715.96
GST	1,907.40
TOTAL DUE	**14,623.36**

BEFORE SIGNING THE AGREEMENT

- 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 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 weathertightness 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 2010;
  - 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 9.0:
  - 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.
- Before signing this agreement, 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.

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

Ninth Edition 2012 (8)

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

DATE: 2020

VENDOR:
Otago Regional Council

Contact Details:
See below

VENDOR'S LAWYERS:

Firm: Ross Dowling Marquet Griffin

Individual Acting: Simon Anderson

Contact Details:
P O Box 1144
DUNEDIN 9054
Telephone: (03) 477 8046
Fax: (03) 477 6998
Email: simon.anderson@rossdowling.co.nz

PURCHASER:
Timaru Michael Morris and Caroline Millo Morris as trustees of the Blue Cliff Trust

Contact Details:
See below

PURCHASER'S LAWYERS:

Firm: Bannerman Cruickshank Pryde

Individual Acting: John Bannerman

Contact Details:
P O Box 857
INVERCARGILL 9840
Telephone: (03) 214 4069
Fax: (03) 214 4760
Email: john.bannerman@cplaw.co.nz

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details:

Prepared for Otago Regional Council
By Ryder Consulting Limited

Dunvegan Lease

Assessment of current ecological values

ryderconsulting
environment + planning + project management

Prepared for Otago Regional Council
By Ryder Consulting Limited

Dunvegan Lease

Assessment of current ecological values

prepared by

Mark Sanders, PhD.

Peer-reviewed by

Greg Ryder, PhD.

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1. Introduction

The Otago Regional Council ('The Council') owns endowment land in the Kuriwao area of South Otago. The land is leased in medium size farm lots. Under statute, the lessee has the option to freehold the land. T M & C M Morris (as Trustees for Blue Cliff Trust) have initiated a request to freehold their leasehold land. The lease number is S328 and the legal description is Sec 1-7 SO 300167. The valuation reference is 28851/12200 and the total area is 842.7 ha. The leased area is commonly known as 'Dunvegan', and is located approximately 10 kilometres south-west of Clinton (Figure 1.1).

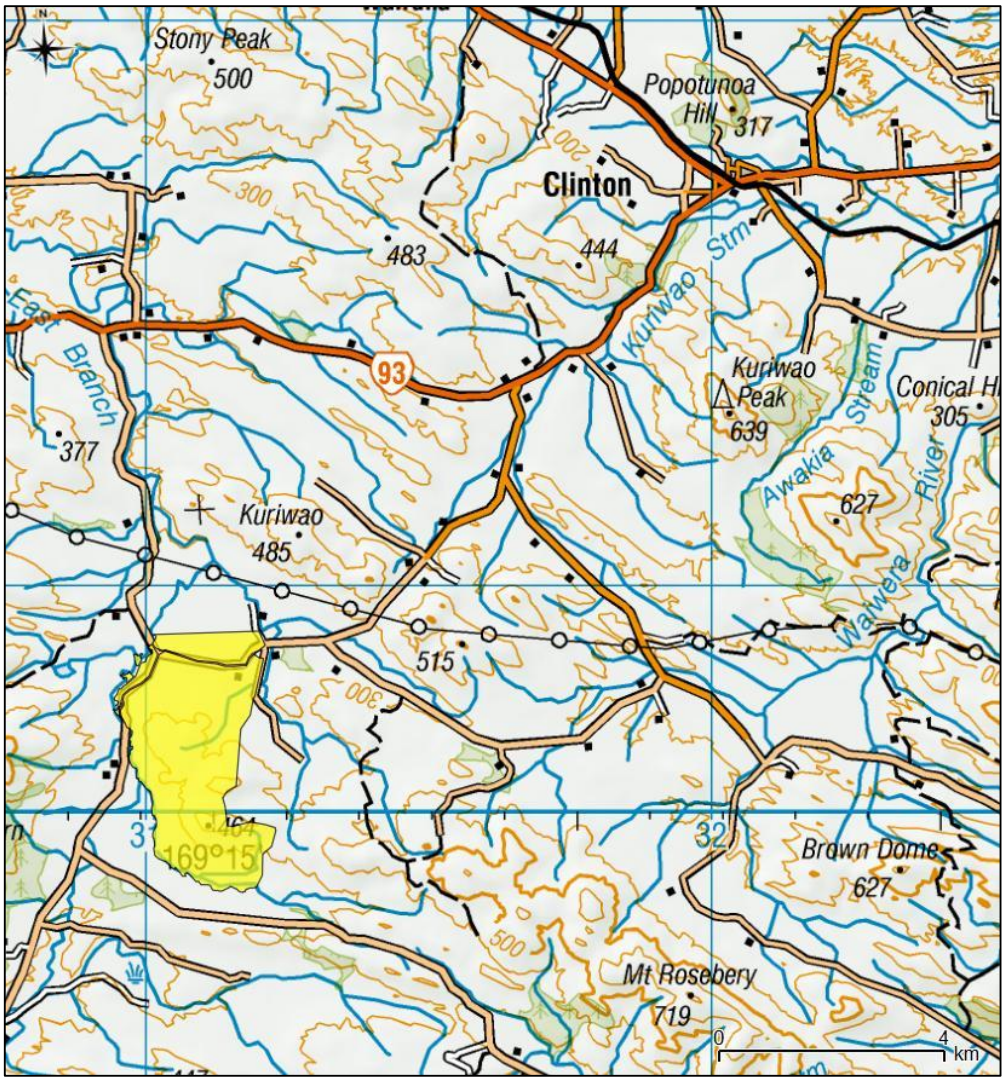


Figure 1.1. Location of the 'Dunvegan' leasehold block (yellow area).

The Council's internal process for freeholding includes assessing the ecological and riparian values on the land (if any) and considering any practical options for protecting any such values. The Council consults the Department of Conservation and Fish and Game but also finds it desirable to have an independent report.

The Council has engaged Ryder Consulting to carry out a rapid ecological assessment of the site, and to prepare a concise report describing the property and any environmentally valuable and/or sensitive aspects of it and discussing options for protecting ecological values, if deemed necessary.

2. Methods

Before conducting the field survey, background ecological information on the site and surrounding area was obtained by searching online databases and mapping services such as the Landcare Research OurEnvironment service, the Department of Conservation's website, and the Council's online information on Regional Significant wetlands. Recent aerial photographs[1] of the property were also examined before visiting the site to identify potential ecological features of interest, such as potential areas of indigenous vegetation, streams and wetlands.

A field survey of the vegetation of the site was made on 16 March 2016. The weather was fine, and access and visibility were good. The site visit commenced with an initial 'tour' with Mr Morris, who pointed out access and described recent and current management practices. The site was then surveyed by foot and from a vehicle, aided by binoculars as necessary. In addition to the ground survey, low elevation, high resolution vertical aerial photographs were taken using a Remotely Piloted Aircraft (RPA), or 'drone'. The survey focused on identifying and mapping vegetation types, but observations of fauna and habitat were also recorded. The rapid ecological survey does not constitute a comprehensive ecological survey, but is sufficient to assess the ecological values, map vegetation types, and inform a discussion of potential management options.

[1] The Otago 0.75m Rural Aerial Photo (2004 – 2011) collection, Source: LINZ.

3. Site description and assessment of ecological values

3.1 Property description and current management

Dunvegan has been farmed as sheep and beef system for the past four years by the current lessees, and similarly by previous lessees[2]. Most of the property is in improved pasture, although areas of indigenous vegetation are present, as described below. Some winter fodder crops are grown. The topography is rolling to steep hill country, with a range of aspects. Elevation ranges from 220 m to 464 m a.s.l. Some gently-sloping and flat areas are present along the Waipahi River East Branch valley, on the western side of the property, and at the northern end of the property. There are numerous small streams on the property, which all flow, directly or indirectly, into the into the East Branch of the Waipahi River, which flows along the southern and western boundaries the property.

Since taking over the lease four years ago, the current lessees have undertaken substantial improvements to the stock water system, having installed piped water and troughs throughout the property. Substantial effort has also been put into containing and controlling gorse on the productive pasture although fairly extensive areas of dense gorse remain within in the Cairn Road wetland complex in and to the south of the property (discussed below).

3.2 Ecological context

The Dunvegan lease is located within the Waipahi Ecological District, in the Catlins Ecological Region. McEwen (1987) describes the Waipahi Ecological District as follows:

TOPOGRAPHY/GEOLOGY: inland district characterised by a series of parallel hills and valleys formed by folded Jurassic marine and estuarine sediments (sandstones and mudstones) of the Southland Syncline; mostly below 600m a.s.l., maximum altitude 719m; drained by the Waipahi R. and other small waterways.
CLIMATE: moist cool, cloudy; rainfall 800-1200mm p.a. evenly distributed.
SOILS: well drained soils from variable cover of loess over tuffaceous sandstones and related slope deposits, yellowish brown firm clayey-textured subsoils with blocky structure, mainly moderately leached, moderately fertile; at higher altitudes soils more strongly leached with more friable subsoils; on highest parts soils have poor drainage (gleyed) and peaty topsoils.
VEGETATION: originally forested (silver beech around Catlins R. in the SE, podocarp/kamahi forests to the N and W); replaced further west by red tussocklands induced by Polynesian fires between c.1200 and 1800 AD; now these tussocklands either heavily modified or replaced by exotic pasture except on southerly faces, higher altitudes and more remote areas. Some Cassinia, manuka, Dracophyllum and flax scrub, mainly on S faces in southern part of district. Bracken common on sunny faces in the E.
BIRDS: highly modified by farming; only species of note Fernbird.
REPTILES: green skink (Leiolopisma chloronoton) common in the hills S of Clinton.

[2] According to Mr Morris.

MODIFICATIONS: much of district grazed (semi-extensive sheep and cattle); exotic forest (Slopedown) near boundary in the SW, and being established in the N.

The New Zealand Threatened Environment Classification shows Dunvegan as consisting of environments with <10% indigenous cover remaining, and >30% indigenous cover remaining and >20% protected, as illustrated in Appendix A. Under the Land Environments of New Zealand (LENZ) classification, the property is made up of land environments L3.1a, Q4.1a, Q4.1d, Q4.2b (described briefly in Appendix B).

The Dunvegan lease includes parts of two wetlands identified in Schedule 9 of the Regional Plan: Water for Otago (the Water Plan) as Regionally Significant Wetlands and Wetland Management Areas. These are the Dunvegan Fen Complex (Wetland number 38 in Schedule 9), and the Cairn Road Bog (wetland number 172).

Dunvegan contains no land administered by the Department of Conservation (DOC). The nearest DOC-administered land is a s.24 marginal strip along the East Branch of the Waipahi River adjacent to the north-western boundary of the property, between Slopedown Road and Dodds Road. There are no QEII covenants on or adjacent to the Dunvegan.

3.3 Vegetation types

The vegetation of Dunvegan was classified into five broad vegetation types, which are described below and mapped in Figure 3.1. Representative photographs of these vegetation types are provided in Appendix D.

Exotic trees

Small patches of extoic trees are present within the property (Figure 3.1). Examples are shown in Photos 1 and 2. These include pine forest/shelterbelts, and areas comprising mixtures of elder, willow and rowan, often with blackberry and large-leaved pohuehue (scientific names of plants mentioned in the text are listed in Appendix E). The patches of exotic trees have been mapped as one vegetation type.

Pasture

The majority of the leasehold land consists of improved pasture. In some places, such as along stream edges or at the margins of shrublands, scattered native plants such as mingimingi, red tussock, wiwi (Edgar's rush) are also scattered through the pasture. Where native species are prominent, the vegetation is described and mapped as separate vegetation types (below). The site contains numerous small tributaries of the Waipahi River East Branch. These typically contain red tussock/pasture and indigenous shrubs as described below, but are too numerous and narrow to be mapped separately so are subsumed within the mapped pasture in Figure 3.1.

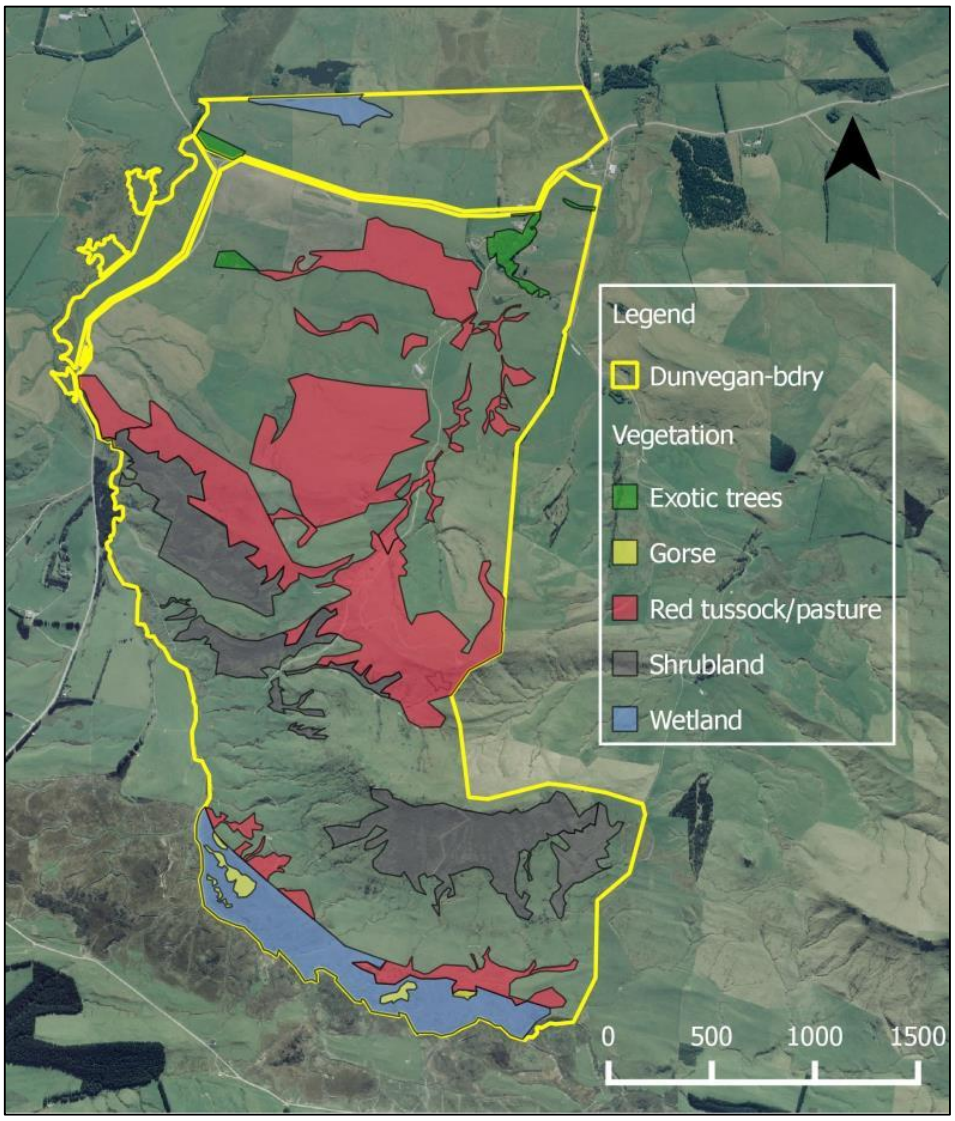


Figure 3.1. Vegetation types within the Dunvegan lease. The unshaded areas are pasture.

Red tussock/pasture

In this vegetation type, red tussock is either the dominant cover, or is very prominent. Inter-tussock vegetation is dominated by exotic grasses and herbs (e.g. Photos 3 and 4). Healthy expanses of red tussock over pasture are found over fairly extensive areas of the property (Figure 3.1). The lessees regard these areas of red tussock as a valuable part of their farming operation e.g. for grazing and because of the shelter they provide for stock, particularly lambs.

Shrubland

Shrublands are present on some of the steeper parts of the property in the west and south. The indigenous *Coprosma propinqua* (mingimingi) and *C. rugosa* are major, often co-dominant, components of this vegetation type (Photos 5, 6, and 7) and sometimes from quite dense shrubland. Other shrubs such as koromiko, tauhinu, and mountain holly are present as scattered individuals, as are native trees such as cabbage trees, broadleaf and makomako/wineberry. Cabbage trees typically occur along stream channels, particularly on the southern aspects of the prominent hill in the south of the property, known as the 'Back Block' The understory varies, consisting of a diversity of indigenous and exotic species, including exotic herbs and grasses, gorse, broom, bracken fern, prickly shield fern, red tussock, and swamp kiokio. Indigenous and exotic vines (small- and large-leaved pohuehue, tataramoa/bush lawyer, blackberry) are sometimes a major component of the shrublands.

Wetland

The parts of the two Regionally Significant Wetlands that are located within Dunvegan are mapped as 'Wetland' in Figure 3. These consist of part of the Dunvegan Fen Complex[3] on the northern boundary of the property, and the Cairn Road Bog[4] along the southern boundary. The vegetation in both areas of wetland within the Dunvegan lease is dominated by red tussock and wire rush (in places), although gorse is also prominent in the Cairn Road wetland. Gorse forms dense stands in places within the Cairn Road wetland and the largest of these stands are mapped separately in Figure 3. These wetlands are described in more detail in the inventory of wetlands on The Council's website[5].

The Dunvegan Fen complex is noted in The Council's inventory of wetlands as a habitat for nationally or internationally rare or threatened species or communities. It is recorded as having a high degree of wetland naturalness. This description is consistent with our observations. Similarly, the inventory's description of the Cairn Road Bog appears accurate with regard to the part within the Dunvegan lease.

Gorse

As noted above, gorse, although well-controlled on the improved pasture within the property, is present through much of the Cairn Road Bog, and has established large dense stands in places. The largest of these are mapped separately in Figure 3.1.

[3] Wetland number 38 in Schedule 9: *Schedule of identified Regionally Significant Wetlands and Wetland Management Areas* of the Regional Plan: Water for Otago.
[4] Wetland number 172 in Schedule 9.
[5] http://www.orc.govt.nz/Information-and-Services/Wetlands-Inventory/Clutha-District/ viewed 13 May 2016.

3.4 Evaluation of conservation values and recommendations

The Dunvegan Fen Complex and the Cairn Road Wetland

The sites with the highest ecological value within the Dunvegan lease are the parts of the two Regionally Significant Wetlands (the Dunvegan Fen Complex and the Cairn Road Bog) that lie within the property. Because of the extensive loss of wetlands throughout New Zealand, including Otago, both of these sites have very high ecological value at both a regional and national scale. As well as the botanical values touched on above, the wetlands will undoubtedly provide habitat for a high diversity of terrestrial and aquatic invertebrates, and for indigenous birds, lizards and fish (including longfin eels). The Nationally Endangered Australasian Bittern (*Botaurus poiciloptilus*) is recorded as present in Dunvegan Fen Complex and the Cairn Road Bog also provides suitable habitat for this species. South Island fernbirds (*Bowdleria punctata punctate,* At Risk - Declining) were seen and heard during the site survey in the south of the property, and are likely are present in the Cairn Road Bog. These wetlands will also provide ecosystem services such as buffering and filtering of runoff, and have non-ecological values, not addressed in this report (e.g. recreational, cultural, scientific).

The part of the Cairn Road wetland within Dunvegan has particular value because it is the most intact remnant of the larger Cairn Road wetland complex, which has been modified as a result of excavation of a network of drains to the south of the Waipahi River East Branch (and apparently grazing and pasture development).

Stock have been fenced out of the Cairn Road wetland, but it was not clear from the site visit whether stock have been completely excluded from the Dunvegan Fen Complex (they may have access to parts of the south-eastern end). We recommend that stock continue to be excluded (or are excluded if they have not already been) from all parts of both of these wetlands.

Gorse represents a major threat to the Cairn Road wetland, and its invasion has probably been facilitated by the drainage of the wetland south of and outside the Dunvegan property, resulting in lowering of the water table increasing the area of the relatively dry ground that gorse 'prefers'. From a conservation perspective, it is highly desirable that gorse invasion is halted or reserved. Options for achieving this include targeted weed control and halting or reversing drainage (recognising however that drainage to date has occurred outside Dunvegan). Any weed control would need to be undertaken very carefully to avoid or minimise risk to indigenous vegetation (e.g. by targeted spraying using selective herbicides and experienced operators).

Gorse control would be costly, and an ongoing commitment would be required. It is beyond the scope of this report to comment on who should bear this cost, but this is a matter that would clearly need to be considered. The maintenance by the current lessees of good gorse control (and weed control generally) on the remainder of the property

should be recognised as positive because the surrounding land does not provide a large source of weed seeds for either of these wetlands.

Red tussock/pasture

Although exotic grasses dominate the inter-tussock vegetation in the red tussock/pasture, this vegetation still has conservation value because of the healthy and apparently self-sustaining condition of the red tussock, a species that, although still widespread and well-represented in much of Otago and Southland, has greatly decreased in range as a result of agricultural development.

As noted above, the current lessees view the red tussock/pasture vegetation type as a valuable part of their farming operation (e.g. as shelter for lambs) and intend to retain it. The red tussock/pasture appears to be in good condition under current management (albeit with limited indigenous inter-tussock plant diversity), and it is recommended that the Council encourage the landholder to continue current management and retain the current extent of the red tussock/pasture vegetation .

Shrubland

The shrublands on the site support a variety of indigenous plant species, and will provide habitat for a diversity of indigenous terrestrial and aquatic invertebrates, birds and lizards. The shrublands are quite dense in places (e.g. the two largest patches in the west) and appear to be self-sustaining and even regenerating under current management, which includes stock access to most sites. This vegetation type is fairly modified and is not of high significance. Nonetheless, from a conservation perspective, it would be desirable to reduce grazing in order to facilitate regeneration of the indigenous vegetation, which has the potential to develop into a more mature and diverse broadleaf-podocarp forest. However, grazing is also likely to be beneficial in reducing the extent of weed invasion, so complete cessation of grazing may not be desirable. As part of current management of the property, the lessee maintains good weed control throughout the property, including the shrublands. It is desirable that this continues.

Exclusion of grazing from some of the shrublands could be considered to enhance conservation values, but this would carry costs of reduced grazing for the landholder and a concurrent increase in the need for weed control.

Riparian margins

A major feature of the property is the presence of numerous small streams (e.g. Photos 3, 6 and 8) that flow into the East Branch of the Waipahi River, a highly valued fly fishing river. It is likely that these streams carry sediment and nutrients into the Waipahi River as a result of surrounding farming activities and stock being able to access most of these streams. From a conservation perspective, stock would ideally be completely excluded from all waterways, and a wide buffer of riparian vegetation would be allowed to

establish to reduce run-off. However, this would almost certainly be economically untenable and impractical from a farming perspective.

The current lessees have made a substantial investment in installing troughs throughout the property, and this will have reduced the frequency of stock entering waterways to drink. It is recommended that options for further reducing stock access to waterways are discussed with the current lessees. For example it may be practical and economical to erect single-wire electric fencing to exclude cattle from the larger or more vulnerable streams, and to ensure that timing and location of winter grazing is designed to minimise impacts on streams.

4. Conclusions

Under current management, Dunvegan has seen major weed control throughout the property (gorse, mainly), with the exception of large established stands of gorse in the Cairn Road wetland. The current lessees have also invested in stock water reticulation throughout the property, which has helped to reduced stock access to waterways. Fairly extensive stands of red tussock with inter-tussock vegetation comprising exotic grasses and herbs are grazed as a valuable part of the existing farming operation.

The most valuable vegetation and habitats on the property are parts of two Regionally Significant Wetlands, the Dunvegan Fen Complex and the Cairn Road Bog. Both of these sites have very high ecological value at both a regional and national scale, but face threats including drainage (outside of the Dunvegan lease) and gorse invasion at the Cairn Road site in particular. It would be desirable to continue to exclude stock from these wetlands, to prevent further drainage, and to control gorse at the Cairn Road wetland.

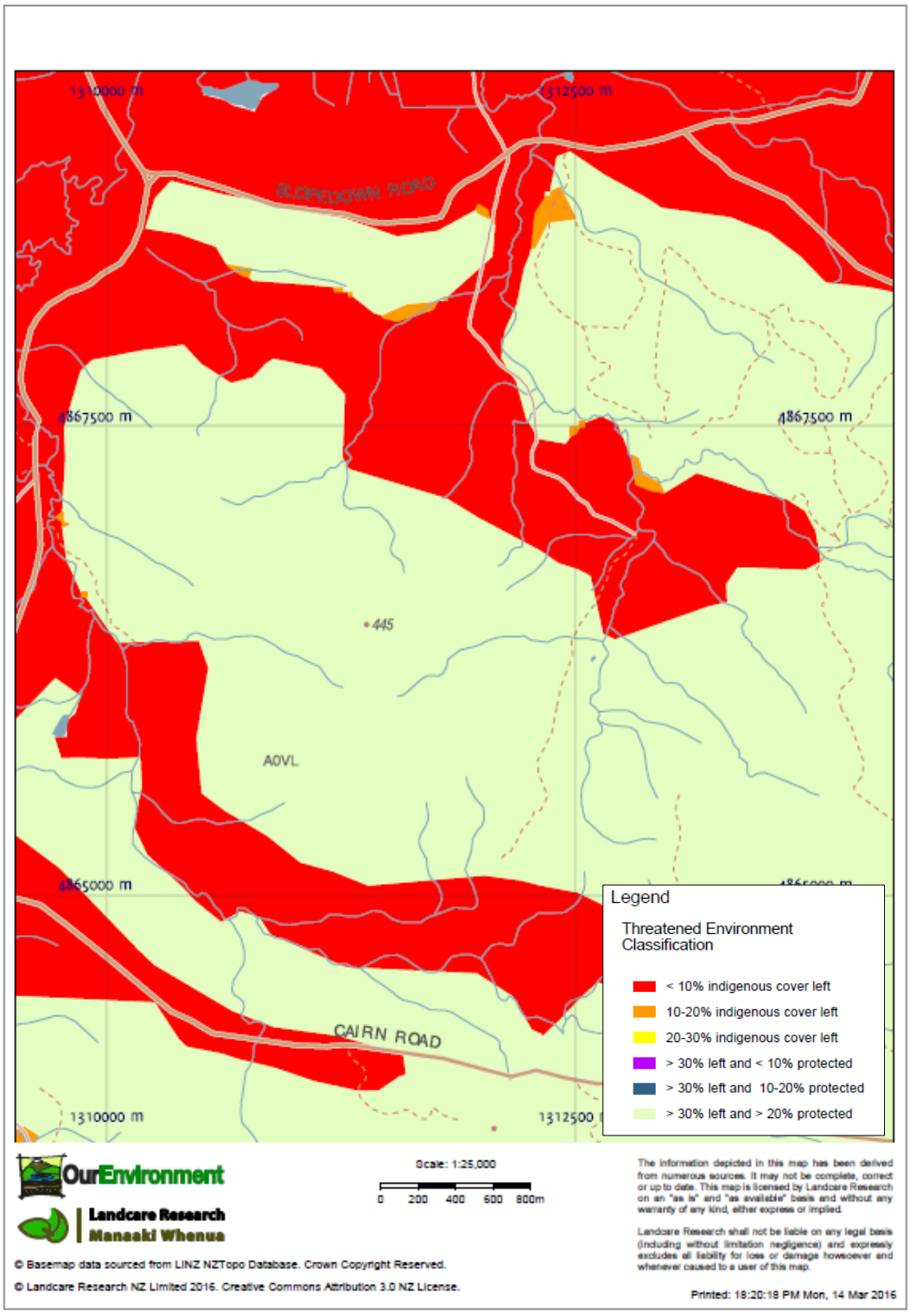
Indigenous shrublands on Dunvegan have good ecological value and have the potential to develop into a more diverse broadleaf-podocarp forest. Exclusion of grazing from some of the shrublands could be considered to protect and enhance conservation values of these shrublands, although this would carry costs of reduced grazing for the landholder and a concurrent increase in the need for weed control.

To reduce input of sediment and nutrients to the Waipahi River East Branch it would be desirable to exclude stock and allow a wide buffer of riparian vegetation to establish. However, because of large number of streams, complete stock exclusion would require a very large investment in fencing that would almost certainly be economically untenable and impractical from a farming perspective. The current lessees have made a substantial investment in installing troughs throughout the property, and this will have reduced the frequency of stock entering waterways to drink. The recently-adopted Regional Water Plan (RWP) should protect the biodiversity values and water quality at Dunvegan, and it is recommended that Council consider more frequent monitoring to ensure that ongoing management of Dunvegan complies with the RWP.

5. References

McEwen, W.M. 1987. *Ecological Regions and Districts of New Zealand*. Booklet to accompany Sheet 4: descriptions of Districts in the southern South Island from Browning to Snares; also southern islands not shown on map. *New Zealand Biological Resources Centre Publication No. 5 (in four parts) Part 4.* Department of Conservation, Wellington, New Zealand.

Appendix A. Threatened Environment Classification



Appendix B. LENZ Environments

Dunvegan comprises Land Environments L3.1a, Q4.1a, Q4.1d, Q4.2b. The following are extracts from Leathwick, J. R.; Morgan, F.; Wilson, G.; Rutledge, D.; McLeod, M.; Johnston, K. 2002. *Land Environments of New Zealand*, a Technical Guide. Ministry for the Environment. 244pp.

Environment L3

Environment L3 includes high elevation wetlands on the Rock and Pillar Range, wetlands around Lake Te Anau, poorly-drained terraces in southwestern Fiordland and extensive wetlands around Invercargill and Balcutha and on Stewart Island. Climatically this environment is cool, with low solar radiation, low vapour pressure deficits and slight annual water deficits. Parent materials consist of extensive areas of alluvium from the Fiordland complex, tuffaceous greywacke, and loess from greywacke and schist. The combination of high rainfall and very poor drainage has resulted in extensive areas of peat. Soils are generally of low fertility.

Level III & IV Descriptions

Level III	L3.1	L3.2
Area	69,188 ha	46,544 ha
Elevation	125 m	70 m
Location	Central Otago and Southland particularly around Invercargill	South-western Southland, Invercargill, northern Stewart Island
Climate	Cool temperatures, low solar radiation, moderate vapour pressure deficits, low monthly water balance ratios, slight annual water deficits	Cool temperatures, low solar radiation, moderate vapour pressure deficits, low monthly water balance ratios, slight annual water deficits
Landform	Flat floodplains	Very gently undulating floodplains
Soils	Recent, imperfectly drained soils of moderate fertility from alluvium from the Fiordland complex with extensive peat	Recent, poorly-drained soils of high fertility from Tertiary sandstones and alluvium from the Fiordland complex
Level IV	a. warmer winter temperatures b. much cooler temperatures	a. as for L3.2 b. much warmer temperatures, weakly indurated, fine-textured parent materials

Environment Q4

Environment Q4 consists of low rolling hills that extend from Dunedin to the Catlins and through much of Southland to the eastern margins of the Fiordland mountains. Climatically this environment is cool, with low solar radiation (due to its more southerly location and generally close proximity to the coast), moderate vapour pressure deficits and low annual water deficits. The soils of Q4 are mostly derived from tuffaceous greywacke and schist but with extensive areas of alluvium and loess. There are also smaller areas of soft Tertiary rocks and scattered areas of andesite and basalt. Soils are moderate to well-drained and of moderate natural fertility.

Level III & IV Descriptions

Level III	Q4.1	Q4.2	Q4.3
Area	477,280 ha	464,636 ha	354,804 ha
Elevation	265 m	215 m	330 m
Location	Most of the Catlins, north of Te Waewae Bay up to Te Anau	Around Invercargill, east of Lake Te Anau and valleys in the Catlins	Eastern Otago including the Otago Peninsula
Climate	Cool temperatures, low solar radiation, moderate vapour pressure deficits, low monthly water balance ratios, slight annual water deficits	Cool temperatures, low solar radiation, moderate vapour pressure deficits, low monthly water balance ratios, slight annual water deficits	Cool temperatures, low solar radiation, moderate vapour pressure deficits, very low monthly water balance ratios, low annual water deficits
Landform	Easy rolling hills	Gently undulating hills	Rolling hills
Soils	Well-drained soils of moderate fertility from tuffaceous greywacke, Tertiary mudstones and gravels and andesite	Well-drained soils of moderate fertility from loess and alluvium from tuffaceous greywacke	Imperfectly drained soils of moderate fertility from schist and quartz gravels
Level IV	a. imperfectly drained b. weakly indurated c. much cooler temperatures d. very gently undulating hills	a. cooler temperatures, high fertility b. warmer winter temperatures, high fertility c. warmer annual temperatures, flat terrain, imperfectly drained, high fertility	a. lower annual water deficits b. much higher annual water deficits, strongly rolling hills c. warmer temperatures, low fertility d. much warmer temperatures, strongly rolling hills, well-drained

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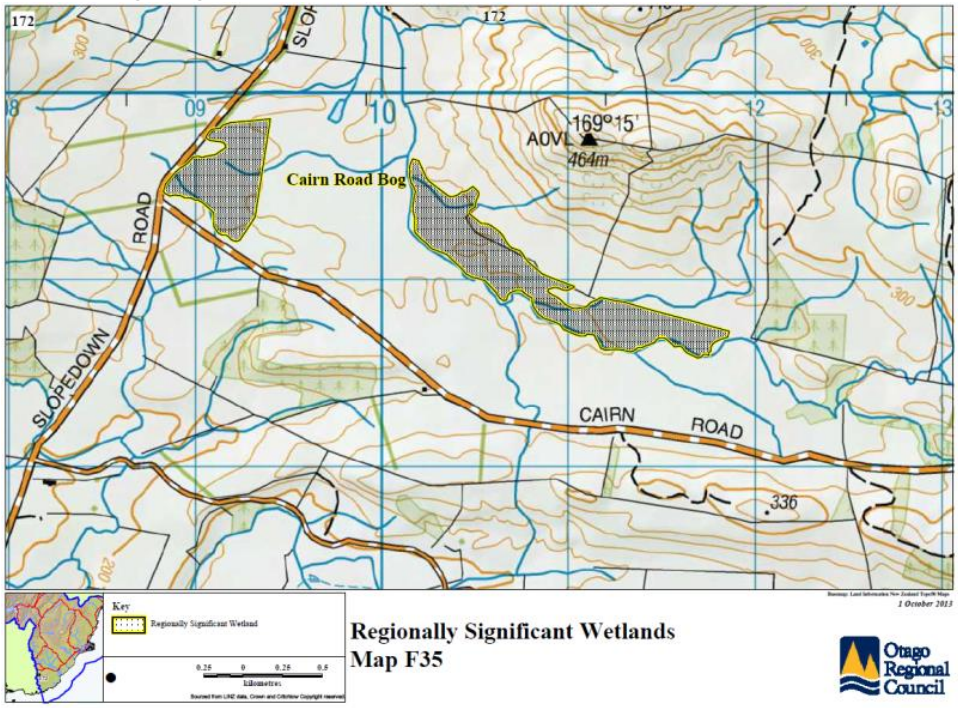
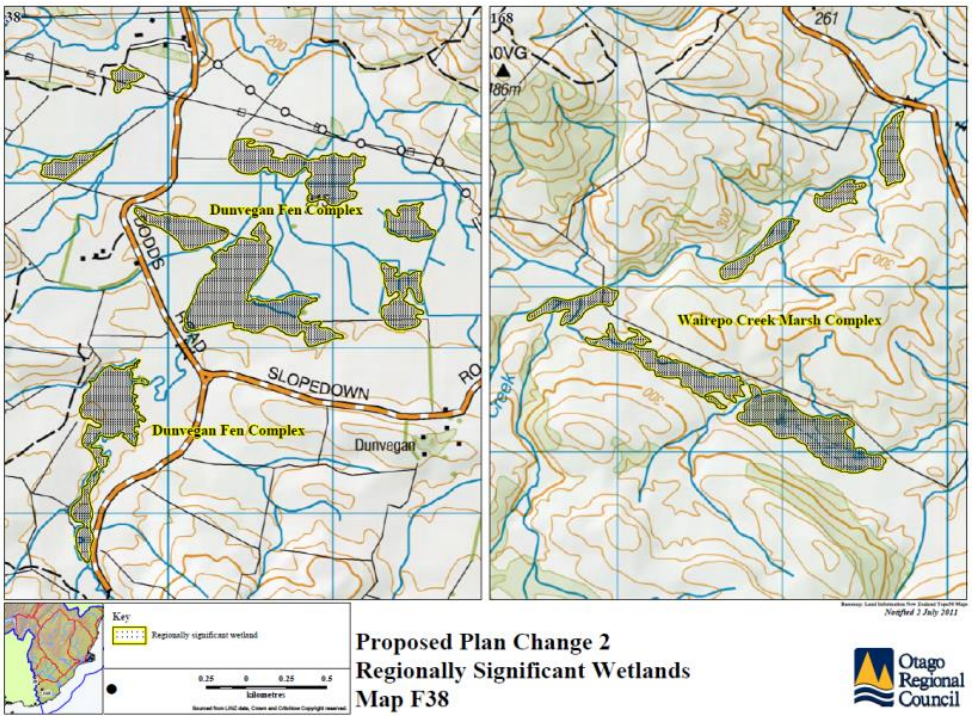
Appendix C. Regionally significant wetlands within and/or adjacent to Dunvegan

Source: Otago Regional council website.





Appendix D. Photographs of vegetation

Photo 1. View upstream along Waipahi River East Branch, showing examples of exotic forest, indigenous shrubland, and red tussock/grassland on Dunvegan.

Photo 2. Waipahi River East Branch in at intersection of Dodds and Slopedown Road. The Dunvegan leasehold land is located to the right of the river (including both sides of the road) and 'above' the road.

Photo 3. Typical gully with red tussock/pasture and occasional cabbage tree, surrounded by pasture. This view is from Slopedown Road.

Photo 4. Discrete areas of red tussock/pasture adjacent to pasture.

Photo 5. Example of more dense shrubland near the centre of the Dunvegan property.

Photo 6. Indigenous shrubland can be seen on the south-facing slopes of the hill to the left, known as the 'Back Block'. The Cairn Road Bog is located on the right of the photograph, to the right of the fence line. Dark patches within the bog are gorse.

Photo 7. Mixture of indigenous shrubland and pasture with some red tussock on the 'Back Block'.

Photo 8. View to the south-west from the 'Back Block' showing some of the numerous small tributaries of the Waiphi River East Branch, and their typical riparian vegetation in which indigenous shrubs and red tussock are prominent. Cairn Road Bog is visible at the top of the photograph.

Photo 9. View upstream along the Waipahi River East Branch (i.e. to the south). Dunvegan is to the left of the river as viewed in this photograph.

Appendix E: List of plant species recorded or mentioned in the text

Scientific name	Common name
*Cirsium arvense**	Californian thistle
*Cytisus scoparius**	European broom
*Digitalis purpurea**	foxglove
*Erythranthe moschata**	musk
*Glyceria declinata**	floating sweetgrass
*Juncus articulatus**	jointed rush
*Leycesteria formosa**	Himalyan honeysuckle
*Myosotis laxa**	water forget-me-not
*Ranunculus repens**	buttercup
*Rubus fruticosus**	blackberry
*Rumex obtusifolius**	broad-leaved dock
*Sambucus nigra**	elder
*Sorbus aucuparia**	rowan
*Trifolium repens**	white clover
*Ulex europaeus**	gorse
Aristotelia serrata	Makomako/wineberry
Carex geminata	cutty grass
Carex secta	purei
Chionochloa rubra	red tussock
Coprosma propinqua	mingimingi
Coprosma rugosa	mingimingi
Cordyline australis	ti/cabbage tree
Empodisma minus	Wire rush
Griselinia littoralis	broadleaf
Juncus edgariae	wiwi/Edgar's rush
Olearia ilicifolia	mountain holly
Ozothamnus leptophyllus	tauhinu
Phormium tenax	NZ flax
Polystichum vestitum	prickly shield fern
Rubus cissoides	Tataramoa/bush lawyer
Blechnum minus	swamp kiokio
Blechnum penna-marina	Alpine hard fern
Hebe salicifolia	koromiko
Muehlenbeckia australis	large-leaved pohuehue
Muehlenbeckia complexa	small-leaved pohuehue/wire vine
Pteridium esculentum	bracken
Sphagnum species	sphagnum moss

Ninth Edition 2012 (8)

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: 2019

VENDOR: Otago Regional Council

PURCHASER: George Raymond Pearce.Shirley Kay Pearce and HGW Trustees Limited as trustees of the George Pearce Kuriwao Trust **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: 495 Slopedown Road, Clinton

Estate: **FEE SIMPLE** ~~LEASEHOLD~~ ~~STRATUM IN FREEHOLD~~ ~~STRATUM IN LEASEHOLD~~
~~CROSSLEASE (FEE SIMPLE)~~ ~~CROSSLEASE (LEASEHOLD)~~ (fee simple if none is deleted)

Legal Description:

Area (more or less):	***Lot/Flat/Unit:***	***DP:***	***Record of Title (unique identifier):***
796.1921 ha	Sections 3-4, 10-11, 14, 17, 19 and 25-26 Block VII Kuriwao Survey District and Section 5-6 Block XII Kuriwao Survey District		OT18C/599

PAYMENT OF PURCHASE PRICE
Purchase price: $775,000.00

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 14.0):

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: 12 **% p.a.**

~~CONDITIONS (refer clause 10.0)~~

Finance condition
Lender:
Amount required:
~~**Finance date:**~~

LIM required: ~~(refer clause 10.2)~~ **Yes/No**
Building report required: (refer clause 10.3) **Yes/No**
OIA Consent required: (refer clause 10.4) **Yes/No**
~~Land Act/OIA date:~~

TENANCIES (if any)
Name of tenant: The purchaser holds the leasehold estate in record of title 7964

Bond: **Rent:** **Term:** **Right of renewal:**

SALE BY: N/A

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) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
(3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
(4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
(5) "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.
(6) "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.
(7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
(8) "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.
(9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
(10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
(11) "LINZ" means Land Information New Zealand.
(12) "Local authority" means a territorial authority or a regional council.
(13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
(14) "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.
(15) "Property" means the property described in this agreement.
(16) "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.
(17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
(18) "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.
(19) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
(20) "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.
(21) "Settlement date" means the date specified as such in this agreement.
(22) "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.
(23) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
(24) "Unit title" means a unit title under the Unit Titles Act 2010.
(25) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
(26) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
(27) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
(28) The term "title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
(29) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
(30) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
(31) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
(32) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
(33) "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 10.2(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.
(34) Unless a contrary intention appears on the front page or elsewhere in this agreement:
  (a) 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
  (b) 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.

1.2 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 1.2(2).

1.3 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 facsimile; or
    (iv) by email; or
    (v) 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 1.3(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 facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
  (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

(e) 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;
(f) in the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.

(5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
(6) In accordance with section 222 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.

1.4 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 2010; and
(b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (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 2010 to postpone the settlement date until after the disclosure statements have been provided; or
(4) this agreement is cancelled pursuant to subclause 6.2(3)(c) or avoided pursuant to subclause 10.8(5) or, 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 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

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 on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and 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 3.14);
(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.

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).

3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
(1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
(2) the interim amount must be a reasonable sum having regard to all of the circumstances;
(3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer 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;
(4) the stakeholder shall lodge the interim amount on 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;
(5) 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;
(6) the amount determined to be payable shall not be limited by the interim amount; and
(7) 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.

Vendor Default: Late Settlement or Failure to Give Possession

3.14 (1) For the purposes of this subclause 3.14:
(a) the default period means:
(i) in subclause 3.14(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 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
(iii) in subclause 3.14(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 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
(4) Notwithstanding the provisions of subclause 3.14(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 3.14(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
(5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period.
(6) The provisions of this subclause 3.14 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) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
(a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
(b) the interim amount shall be the lower of:
(i) the amount claimed; or
(ii) 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.
(c) the stakeholder shall lodge the interim amount on 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;
(d) 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;
(e) the amount determined to be payable shall not be limited by the interim amount; and
(f) 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.

Deferment of Settlement and Possession

3.15 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).

3.16 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.

3.17 If
(1) the property is a unit title;
(2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; 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 9.2(3),
(4) then the vendor may extend the settlement date:
(a) where there is a deferment of the settlement date pursuant to subclause 3.15, 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 3.16, 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

3.18 (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,
(c) 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 3.18(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

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 untenantable and it is untenantable 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 untenantable 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 untenantable 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 6.4 for when an amount of compensation is disputed.~~

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

6.0 Title, boundaries and requisitions

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

6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
(a) the tenth working day after the date of this agreement; or
(b) the settlement date.
(2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.
(3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
(a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
(b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
(c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.
(4) 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.

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

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(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.

6.4 Except as provided by sections 36 to 42 of the Contract and Commercial Law Act 2017, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.

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

7.0 Vendor's warranties and undertakings

7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
(1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
(a) from any local or government authority or other statutory body; or
(b) under the Resource Management Act 1991; or
~~(c) from any tenant of the property; or~~
(d) from any other party; or
(2) given any consent or waiver,
which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.

7.2 The vendor warrants and undertakes that at settlement:
~~(1) The chattels 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 so to deliver them shall only create a right of compensation.~~
~~(2) All electrical and other installations on the property are free of any charge whatsoever.~~
~~(3) There are no arrears of rates, water rates or charges outstanding on the property.~~
(4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
~~(5) Where the vendor has done or caused or permitted to be done on the property any works:~~
~~(a) any permit, resource consent, or building consent required by law was obtained; and~~
~~(b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and~~
~~(c) where appropriate, a code compliance certificate was issued for those works.~~
~~(6) Where under the Building Act, any building on the property sold requires a compliance schedule:~~
~~(a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;~~
~~(b) the building has a current building warrant of fitness; and~~
~~(c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.~~
(7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
(8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
(a) from any local or government authority or other statutory body; or
(b) under the Resource Management Act 1991; or
(c) from any tenant of the property; or
(d) from any other party,
has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
(9) Any chattels included in the sale are the unencumbered property of the vendor.

7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
(1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
(2) the building has a current building warrant of fitness; and
(3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.

~~7.4 The vendor warrants and undertakes that on or immediately after settlement:~~
~~(1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.~~
~~(2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.~~
~~(3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.~~
~~(4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.~~

7.5 If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

8.0 Claims for compensation

8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:
(1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
(2) the notice must:
(a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
(b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
(c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
(d) be particularised and quantified to the extent reasonably possible as at the date of the notice.

8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 11.1.

8.3 If the amount of compensation is agreed, it shall be deducted on settlement.

8.4 If the amount of compensation is disputed:
(1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
(2) the interim amount must be a reasonable sum having regard to all of the circumstances;
(3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer 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;
(4) the stakeholder shall lodge the interim amount on 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;
(5) 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;
(6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
(7) 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.

8.5 The procedures prescribed in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract.

~~**9.0 Unit title and cross lease provisions**~~

~~Unit Titles~~

~~9.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act 2010 ("the 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.~~

~~9.2 If the property is a unit title, the vendor warrants and undertakes as follows:~~

~~(1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.~~

~~(2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.~~

~~(3) Not less than five working days before the settlement date, the vendor will provide:~~

~~(a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and~~

~~(b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.~~

~~(4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.~~

~~(5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.~~

~~(6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.~~

~~(7) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:~~

~~(a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or~~

~~(b) any proceedings being instituted by or against the body corporate; or~~

~~(c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.~~

~~(8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.~~

~~(9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.~~

~~(10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:~~

~~(a) the transfer of the whole or any part of the common property;~~

~~(b) the addition of any land to the common property;~~

~~(c) the cancellation of the unit plan; 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.~~

~~9.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 9.2(3), 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.~~

~~9.4 If the property is a unit title, each party specifies that:~~

~~(1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the 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 Act.~~

~~9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 9.8(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.~~

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

~~9.6 (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 ("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 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.~~

10.0 Conditions and mortgage terms

Particular Conditions

10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

10.2 (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 10.8(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 10.8(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.

10.3 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 tenth 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. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. 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. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.

10.4 (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 Land Act/OIA date shown on the front page of this agreement, 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.

10.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.

10.6 If the Land Act/OIA date is not shown on the front page of this agreement, that date shall be the settlement date or a date 95 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.

10.7 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.

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Operation of Conditions

10.8 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.

Mortgage Terms

10.9 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.

10.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

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 this agreement 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 as aforesaid 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 giving 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 Agent

13.1 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 appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

13.2 The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

14.0 Goods and Services Tax

14.1 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 3.6(1).

14.2 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.

14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

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14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, 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.

15.0 Zero-rating

15.1 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 is correct at the date of this agreement.

15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.

15.3 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.

15.4 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.

15.5 If any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 1 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added 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.

15.6 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,
the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.

15.7 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 15.3 and 15.4 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.

16.0 Supply of a Going Concern

16.1 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 herein:
(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%.

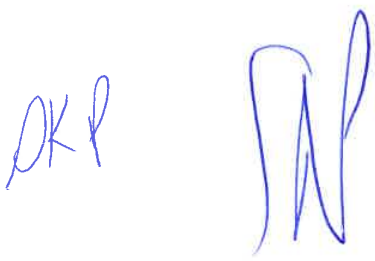
16.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 14.0 of this agreement shall apply.

17.0 Limitation of Liability

17.1 If any person enters into this agreement as trustee of a trust, then:
(1) That person warrants that:
(a) the person has power to enter into this agreement under the terms of the trust;
(b) the person has properly signed this agreement in accordance with the terms of the trust;
(c) the person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
(d) all of the persons who are trustees of the trust have approved entry into this agreement.
(2) 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, 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"). 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.

18.0 Counterparts

18.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.



FURTHER TERMS OF SALE

Refer to following page

OKP

ANNEXURE – FURTHER TERMS OF SALE

495 Slopetown Road, Clinton (RT OT18C/599)

19.0 **Legislation** – The parties enter into this agreement pursuant to section 14 of the Otago Regional Council (Kuriwao Endowment Lands) Act 1994 and Part VII of the Land Act 1948 ("the Legislation"). In the event of inconsistency between the provisions of this agreement and the mandatory provisions of the Legislation, the Legislation shall prevail.

20.0 **No deferred payments** – Under section 122(10) of the Land Act 1948 the purchaser purchases for cash and not upon deferred payments.

21.0 **Payment of rent** – The purchaser shall at the same time as and in addition to payment of the purchase price pay all rent and other sums plus GST due by the purchaser to the vendor under the lease up to and including the settlement date.

22.0 **Merger of leasehold** – The leasehold estate and the fee simple estate to be transferred from the vendor to the purchaser under this agreement shall merge upon transfer and the transfer to be prepared under clause 3.6 shall provide for this.

23.0 **Conservation covenant** – The vendor and the purchaser shall contemporaneously with the payment of the purchase price, and as an interdependent obligation, enter into a deed of covenant in the form attached to this agreement as Appendix A ("Covenant").

24.0 **No breach** – From the date of this agreement the purchaser must not cause or permit anything to be done which would breach the Covenant.

25.0 **Fencing contribution** – The vendor's contribution of $3,438.14 (being 50%) of the cost of fencing the areas subject to the covenant shall be set off against the purchase price payable on the settlement date. The invoice for the fencing is at Appendix B.

26.0 **Council approval** – This agreement is subject to the approval of the Otago Regional Council or its duly authorised delegate within 20 working days from the date of this agreement. This condition is for the benefit of, and may only be waived by, the vendor. To avoid doubt, the decision of the Otago Regional Council under this clause is to be made in its capacity as the regional council for the Otago region in which the property is situated and is unfettered.

27.0 **Settlement date** - The settlement date is 20 working days after the fulfilment of the Otago Regional Council approval condition in clause 26.0.

Ninth Edition 2012 (8)

SCHEDULE 1

(GST Information – see clause 15.0)

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

1.	The vendor's registration number (if already registered): 51-668-775	
2.	Part of the property is being used as a principal place of residence at the date of this agreement. That part is: "the main farmhouse" (e.g. "the main farmhouse" or "the apartment above the shop")	~~Yes/No~~ Yes
3.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/~~No~~
4.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/~~No~~

If the answer to either or both of questions 3 and 4 is "No", go to question 7

5.	The purchaser's details are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered): 083-968-265	
6.	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). **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") "the main farmhouse"	~~Yes/No~~ No Yes/~~No~~
7.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	~~Yes/No~~

If the answer to question 7 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

8.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
9.	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 8 and 9 is "No", there is no need to complete this Schedule any further.

10.	The nominee's details (if known to the purchaser) are as follows: (a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
11.	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). **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 Yes/No

SCHEDULE 2

List all chattels included in the sale

(strike out or add as applicable)

~~Stove~~ ~~Fixed floor coverings~~ ~~Blinds~~ ~~Curtains~~ ~~Light fittings~~

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 Agents 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 2010.

Signature of Purchaser(s):

Director / Trustee / Authorised Signatory / 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 / 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 / **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 / Attorney***~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

*If this agreement is signed under:

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

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

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

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

APPENDIX A

DATED

BETWEEN **OTAGO REGIONAL COUNCIL**

AND **GEORGE RAYMOND PEARCE, SHIRLEY KAY PEARCE** and **HGW TRUSTEE'S LIMITED** as trustees of the George Pearce Kuriwao Trust

CONSERVATION COVENANT

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

AH-266090-689-215-V1

THIS DEED is dated

PARTIES

1 **OTAGO REGIONAL COUNCIL** ("Council")

2 **GEORGE RAYMOND PEARCE, SHIRLEY KAY PEARCE** and **HGW TRUSTEE'S LIMITED** as trustees of the George Pearce Kuriwao Trust ("Covenantor")

BACKGROUND

A. The Covenantor is the registered proprietor of an estate in fee simple of 796.1921 hectares more or less legally described as Sections 3-4, 10-11, 14, 17, 19, 25-26 Block VII Kuriwao Survey District and Sections 5-6 Block XII Kuriwao Survey District and constituted as record of title identifier OT18C/599 ("the Land").

B. The Council is a local authority for the region in which the Land is situated.

C. The Council is authorised by section 77 of the Reserves Act 1977 ("the Act") to obtain conservation covenants in respect of land for the purposes of managing such land to preserve the natural environment, or landscape amenity, or wildlife or fresh-water life or marine life habitat or historical value, and such covenants are deemed to be an interest in land capable of registration under the Land Transfer Act 1952.

D. The covenantor has agreed to grant the Council a conservation covenant over the Land.

OPERATIVE PART

1 Definitions

1.1 **Council** includes the successors of Council and, for the purposes of exercising the rights and powers of Council under this deed, the members, officers, employees, agents, contractors (and their sub-contractors) of the Council;

1.2 **Covenantor** includes any person named in this deed as the covenantor and that person's successors (as defined in section 40(5) of the Public Works Act

1981); and also includes any person who holds any right, estate or interest in the Land;

1.3 **Freeholding Agreement** means an agreement for sale and purchase of real estate between the Council as vendor and the Covenantor as purchaser, by which the Council sold the fee simple estate in the Land to the Covenantor, dated [ ] 2019;

1.4 **Working Day** means any day of the week other than Saturday, Sunday or a public holiday at Dunedin, New Zealand; and

1.5 **Written Notice** means notice in writing served on a party by:

1.5.1 Personal delivery;

1.5.2 Posting by ordinary mail to that parties last known or usual place of residence of business, in which case it shall be deemed to have been served on the second Working Day following the date of posting; or

1.5.3 Facsimile transmission to that parties last known or usual facsimile number, in which case it shall be deemed to have been served when the sender's facsimile machine reports that the notice has been transmitted.

2 Grant of covenant

2.1 In consideration of the entry by Council into the Freeholding Agreement and this deed, the Covenantor grants to the Council a covenant over those parts of the Land outlined in blue and purple and marked 1 to 5 on the plan attached to this deed as Schedule A ("the Conservation Areas"), which areas are approximate and subject to survey.

3 Covenants

3.1 The Covenantor covenants with the Council with respect to the Conservation Areas that the Covenantor shall:

3.1.1 Manage the Conservation Areas so as to maintain and at the Covenantor's option enhance the natural environment (including the ecology and natural character) of the Conservation Areas and to encourage the regeneration of native plants and the natural environment of the Conservation Areas.

3.1.2 Not undertake any physical works (including, without limitation, vegetation clearing, earthworks, drainage works and building works) within the Conservation Areas without the prior written consent of the Council.

3.1.3 Maintain drains and waterways on the Land so as to preserve the quality of water within the Conservation Areas, and use best endeavours to prevent any contamination thereof.

3.1.4 Permit Council access over the Land to the Conservation Areas to monitor their status.

3.1.5 Use best endeavours to keep the Conservation Areas free of pest plants and animals (including gorse, broom, rabbit, possum and any other plant or animal determined by Council for the purposes of this covenant to be a pest).

3.1.6 Not transfer mortgage, lease or otherwise deal with the Land without first giving written notice of this deed and its terms to the other party and giving written notice to Council of the transfer, mortgage, lease or other dealings.

3.1.7 At its own cost to erect stock proof fences around the unfenced parts of the Conservation Areas, and that the Covenantor shall not damage and shall maintain the fences and any existing fences.

3.1.8 Only graze its stock in the Conservation Areas 3 and 5 in accordance with paragraphs 4, 5 and 6 of section 4 of the ecological report attached to this deed as Schedule B ("the Report") to the extent that this does not cause any material detrimental effects to the natural environment (including the ecology and natural character) of the Conservation Areas.

3.1.9 Use best endeavours to prevent stock from entering Conservation Areas 1, 2 and 4, and, in the event that any stock enters these Conservation Areas, immediately remove the stock and do all things necessary to prevent re-entry.

3.2 The parties agree that the Covenantor's obligations in clause 3.1 shall be interpreted with reference to the Report and any further ecological assessment reports relating to the Conservation Areas.

4 Registration

4.1 The Council may at any time require this covenant to be registered against the title to the Land.

4.2 The Covenantor shall immediately when called upon the do so sign all documents (including an instrument recording the terms of this covenant other than those superseded by registration) and do all things required of it by the Council to enable the Council to give effect to clause 4.1 and to register the covenant granted under this deed.

4.3 The Council shall be permitted access to the Land to enable the preparation of a survey plan (at the expense of the Council) so as to enable registration of the covenant against the title to the Land.

5 Compensation

5.1 The covenantor acknowledges that the entry by the Council into the Freeholding Agreement and this deed is full compensation for the grant of the covenant under this deed and that the covenantor shall not be entitled to any further compensation for any matter connected with this covenant.

5.2 The Council may register a compensation certificate under section 19 of the Public Works Act 1981 against the Land, pending registration of the covenant instrument in accordance with clause 4 of this deed.

6 Default

6.1 If one party alleges that the other is in breach of its obligations under this deed then:

6.1.1 The party alleging the default may serve on the other party Written Notice requiring the defaulting party to remedy the breach; the notice must state the term of this deed which is alleged to have been breached and the grounds upon which the party serving the notice contends that a breach has occurred. The notice must give the other

party five Working Days from service of the notice to remedy the breach.

6.1.2 If after the expiry of five Working Days from the date of service of the notice, the party served with the notice has not remedied its breach, or given notice of dispute, the other party may:

6.1.2.1 Enter the land to which the breach relates; and/or

6.1.2.2 Remedy the breach; and/or

6.1.2.3 In the case of the Council, exercise its power of attorney under clause 8.

6.2 The party in breach is liable to pay to the party serving the notice the costs of preparing and serving the notice and the costs incurred in remedying the breach.

6.3 The other party may recover from the party in breach, as a liquidated debt, any money payable under this clause.

6.4 Nothing in this clause limits any other rights and remedies available to the party alleging breach.

7 Disputes

7.1 If any party considers that a dispute has arisen under clause 6, then:

7.1.1 The party which claims the dispute exists may serve Written Notice on the other party giving full particulars of the dispute.

7.1.2 The parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques which may include negotiation, mediation, independent expert appraisal or any other technique that might be agreed between the parties.

7.1.3 If the dispute is not resolved within ten Working Days of the service of notice of the dispute, or such longer period as the parties may agree, the dispute must be referred to arbitration in accordance with the Arbitration Act 1996 for determination by a single arbitrator to be appointed by the parties, or failing agreement to be appointed by the

president of the Otago branch of the New Zealand Law Society or his or her nominee.

8 Power of attorney

8.1 The Covenantor irrevocably appoints the Council as the Covenantor's attorney in relation to this deed.

8.2 The Council, as attorney:

8.2.1 May sign any documents on behalf of the Covenantor including, without limitation, documents required to be signed under clause 4.2 of this deed; but

8.2.2 Is not obliged to do so.

9 Costs

9.1 Each party shall meet its own legal and other costs with respect to this deed.

10 Counterparts

10.1 This deed may be executed:

10.1.1 In two or more counterparts, all of which are deemed originals, but which together constitute one deed; and

10.1.2 By facsimile or scanned copies signed by the parties, provided that immediately after transmission of the executed agreement each party will forward to the others the original executed copies for the purpose of forming the counterparts referred to in 10.1.1 above.

11 Further assurances

11.1 Each party covenants to execute such further instruments and do such further acts as may be necessary or desirable to carry out the covenants made herein, including to;

11.1.1 Promptly execute and deal with such documents as shall be reasonably be required;

11.1.2 Promptly complete all electronic transactions as shall reasonably be required;

11.1.3 Convey promptly to each party all material notifications, orders and demands and other communications received by any governmental or other authority in relation to this deed;

11.1.4 Comply with all applicable laws of New Zealand; and

11.1.5 Promptly take all necessary steps in its part to give full effect to the terms and conditions of this deed.

12 Compliance with laws

To avoid doubt nothing in this deed shall:

12.1 Limit the obligations of the Covenantor under any regional plan or proposed regional plan or other regulatory instrument promulgated by the Council; nor

12.2 Oblige the Council to exercise any right or power under this deed to comply with any obligation of the Covenantor under any regional or district plan or proposed regional or district plan or any other law; nor

12.3 Fetter or restrict in any way the Council's statutory functions, duties, discretions and powers.

EXECUTED as a deed

The Common Seal of the
OTAGO REGIONAL COUNCIL
was affixed in the presence of:

_____

_____

SIGNED by **GEORGE RAYMOND PEARCE**
as Covenantor in the presence of:

George Raymond Pearce

Witness:

Signature of witness

Full name

Occupation

Place of residence

SIGNED by **SHIRLEY KAY PEARCE**
as Covenantor in the presence of:

Shirley Kay Pearce

Witness:

Signature of witness

Full name

Occupation

Place of residence

SIGNED by **HGW TRUSTEE'S LIMITED** as
Covenantor:

Director

Director

AH-266090-689-215-V1
Page 9 of 9

Schedule A

ORC Kuriwao Leases
Pearce Lease

Wetland Ecological Integrity

Ecological Integrity
Moderate
Moderate-Low

1:5000

Map produced by Mike Thorsen 20190516

OKP

Schedule B

Otago Regional Council

Kuriwao Leases

Ahika Consulting
Rm 2, Third Floor
[illegible] St, Dunedin
PO Box [illegible]
[illegible] 9242
[illegible]@ahika.co.nz
www.ahika.co.nz

Sites of Ecological Importance on Identified Wetlands on Pearce Lease

May 2019

Report prepared for Otago Regional Council by Dr M. J. Thorsen,

16 May 2019

Report number: 0225-02

2 Dowling Street
Dunedin 9016
New Zealand

1 Introduction

The Otago Regional Council (ORC) engaged Ahika Consulting Ltd to carry out a rapid ecological assessment of a wetland complex on the ORC Kuriwao Lease Property S327 (Pearce Lease) identified as being of notable conservation value in a 2010 ecological report[1] (Figure 1) with the aim of identifying if there are areas within this wetland with lower biodiversity values where sheep grazing could be ecologically appropriate. This property is a moderate size sheep and beef farm located 12 km south-west of Clinton on Slopedown Road (Figure 2).

An inspection of the wetlands was made by Dr M. Thorsen on 28 March 2019. This inspection consisted of a walk-through survey of the wetland complex, during which all plants, birds and reptiles seen were recorded, and an estimate made of their abundance and an evaluation made of its ecological integrity – the degree to which it is dominated by exotic plant species - and the ecological value of the wetland subunits (Figure 3).

Figure 1. Location of wetlands as outlined in Figure 3 of the 2010 ecological report.

[1] Mitchell, R. 2010. Kuriwao Lease S327 Pearce: Independent assessment of conservation and ecological values for the freeholding process. Unpub. Report to Otago Regional Council from Kunzea Consultants Ltd.

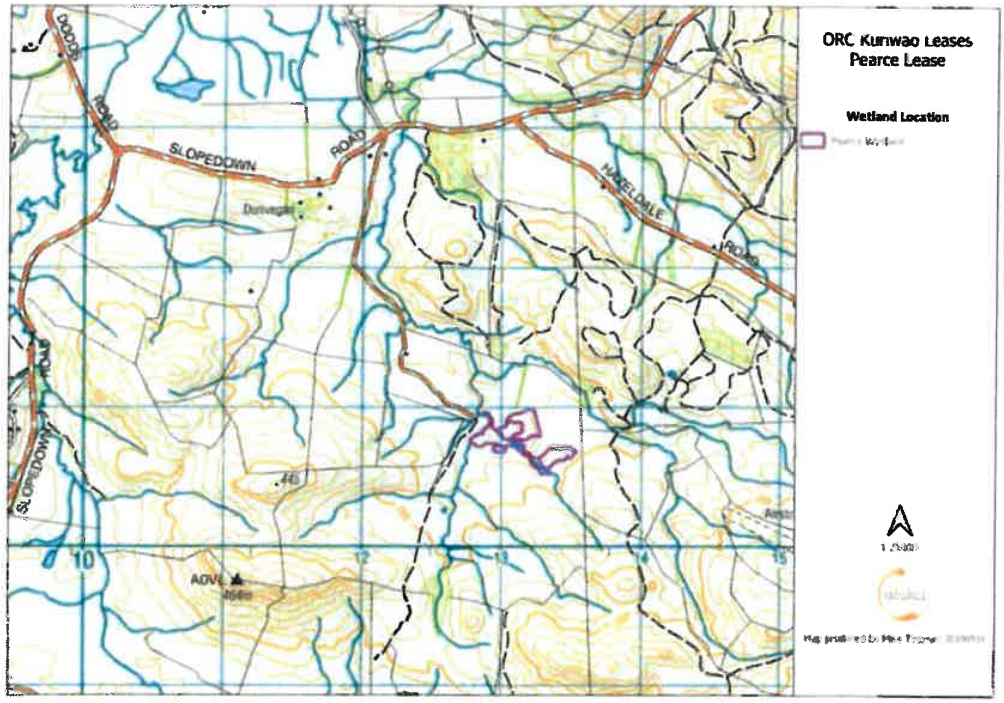


Figure 2. General location of the Pearce wetlands.

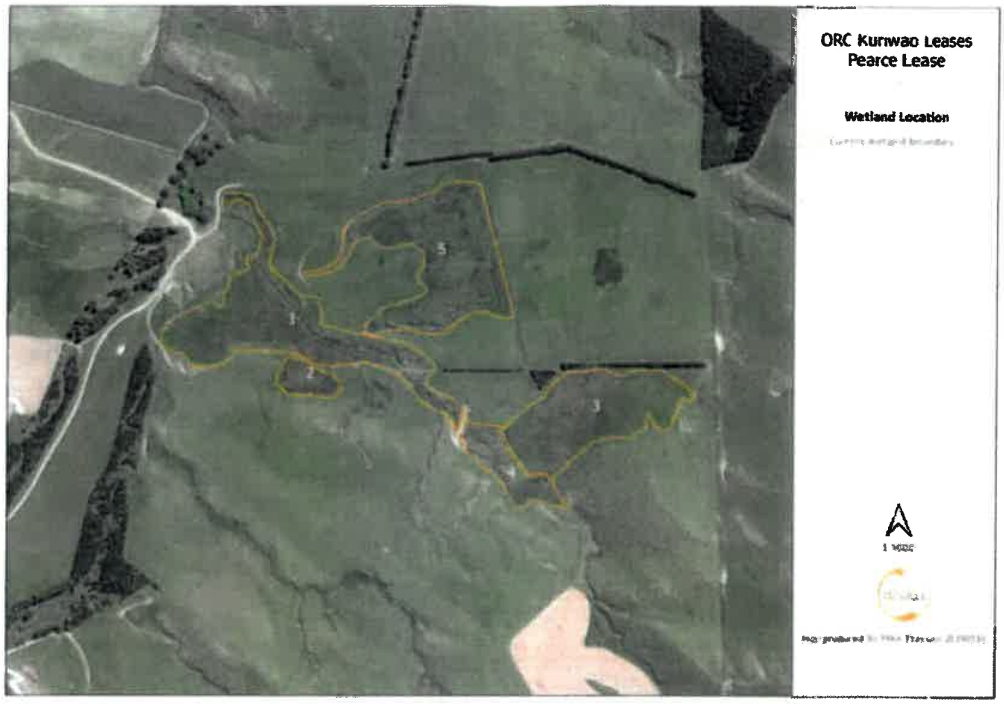


Figure 3. Aerial view of Pearce wetlands with wetland subunits labelled 1-5. Current extent of wetlands is outlined orange.

2 Ecological Features of the Wetlands

The moderate to moderate-low ecological condition of these wetlands (Figure 4) was generally as described in the 2010 ecological report. Nineteen indigenous and 24 exotic plant species were recorded in the wetlands.

Area 1 is a 3.3 ha fenced copper tussock wetland with a row of gums and conifers along the fence line and is comprised of 1.8 m tall copper tussock grassland with large patches of *Carex geminata* sedgeland and *Juncus* species (mainly the exotic soft rush) rushland (Figure 5). Upstream the vegetation changes to a copper tussock and shrub-based riparian gully vegetation (Figure 6). One bittern was seen flying from this wetland. This species has a conservation status of Nationally Critical[2]. This wetland subunit is assessed as being of moderate ecological integrity as approximately 25% cover by exotic plant species and the

[2] Robertson, H.A.; Baird, K.; Dowding, J.E.; Elliott, G.P.; Hitchmough, R.A.; Miskelly, C.M.; McArthur, N.; O'Donnell, C.F.J.; Sagar, P.M.; Scofield, R.P.; Taylor, G.A. 2017: Conservation status of New Zealand birds, 2016. *New Zealand Threat Classification Series 19*. Department of Conservation, Wellington. 23 p.

stream has been channelised to aid drainage which is likely to have dried the surrounding wetland to an unknown extent. This wetland subunit was ranked highest in terms of ecological value of the sites inspected.

Area 2 is a 0.4 ha unfenced copper tussock wetland that has become 'orphaned' from Area 1 and is dominated by 1.8 m tall copper tussock. This wetland subunit is assessed as being of moderate ecological integrity as the inter-tussock spaces are predominantly covered by exotic herbs and grasses. This wetland subunit was ranked third highest in terms of ecological value of the sites inspected.

Area 3 is a 2.4 ha unfenced peat-based copper tussock grassland with sedge and rush patches and a few *Olearia bullata* shrubs (Figure 7). This wetland subunit is assessed as being of moderate ecological integrity as the area has been heavily grazed and pugged by cattle (Figure 8) which has allowed weeds to flourish in the inter-tussock spaces. This wetland subunit was ranked second highest in terms of ecological value of the sites inspected.

Area 4 is a 0.7 ha unfenced area of mostly intact riparian copper tussock grassland and shrub-based gully vegetation that feeds into Area 1. The Declining desert broom[3] is present on the stream banks at two sites. This wetland subunit is assessed as being of moderate ecological integrity as the area has been grazed which has allowed weeds to flourish in the inter-tussock spaces on the shallower slopes. This wetland subunit was ranked fourth highest in terms of ecological value of the sites inspected.

Area 5 is a3.1 ha unfenced area of grazed rushland and sedgeland with some areas of copper tussock (mainly along the small gullies) and extensive exotic grassland within and between these communities (Figure 9). The rushland and sedgeland communities appear to be invading damp areas of adjoining pasture. This wetland subunit is assessed as being of moderate-low ecological integrity as the area is of reasonable size, contributes water to Area 1, and some plant communities show vigour in invading nearby areas, but is of low indigenous species diversity, is covered with large areas of exotic pasture and has been

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[3] de Lange, P.J; Rolfe, J.R; Barkla, J.W; Courtney, S.P; Champion P.D; Courtney, S.P; Perrie, L.R; Beadel, S.M; Ford, K.A; Breitwieser, I; Schönberger, I; Hindmarsh-Walls, R; Heenan, Ladley, K. 2018. Conservation status of New Zealand indigenous vascular plants, 2017. New Zealand Threat Classification Series 22. Department of Conservation, Wellington.

grazed (Figure 10) and pugged (heavily in places) which has allowed weeds and exotic pasture grasses to flourish. This wetland subunit was ranked lowest in terms of ecological value of the sites inspected.

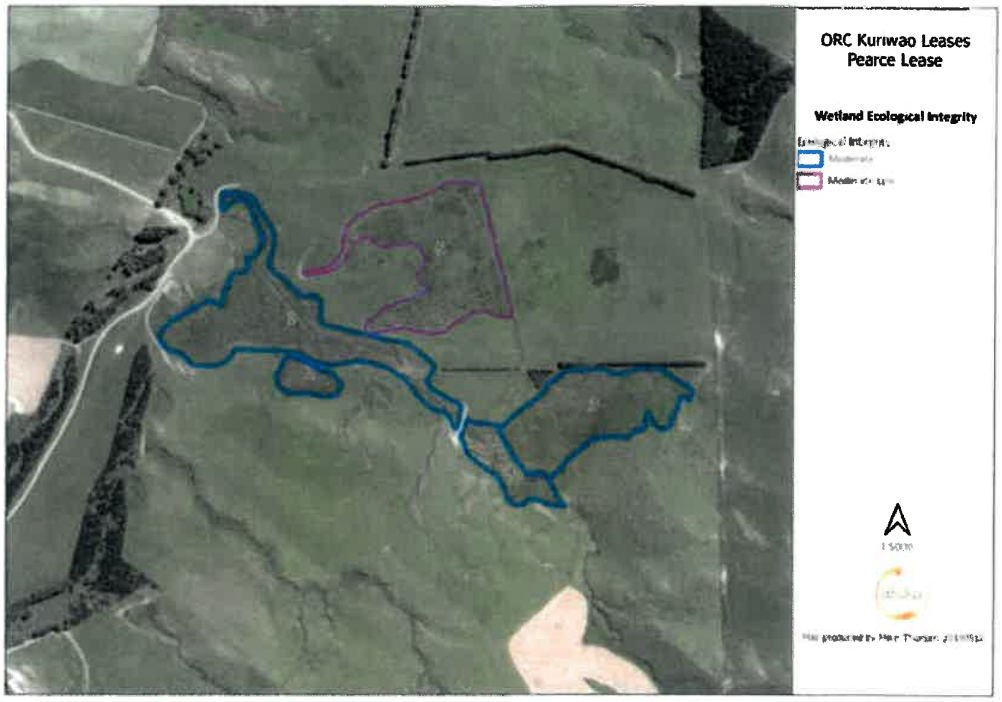

Figure 4. Ecological integrity of wetland subunits within Pearce lease.

3 Impact of sheep on wetlands

Grazing of any wetland area by sheep must first take into consideration that wetlands are becoming a scarce commodity with only 10.1% of their original national extent remaining[4] and in Southland (including parts of the Catlins area) there is an ongoing loss of wetlands at c. 1% of extent per annum[5]. The remaining wetlands are frequently also highly degraded by

[4] See http://archive.stats.govt.nz/browse_for_stats/environment/environmental-reporting-series/environmental-indicators/Home/Fresh%20water/wetland-extent.aspx

[5] Robertson, H.A; Ausseil, A-G; Rance, B; Betts, H; Pomeroy, E. 2019. Loss of wetlands since 1990 in Southland, New Zealand. NZ Journal of ecology 43: 1-9.

pest and weed impacts and therefore priority should be given to protection of any remaining wetland[6].

The impact of sheep on wetlands is poorly documented in the scientific literature[7], and the overall ecological effects of grazing can be both beneficial and detrimental – depending on stock type and stocking rate. From the author's observations of wetlands in Otago and Southland, sheep can have some impact through browsing on indigenous plants, pugging and/or compaction of soil and vegetation surface, damage to moss beds by trampling, increasing nutrient availability through defecation, importation of weeds (in fleece or droppings) and by increasing accessibility to other animal pests by creating access points. Sheep usually avoid damper areas in wetlands, probably due to the risk of entrapment.

Within the area inspected most of the observed impacts (damage to plants, soil pugging, droppings) were attributable to cattle and little damage was evident from sheep, but their effect may have been masked by the cattle impacts.

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[6] Department of Conservation & Ministry for the Environment. 2007. Protecting our places. Publication ME 799. Ministry for the Environment, Wellington.

[7] See for a review: Reeves, P.N; Champion, P.D. 2004. Effects of livestock grazing on wetlands: literature review. Environment Waikato Technical Report 2004/16 available at: https://www.waikatoregion.govt.nz/assets/PageFiles/2810/TR04-16.pdf

4 Recommendation on ecological appropriateness of grazing of areas by sheep

Based on the available ecological evidence and my observations during the site visit I would recommend that:

1. Area 3 be fenced to exclude cattle as a high priority to protect the peat-based wetland.
2. Area 2 be fenced into Area 1 as a matter of moderate priority to increase the effective size of the higher value wetland in Area 1.
3. Area 4 be fenced as a matter of moderate-low priority to protect the riparian tussockland and shrubland and to reduce farming impacts on water quality and instream fauna.
4. Light grazing by sheep of Area 3 may be appropriate, but if the area is grazed that the site is inspected every five years by a suitably qualified ecologist who can recommend to the protection agency that grazing be reduced or removed for a period.
5. Unfettered grazing by sheep is acceptable in Area 5.
6. Light grazing by cattle of Area 5 may be appropriate, but if the area is grazed that the site is inspected every five years by a suitably qualified ecologist who can recommend to the protection agency that grazing be reduced or removed for a period.

I would also recommend that all Areas (1,2,3,4,5) receive some form of protection from earthworks and vegetation clearance.

5 Appendix 1. Site photographs

Figure 5. View south-west across Area 1.

Figure 6. View upstream of riparian tussockland and shrubland part of Area 1 to Area 4 in background.

Figure 7. View from within Area 3 showing some cattle impact on Carex geminata *sedges.*

Figure 8. Heavy cattle grazing of Carex sedges in Area 3.

Figure 9. View looking north across Area 5.

Figure 10. View within Area 5 showing some cattle impacts on Carex sedges and exotic pasture grasses as a ground cover.

6 Appendix 2. Plant species recorded during site visit

Current Name + Authority	Common name	Group 1	Group 2	Family (Tribe)	Threat ranking (2017)	Abundance Class
Cirsium arvense	Californian thistle	DICOTYLEDONOUS HERBS	Composites	Asteraceae	Exotic	c
Cirsium vulgare	Scotch thistle	DICOTYLEDONOUS HERBS	Composites	Asteraceae	Exotic	l
Scorzoneroides autumnalis (L.) Moench	autumn hawkbit	DICOTYLEDONOUS HERBS	Composites	Asteraceae	Exotic	o
Acaena novae-zelandiae Kirk	red bidibid	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Rosaceae	Not Threatened	r
Cerastium fontanum subsp. vulgare (Hartm.) Greuter & Burdet		DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Caryophyllaceae	Exotic	o
Erodium moschatum (L.) L"Hér.	musky storksbill	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Geraniaceae	Exotic	l
Erythranthe guttata (DC.) G.L.Nesom	monkey musk	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Phrymaceae	Exotic	c
Lotus pedunculatus Cav.	lotus	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Fabaceae	Exotic	l

Nasturtium microphyllum Boenn. ex Rchb.	one-rowed watercress	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Brassicaceae	Exotic	c
Ranunculus glabrifolius Hook.	waoriki	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Ranunculaceae	Not Threatened	o
Ranunculus repens L.	buttercup	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Ranunculaceae	Exotic	c
Rumex crispus	curled dock	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Polygonaceae	Exotic	c
Stellaria alsine Grimm	bog stichwort	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Caryophyllaceae	Exotic	l
Stellaria media (L.) Vill. subsp. media	chickweed	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Caryophyllaceae	Exotic	o
Trifolium repens	white clover	DICOTYLEDONOUS HERBS	Dicotyledonous Herbs other than Composites	Fabaceae	Exotic	o

Carmichaelia petriei Kirk	desert broom	DICOTYLEDONOUS TREES AND SHRUBS		Fabaceae	Declining	r
Coprosma propinqua var. propinqua A.Cunn.	mingimingi	DICOTYLEDONOUS TREES AND SHRUBS		Rubiaceae	Not Threatened	r
Olearia bullata H.D.Wilson & Garn.-Jones		DICOTYLEDONOUS TREES AND SHRUBS		Asteraceae	Not Threatened	r
Prunella vulgaris	self-heal	DICOTYLEDONOUS TREES AND SHRUBS		Lamiaceae	Exotic	l
Ulex europaeus	gorse	DICOTYLEDONOUS TREES AND SHRUBS		Fabaceae	Exotic	r
Austroblechnum penna-marina (Poir.) Gasper & V.A.O.Dittrich	little hard fern, alpine hard fern	FERNS		Blechnaceae	Not Threatened	r
Hypolepis millefolium Hook.	Thousand leaved fern	FERNS		Dennstaedtiaceae	Not Threatened	r
Parablechnum montanum (T.C. Chambers & P.A.Farrant) Gasper & Salino	mountain kiokio, Dunedin-Cass blechnum	FERNS		Blechnaceae	Not Threatened	r
Polystichum vestitum (G.Forst.) C.Presl	punui, prickly shield fern	FERNS		Dryopteridaceae	Not Threatened	l
Agrostis stolonifera L.	creeping bent	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	c

Anthoxanthum odoratum L.	sweet vernal	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	o
Chionochloa rubra subsp. cuprea Connor	copper tussock	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Not Threatened	a
Dactylis glomerata L.	cocksfoot	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	a
Festuca novae-zelandiae (Hack.) Cockayne	Fescue tussock, hard tussock	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Not Threatened	r
Glyceria declinata Bréb.	blue sweet grass, glaucous sweet grass	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	l
Lolium perenne L.	perennial rye grass	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	o
Phleum pratense L.	timothy	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	l
Poa cita Edgar	Silver tussock	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Not Threatened	l
Poa pratensis L.	Kentucky bluegrass	MONOCOTYLEDONOUS HERBS	Grasses	Poaceae	Exotic	o
Juncus edgariae L.A.S.Johnson & K.L.Wilson	Wiwi, Edgars rush	MONOCOTYLEDONOUS HERBS	Rushes & Allied Plants	Juncaceae	Not Threatened	c

Juncus effusus L. var. effusus	leafless rush	MONOCOTYLEDONOUS HERBS	Rushes & Allied Plants	Juncaceae	Exotic	c
Juncus usitatus L.A.S.Johnson		MONOCOTYLEDONOUS HERBS	Rushes & Allied Plants	Juncaceae	Not Threatened	l
Carex coriacea Hamlin	cutty grass, rautahi	MONOCOTYLEDONOUS HERBS	Sedges	Cyperaceae	Not Threatened	c
Carex geminata Schkuhr	Cutty grass, Rautahi	MONOCOTYLEDONOUS HERBS	Sedges	Cyperaceae	Not Threatened	c
Carex leporina L.	oval sedge	MONOCOTYLEDONOUS HERBS	Sedges	Cyperaceae	Exotic	o
Carex secta Boott	Purei, Pukio, Niggerhead	MONOCOTYLEDONOUS HERBS	Sedges	Cyperaceae	Not Threatened	o
Carex sinclairii Boott	Sinclair's sedge	MONOCOTYLEDONOUS HERBS	Sedges	Cyperaceae	Not Threatened	l
Eleocharis acuta R.Br.	sharp spike sedge	MONOCOTYLEDONOUS HERBS	Sedges	Cyperaceae	Not Threatened	r

APPENDIX B

to : **The Otago Regional Council**
Private Bag 1954
Dunedin

Tax Invoice No. 5314

Invoice date 02.10.19

from: **The George Pearce Kuriwao Trust**
587 Slopedown Rd
RD 1,
Clinton 9583
GST No. 83 968 265

To doze fence line, supply materials and erect fence for "stock exclusion areas 2 and 3"
(568 metres approx.)

	Units	Rate		Amount (excl. GST)
Tisdall Contracting:				
Doze fence line				
Drive Posts				
Labour - lay out posts, drive posts pull wires, stay the posts, staple posts and insulators, swing gate, nail rails etc.				
Materials				
Posts				
Strainers				
Stays				
Stay blocks				
Insulators				
Triplexs				
Timber				
Gate				
Gudgeons				
Gate Catch				
End insulators				
Wire				
Staples $100/20kg				
RTL - freight				

	$	5,979.37
GST 15%	$	896.91
TOTAL COST	$	6,876.28
ORC 50% share (incl gst)	$	**3,438.14**

OKP

Ninth Edition 2012 (8)

BEFORE SIGNING THE AGREEMENT

- 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 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 weathertightness 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 2010;
  - 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 9.0:
  - 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.
- Before signing this agreement, 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.

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

DATE: 2019

VENDOR:
Otago Regional Council

Contact Details:
See below

VENDOR'S LAWYERS:

Firm: Ross Dowling Marquet Griffin

Individual Acting: Andrew Hancock

Contact Details:
P O Box 1144
DUNEDIN 9054
Phone: (03) 477 8046
Fax: (03) 477 6998
Email: andrew.hancock@rossdowling.co.nz

PURCHASER:
George Raymond ~~Peace~~ Pearce, Shirley Kay Pearce and HGW Trustees Limited as trustees of the George Pearce Kuriwao Trust
Contact Details:
See below

SNP OKP

PURCHASER'S LAWYERS:

Firm: O'Neill Devereux

Individual Acting: Todd Whitcombe

Contact Details:
P O Box 909
DUNEDIN 9054
Phone: (03) 4776 801
Fax (03) 479 0201
Email: todd@ond.co.nz

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details:

SNP OKP

10.5. Local Government New Zealand Annual General Meeting 2020: Attendance and Remits

Prepared for:	Council
Report No.	GOV1932
Activity:	Governance Report
Author:	Amanda Vercoe, Executive Advisor
Endorsed by:	Sarah Gardner, Chief Executive
Date:	18 July 2020

PURPOSE

[1] To nominate ORC delegates to attend the Local Government New Zealand 33rd Annual General Meeting on Friday 21 August in Wellington, and to consider the priority remits for the meeting.

EXECUTIVE SUMMARY

[2] The Local Government New Zealand Annual General Meeting will take place on 21 August 2020. The meeting will consider the remits that have been put forward from across the local government sector to shape the LGNZ forward work programme for the year ahead.

[3] The Otago Regional Council needs to confirm its representation at the meeting (up to three voting delegates) and decide what direction to give its delegates to the meeting.

RECOMMENDATION

That the Council:

1) ***Receives*** *this report.*
2) ***Decides*** *which councillors will represent the ORC as official ORC delegates to the AGM.*
3) ***Notes*** *the attached remits will be discussed at the LGNZ AGM.*
4) ***Either directs*** *the ORC delegates on what remits the ORC supports for voting purposes at the AGM; or*
5) ***Gives*** *the ORC delegates discretion to vote on remits supported by the ORC for voting purposes at the AGM.*

BACKGROUND

[4] The Local Government New Zealand (LGNZ) Annual General Meeting (AGM) will take place on Friday 21 August, in Wellington (this is the rescheduled date, following delays from COVID-19).

[5] The Otago Regional Council (ORC) is a member of LGNZ and is entitled to three votes at the 2020 AGM. In 2019, the AGM was attended by the Chair, Councillor Hope, and General Manager People, Culture and Communications (in lieu of Chief Executive).

[6] At the AGM, delegates will be required to vote on the 2020 remits. Remits are an opportunity for councils to direct the advocacy work of Local Government New Zealand

[7] Remits raised by a council must have formal support from at least one zone or sector group meeting or five councils prior to being submitted, as they must be relevant to local government. The proposed remits require more than 50 percent support for LGNZ to advocate for them on behalf of the sector. Once passed, remits become official policy to be actioned by Local Government New Zealand.

[8] Remits should address major strategic "issues of the moment". They should have a national focus articulating a major interest or concern at the national political level.

DISCUSSION

[9] Attachment 1 provides the 2020 Annual General Meeting remits. A summary has been included below.

[10] **1. Public transport support**: That LGNZ acknowledges the Government for its recognition during COVID-19 of public transport as an essential service and its strong financial support, and calls on the Government to work with councils to maintain the viability of public transport during the recovery phase of COVID-19.

[11] **2. Housing affordability**: That LGNZ calls on the Government to introduce legislation to enable councils to address housing affordability in their communities, establish a working group, and advocate for an affordable housing National Policy Statement to be developed.

[12] **3. Returning GST on rates for councils to spend on infrastructure**: That LGNZ request the Government use the appropriate mechanisms to enable the 15 percent GST charged on rates to be returned to councils to spend on local or regional infrastructure projects.

[13] **4. Natural hazards and climate change adaptation**: That LGNZ seeks from Central Government a review of current law relating to natural hazards and climate change adaptation along NZ's coastlines and coordinates the development of a coastline strategy for the whole of New Zealand which would cover roles and responsibilities of territorial authorities, regional councils and central government, greater direction of an integrated approach, and development of principles for "who pays".

[14] **5. Annual regional balance of transfers**: That LGNZ work with Treasury, Statistics NZ and other government agencies to develop and annual regional balance of transfers to show how much each region contributes in taxes and how much each region receives in government funding.

[15] **6. Local Government Electoral Cycle**: That the local government cycle be extended from three to four years.

[16] **7. Water Bottling**: That LGNZ works with Government to place a moratorium on applications to take and/or use water for water bottling or bulk export; require and enable regional councils to review inactive water bottling consents, with a view to withdrawal of the consent and discourage consent 'banking'.

[17] **8. Quorum when attending local authority meetings**: That LGNZ requests Central Government amend legislation to enable elected or appointed members, connecting remotely to a public council meeting, be included in the quorum.

[18] **9. Use of macrons by local authorities**: That LGNZ work with Central Government to put in place a simplified process for the addition of macrons to council names if requested by that council or its community.

[19] **10. Rates rebates for low income property owners**: That the Government lift the level of rates rebates available for low- and fixed-income property owners – with yearly increases, considering the cost of inputs into local government services.

[20] **11. Local Government's CO2 emissions**: That the Government implement and independent scheme, based on the United Kingdom model operated by the Department of Business, Energy, and Industrial Strategy, to measure and report on carbon emissions at a district level.

OPTIONS

[21] Council can direct its nominated ORC delegates on what remits the ORC supports for voting purposes at the AGM; or

[22] Council can give the ORC delegates discretion to vote on remits supported by the ORC for voting purposes at the AGM.

CONSIDERATIONS

Policy Considerations

[23] No policy considerations.

Financial Considerations

[24] No financial considerations.

Significance and Engagement

[25] No significance and engagement questions.

Legislative Considerations

[26] No legislative considerations, other than noting some of the remits recommend legislation change.

Risk Considerations

[27] No risk considerations.

NEXT STEPS

[28] The LGNZ work programme will be finalised following the AGM and made available to councillors. Any aspects of the LGNZ work programme of direct interest to the ORC can be considered in committee or workshop when or as deemed necessary.

ATTACHMENTS

1. 2020 AGM Remits [**10.5.1** - 44 pages]
2. Otago RC - AGM registration form [**10.5.2** - 3 pages]

Who's putting local issues on the national agenda?

We are. LGNZ.
Te Kāhui Kaunihera ō Aotearoa.

2020 Annual General Meeting

Remits

We are. LGNZ.
Te Kāhui Kaunihera ō Aotearoa.

1 Public transport support

Remit: That LGNZ:

- Acknowledges the Government for its recognition during COVID-19 of public transport as an essential service;
- Acknowledges the strong financial support provided by the Government through Waka Kotahi NZTA during the COVID-19 Alert Levels, that enabled councils to continue to provide public transport for people providing essential services and transport for the public to receive essential services up to 30 June 2020;
- Recognises that councils will continue to be under significant financial pressure to maintain the viability of public transport under current FAR rate settings for many months during the recovery phase from COVID-19; and
- Calls on the Government to work with councils to maintain the financial viability of public transport during the recovery phase of COVID-19.

Proposed by: Greater Wellington Regional Council

Supported by: LGNZ Regional Sector

Background information and research

1. Nature of the issue

The Remit is important as an acknowledgement to the Government from the Local Government sector for the strong support for public transport during the response to the COVID-19 pandemic emergency, and to reinforce the need for ongoing support during recovery from COVID-19 to ensure the financial viability of public transport in councils across New Zealand.

The Remit meets the tests for acceptance of a proposed Remit to the LGNZ AGM in that it addresses a major strategic "issue of the moment", and it has a national focus articulating a major interest and concern at the national political level.

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2. Background to its being raised

This Remit gives deserved acknowledgement to the Government for its strong support of public transport during the response phase to the COVID-19 pandemic emergency. We know from experience in China that recovery of patronage on public transport has been slow following the passing of the worst of COVID-19. The recovery phase from COVID-19 in New Zealand may take many months, and even years, based on current projections.

The Government through Waka Kotahi NZ Transport Agency (NZTA) required and funded the delivery of public transport (as an essential service) throughout the Alert Levels.

NZTA has also funded:

- The shortfall in revenue for bus, ferry and train operations;
- The additional costs that resulted from COVID-19 such as cleaning, stickers and advertising collateral; and
- The Total Mobility Service receiving a full subsidy for a taxi service up to $80 /trip until the end of June.

As at 11 June, we do not know what financial support will be available from the Government through NZTA for public transport beyond financial year 2020/2021. This Remit is calling for the Government to continue to work in partnership with councils to ensure the ongoing viability of public transport in the regions, cities, towns and communities across New Zealand.

3. New or confirming existing policy

This issue is not currently covered by existing LGNZ policy.

It is new policy, in so far as it relates to COVID-19 and the associated ongoing financial viability of public transport. One possible tool could be an increase in the appropriate Financial Assistance Rate (FAR) during the Recovery Phase from COVID-19.

4. How the issue relates to objectives in the current Work Programme

The issue directly relates to Issue "1. Infrastructure and Funding" of LGNZ's "The six big issues for New Zealand councils, Our work, Our policy priorities":

https://www.lgnz.co.nz/our-work/ourpolicy-priorities/the-six-big-issues/

This also indirectly relates to LGNZ's social priorities, as it is vital that public transport continues to be available to those in our communities who rely on it.

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5. What work or action on the issue has been done and what was the outcome

Because of the speed by which the pandemic has become an issue, no work has been undertaken on this issue by either LGNZ or the proposer. Current government support has primarily been concerned with the need to sustain public transport through the immediate response or emergency phase. This Remit is concerned with the sustainability of public transport during the recovery and rebuild phase's post-COVID-19.

6. Any existing relevant legislation, policy or practice

- Land Transport Management Act 2003 , no 118 (as at 22 October 2019): http://www.legislation.govt.nz/act/public/2003/0118/77.0/DLM226230.html
- Draft Government Policy Statement on Land Transport, 2021/22 – 30/31 including Outcome "Inclusive Access" (which includes "access to work, education and healthcare"), and Outcome "Resilience and security" (which includes "recovering effectively from disruptive events"): https://www.transport.govt.nz/multimodal/keystrategiesandplans/gpsonlandtransportfunding/gps-2021/
- National Action Plan 3 "Unite Against COVID-19", as of 23 April 2020, National Crisis Management Centre: https://uniteforrecovery.govt.nz/assets/resources/legislation-and-key-documents/COVID19-National-Action-Plan-3-as-of-22-April-extended.pdf

7. **Outcome of any prior discussion at a Zone or Sector meeting**

Zone and Sector Meetings have not been held during COVID-19 Alert Levels.

8. Suggested course of action envisaged

That the President of LGNZ write to the Minister of Transport and the Minister of Local Government, to convey the Remit and seek a meeting with the Ministers to discuss a joint work programme between the Government and councils (through LGNZ) on policy to maintain the financial viability of public transport during the recovery phase of COVID-19.

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2 Housing affordability

Remit: *That Local Government New Zealand (LGNZ):*

- *Calls on the Government to introduce legislation that would fully enable councils to address housing affordability in their communities through a range of value uplift and capture tools, one such tool being 'inclusionary zoning';*
- *Seeks to establish a working group on affordable housing, comprising of relevant/affected councils, central government (MHUD, Kāinga Ora, MSD), iwi, and the community housing sector; and*
- *Advocates to central government for an affordable housing National Policy Statement to be developed.*

Proposed by: Hamilton City Council and Christchurch City Council

Supported by: Tauranga City Council; Tasman District Council; Waipa District Council; South Waikato District Council; and Waitomo District Council

Background information and research

1. Nature of the issue

Many towns and cities in New Zealand are grappling with how to provide more affordable housing – dwellings that are affordable to buy or rent for households on low to median incomes with secure tenure.

A more joined-up response is necessary. This remit therefore calls for:

- A working group on affordable housing be established, comprising of relevant/affected councils, LGNZ, central government (MHUD, Kāinga Ora, MSD), iwi and the community housing sector; and
- LGNZ to advocate to central government for an affordable housing National Policy Statement to be developed.

The remit also covers one specific proposal: inclusionary zoning.

Councils need more tools to enable them to respond to housing needs in their communities. One such tool is inclusionary zoning that seeks land or financial contributions from developers being vested to nominated housing land trusts.

While this is not commonplace in New Zealand currently, it is widespread in other major housing hotspots around the world including in parts of the United Kingdom, Australia and the United States.

The term inclusionary zoning refers to district plan rules that require a portion of new land development to be retained as affordable housing for people on low-to-moderate incomes. The theory of inclusionary zoning is that when land is up-zoned (for example, from rural to residential), it creates a significant uplift in value, and the community should share in the benefit of that uplift. This value uplift is enabled through council planning processes, including but not limited to private plan changes, granting of resource consents or council-initiated district plan rezoning under the Resource Management Act (RMA) process.

As an example of inclusionary zoning, a council's district plan could require that land developers provide 5 per cent of titled sections from up-zoned land or on a specific unit threshold of consented residential development, or the equivalent monetary value, to a community housing trust. This land would then be retained on behalf of the community in perpetuity and used for affordable housing.

It is critical that government reinstate the ability to secure financial contributions as one of the options for local government funding for securing and providing a basis for a monetary contribution. This remit supports the Resource Legislation Amendment Act 2017 (RLAA) and its proposal to repeal the current provisions which stop the ability to secure contributions after April 2022.

An early form of inclusionary zoning was central to the early success of the Queenstown Lakes Community Housing Trust (QLCHT), enabling it to grow its housing stock significantly since it was established in 2007. Inclusionary zoning was a key tool for the Queenstown Lakes District Council (QLDC), utilised primarily for the period from 2006 through to 2013, ensuring that the Council could negotiate the inclusion of affordable housing through the planning process.

Although QLDC's first inclusionary zoning plan change was settled in July 2013, Queenstown was subject to legal challenges in the Environment Court, High Court and Court of Appeal by some land developers during the period 2009-2013 on its plan change to add a set of objectives, policies and rules into its district plan. The settlement forced the Council to make its inclusionary zoning provisions a matter of assessment, rather than rule-based and mandatory, reducing the effectiveness of these provisions in addressing the District's severe housing affordability issues. Today these provisions represent an inclusionary zoning opportunity that was not completely realised, having achieved only piecemeal and limited further contributions, facilitated through non-mandatory schemes and with limited certainty going forward.

Because of continuing acute housing affordability issues, the QLDC intends notifying new inclusionary zoning provisions in the next stage of its district plan review and is anticipating the same legal challenges and likely lengthy and costly appeals process.

The housing affordability challenge is wide ranging and complex. Inclusionary zoning is not the sole answer. However, it is a vital tool in enabling councils to secure a longer-term supply of land or funds in partnership with registered housing trusts and that legislation is needed to ensure inclusionary zoning can be applied consistently across the regions and minimise the risk of legal challenge.

For the avoidance of doubt, this remit proposes that councils have the clear legal opportunity in legislation to pursue inclusionary zoning. It would not be mandatory.

2. Background to its being raised

The Queenstown Lakes Community Housing Trust

In 2007, QLDC recognised a serious lack of affordable housing in its district and acted by forming the QLCHT. The trust is an independent, not-for-profit, community-owned organisation that maintains a strong relationship with the Council, with a shared goal of creating decent, secure housing for the community. The consensus to establish the QLCHT and develop planning tools to deliver affordable housing were two of 34 action items set out in the 2005 'Housing Our People in our Environment' strategy, a significant milestone of council commitment to address its housing issues with local leadership, and central government participation and investment.

The Trust operates across the housing continuum. As at June 2019, it had assisted 130 households into their assisted ownership programmes, ten into rent-to-buy schemes and 34 into affordable rental properties. The Trust has over 600 households on its waiting list and has set the goal of providing 1,000 homes over the next ten years. This goal was reaffirmed though the October 2017 Mayoral Housing Affordability Task Force report.

QLDC negotiated its first inclusionary zoning agreement with a developer over 15 years ago. This resulted in a cash payment of over $5 million, which enabled the trust to buy a large piece of land and build its first development in an affordable subdivision of Queenstown. Since then, subsequent agreements with developers have delivered residential land valued at over $12 million to the Trust, with some further cash contributions.

This remit suggests that the approach taken by QLDC has been one of the few effective approaches in the country in capturing and retaining value uplift for delivery as affordable housing.

Proposed National Policy Statement on Urban Development 2019 (NPS-UD)

Although the proposed NPS-UD looks at providing for intensification and a range of housing typologies, density and variety to support housing capacity assessments, the policies are not generally focused on housing affordability, despite this being an essential part of providing for peoples wellbeing in the proposed Objective O2 of this NPS.

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Establishment of the Waikato Community Lands Trust

A housing stocktake, carried out by the Waikato Regional Housing Initiative in 2018, found that Hamilton was the third least affordable house market in New Zealand, with a median house price of 6.8 times the average household income. Three times the median income is considered affordable.

In 2019, Hamilton City Council approved the establishment of the Waikato Community Lands Trust to help address housing affordability – a community owned trust with the purpose of holding land in perpetuity to provide access to affordable housing for the benefit of the community (like the QLCHT model). Hamilton City Council also committed an initial $2 million to the Trust as a seed funding for purchasing land. However, for the trust to grow its capacity and build a sustainable, long-term model going forward, inclusionary zoning provisions will be needed.

Other councils

While we understand that other councils are interested in exploring the use of inclusionary zoning, few have the appetite for the risks of legal challenge through the Environment Court, High Court, and Court of Appeal that QLDC faced. However, if there were an acceptable pathway that councils could follow to enable their implementation of a local housing strategy, founded on a robust needs assessment, which allowed inclusionary zoning as one of their tools, many are likely to consider such a path. The lack of enablement to local government was raised as the primary barrier to wider uptake at the 25 February LGNZ Housing Symposium.

Challenges to implementing inclusionary zoning

At present, councils that introduce inclusionary zoning provisions into their district plan open themselves up to legal challenge. The risk of lengthy and expensive legal challenges is a key barrier to councils adopting inclusionary zoning as a housing affordability lever.

The risk of legal challenge can be seen from the Queenstown example. In 2010, the QLDC inclusionary zoning requirements were challenged in the Environment Court. The outcome of the initial legal challenge was favourable for the Council and housing trust. The Court decided that the inclusionary zoning provisions were allowed under the RMA because they were a way for the Council to 'mitigate' the impacts of its policy to protect the area's unique landscape by constraining land use (which is critical for tourism and economic development in the area but puts pressure on land prices).

Appeals to the High Court and Court of Appeal by a small set of developer appellants during the period 2009-2013 on its plan change to add a set of objectives, policies and rules into its district plan were focused only on whether affordable housing was an RMA matter. The successive rulings in council's favour affirmed that in the specific case of QLDC's tourism-based economy focused on protecting the outstanding natural landscapes of the district, housing affordability was in fact a matter within scope of resource management, and therefore, application of district plan provisions. However, the substantive case of whether the specific rules and implementation provisions were correct was never heard by any Court.

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Therefore, a cloud remains as to whether the specific mandatory tools designed by QLDC for implementation through a local housing trust would comply with the RMA. The settlement forced the Council to make its inclusionary zoning provisions a matter of assessment, rather than rule-based and mandatory, reducing the effectiveness of these provisions in addressing the District's severe housing affordability issues.

QLDC is currently considering further provisions for delivery of affordable housing through its District Plan Review. Clear legal authority from central government to enable councils to address affordable housing would assist both QLDC, Hamilton City Council, and likely any Council around New Zealand which has the local mandate to develop and implement its local housing plan.

3. New or confirming existing policy

This is a new policy.

4. How the issue relates to objectives in the current Work Programme

Affordable and healthy housing are key ingredients to promoting wellbeing in local communities. LGNZ has recognised housing affordability as a key issue and its National Council agreed that housing should be a 2018 priority topic. As part of its Housing 2030 Project workstream, LGNZ currently has two separate working groups – the Supply Working Group and Social and Community Housing Working Group.

5. What work or action on the issue has been done and what was the outcome

Community Housing Aotearoa (CHA) has outlined in its submissions to central government on the Urban Development Bill the need for councils to have clear enabling authority to implement tools locally such as inclusionary zoning. The reason CHA supports this approach is that it supports local strategies between councils and community housing providers across the country to combine local land value uplift with investment through philanthropic channels, blended with central government investment (such as the Income Related Rent Subsidy for social housing or Progressive Homeownership fund) to deliver locally-relevant housing solutions. CHA will continue to work with councils and Local Government New Zealand on the enabling approach to see this tool work for councils that choose to utilise it.

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6. Any existing relevant legislation, policy or practice

The RMA enables district plans to explore inclusionary zoning policies to a limited degree but only if councils retain the ability to seek and secure financial contributions. However, without a legislated mandate for affordable housing and in the absence of legislation like the Housing Accord and Special Housing Areas Act (2013) (HASHAA) which is now rescinded, this still comes with uncertainty and relies on individual councils making a strong demonstrable evidence-based case for its own housing need and has a risk of legal challenge.

7. Outcome of any prior discussion at a Zone/Sector meeting

Not possible in the revised timeframes.

8. Suggested course of action envisaged

We assume that, by August's LGNZ AGM, it will be too late to alter the proposed NPS-UD, although it may be possible to make changes at the time of any subsequent amendment. Instead, the remit calls for LGNZ to advocate for there to be a National Policy Statement specifically focused on affordable housing.

This remit also encourages a working group be formed, compromising of relevant/affected Councils, central Government (MHUD, Kāinga Ora, MSD), iwi, and the community housing sector. The group would work on the inclusionary zoning proposals set out in this remit, and work in partnership on other means of addressing the affordable housing challenge, leading to the delivery of the proposed National Policy Statement.

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3 Returning GST on rates for councils to spend on infrastructure

Remit: That Local Government New Zealand (LGNZ) request that the Government use the appropriate mechanisms to enable the 15 per cent Goods and Services Tax (GST) charged on rates be returned to councils to spend on local or regional infrastructure projects.

Proposed by: Hamilton City Council and New Plymouth District Council

Supported by: Auckland Council; Christchurch City Council; Tauranga City Council; Nelson City Council; Tasman District Council; Gisborne District Council; Waipa District Council; Waikato District Council; and South Waikato District Council

Background information and research

1. Nature of the issue

Whereas GST is not applied on the vast majority of other taxes, it is applied on rates. This causes hundreds of millions of dollars per year to leave the area in which they were generated and go to central government, whilst driving up rates.

One option, of course, would be not to levy this 'tax on a tax'. The option proposed in this remit is that LGNZ negotiate with central Government for this sum to be returned to councils for them to spend directly on local or regional infrastructure. This option has been proposed by – amongst others – respected economist Shamubeel Eaqub.

As well as, we believe, being a fairer and more rational system, this would provide much needed support to councils, whilst ensuring the money is ringfenced to be spent on infrastructure projects of local, regional and national benefit, thus helping to address New Zealand's longstanding infrastructure challenge.

2. Background to its being raised

In 2017, a remit from Gisborne District Council proposing that a proportion of all GST be returned to the region in which it was generated, for councils to use on servicing visitor infrastructure was supported at LGNZ's Annual Conference, although subsequent discussions with the Government did not prove fruitful.

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Three years on, with pressure on local government greater than ever following the COVID-19 outbreak, we think the time is right to raise a similar issue. This remit has also been developed noting that the need for investment in New Zealand's infrastructure, particularly in its three waters infrastructure, is ever clearer.

3. New or confirming existing policy

The proposed remit would be consistent with LGNZ's position, as voted through at Annual Conference in 2017, that some GST should be returned to the local or regional level. However, the exact focus of this remit is different.

The issue around GST was also raised by LGNZ in its February 2015 Funding Review discussion paper, as well as in their submission to the New Zealand Productivity Commission's Local Government Funding and Financing Inquiry that commenced in July 2018.

Hamilton City Council also raised the issue of investigating use of various financing tools that are linked to the growth and development in a council's administrative area in its submission to the Productivity Commission's Local Government Funding and Financing Inquiry. The submission noted that "this could involve councils receiving a set portion of the Government's GST 'take' from their administrative area, or alternatively, a set amount of the total 'spend' in a council's administrative area that is captured as an additional levy to the current GST component, potentially in the form of an increase to the GST rate. Such funding streams should be dedicated to core infrastructure maintenance and enhancement".

4. How the issue relates to objectives in the current Work Programme

The remit is broadly consistent with existing LGNZ policy, but with a slightly different focus.

5. What work or action on the issue has been done and what was the outcome

No formal work undertaken.

6. Outcome of any prior discussion at a Zone or Sector meeting

Not possible in the revised timeframes.

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4 Natural hazards and climate change adaptation

Remit: That central government undertakes, in collaboration with all of local government, a comprehensive review of the current law relating to natural hazards and climate change adaptation along New Zealand's coastlines, and coordinates the development of a coastline strategy for the whole of New Zealand which would cover: the roles and responsibilities of territorial authorities, regional councils and central government; greater direction on an integrated approach; and development of principles for "who pays".

Proposed by: Hauraki District Council

Supported by: Hawke's Bay Regional Council, Thames-Coromandel District Council; Napier City Council; Hastings District Council; and Northland Regional Council.

Background information and research

1. Nature of the issue

Central government has provided guidance to local government on how to apply a risk-based adaptive approach to planning for climate change in coastal communities. Many councils are now following this guidance and working with their communities using adaptive planning approaches. As these councils look ahead to how adaptive approaches can be implemented, they are encountering limitations in existing legislation and a lack of guidance from central government on the legalities and practicalities of doing so.

Councils report difficulty in determining their respective roles (territorial and regional) and who should do what in the area of managing the risks of natural hazards arising from climate change. Furthermore, they note that there is a lack of direction over who pays for what and who owns/maintains/is liable for any assets that may be required.

Councils also have many unanswered questions around how a managed retreat option should be implemented. For example, where managed retreat is identified as a preferred adaptation option, how should this be undertaken, by who, where should costs fall, whether compensation is payable and if so by whom?

Furthermore, councils see difficulties in how adaptive approaches can be implemented through statutory documents such as District and Long Term Plans, especially as councils are being asked to plan at least 100 years into the future using adaptive approaches which may require rapid implementation (eg in response to a 'trigger' event). This combination of long timeframes, deep uncertainty, and potentially rapid action is not well provided for by these documents.

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2. Background to its being raised

Beginning in 2014, Hawke's Bay councils (Napier City Council; Hastings District Council; and Hawke's Bay Regional Council) and tangata whenua partnered to develop a Coastal Hazards Strategy that was ultimately the first project of its type to follow the approaches set out in the Ministry for the Environment's coastal hazards guidance (the Guidance). The councils and tangata whenua are now working on the implementation phase of the strategy.

Hauraki District Council are working with Waikato Regional Council, Waikato District Council and Iwi to prepare a community plan (Wharekawa Coast 2120) for the western Firth of Thames area, using a similar approach to the Hawke's Bay Coastal Strategy, and following the Guidance. Hauraki District Council is aware of other work of this nature being undertaken in the Waikato region by Thames-Coromandel and Waikato District Councils, in the Wellington region, and scoping is underway for work in the Northland region.

All of these projects recognise the importance of regional and territorial authorities working collaboratively with their communities to respond to increasing natural hazard risks in coastal areas, due to climate change. These projects are at different stages of development, but eventually will all be facing the same implementation issues.

3. New or confirming existing policy

This remit is a new policy.

4. How the issue relates to objectives in the current Work Programme

This remit raises issues around how local government can practically implement approaches and responses to natural hazards risks in coastal areas developed under the Guidance. These issues are related to LGNZ's policy priorities: Climate Change and Environment (Natural Hazards). In particular, the topics of community resilience and climate future fit, as well as LGNZ's climate change project.

5. What work or action on the issue has been done and what was the outcome

The Ministry for the Environment recently published a case study on challenges with implementing the Hawke's Bay Coastal Strategy. This case study highlights many of the issues identified by this remit and provides more detailed analysis.

The Wharekawa Coast 2120 Joint Working Party (comprising elected members and iwi representatives) recently considered a paper on project implementation funding issues. Discussions regarding this information, and other papers reviewing Deep South Science Challenge research, prompted the preparation of this remit.

Also of relevance to the issues raised by this remit is the Productivity Commission's recent local government funding and financing inquiry.

6. Any existing relevant legislation, policy or practice

The following legislation is considered relevant to the remit: Resource Management Act 1991 and New Zealand Coastal Policy Statement 2010, Local Government Act 2002, Public Works Act 1981, and Building Act 2004.

7. Outcome of any prior discussion at a Zone/Sector meeting

This has not been discussed at zone or sector meetings to date.

8. Suggested course of action envisaged

LGNZ works with central government to prepare a nationwide coastal strategy that provides further direction on an integrated approach to climate change adaptation issues including:

a. The roles and responsibilities of territorial and regional councils;
b. How managed retreat should be implemented including funding arrangements and whether compensation is payable and if so by whom;
c. A protocol for considering how costs for adaptation actions should be allocated both between local government itself (territorial and regional councils), between local and central government, and between public and private beneficiaries;
d. How adaptive planning approaches should be implemented, for example by providing better linkages between LGA and RMA processes or by potentially new natural hazard risk management and climate change adaptation-specific legislation; and
e. How councils could be supported to implement appropriate restrictive zoning behind defensive measures to respond to 'moral hazard' issues.

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5 Annual regional balance of transfers

Remit: That LGNZ work with Treasury, Statistics New Zealand and other government agencies to develop an annual regional balance of transfers to show how much each region contributes in taxes and how much each region receives in government funding.

Proposed by: New Plymouth District Council

Supported by: Thames-Coromandel District Council; South Taranaki District Council; Hastings District Council; Rangitīkei District Council; and Rotorua Lakes Council.

Background information and research

1. Nature of the issue

Regional New Zealand often questions whether the government returns more or less to the region than it receives in tax and other revenue sources. This remit proposes that LGNZ work with relevant government agencies – particularly Treasury and Statistics New Zealand – to develop an annual publication of a regional balance of transfers outlining the inwards and outwards flow of money between the region and the government.

As with many regions, Taranaki has perceived that it has received low investment from government compared to the amount of tax paid by the region. Various attempts have been made to provide an estimate of the gap, however obtaining regional financial information from government agencies has proved difficult. Many agencies cannot provide breakdowns of expenditure and collection of revenue is difficult to obtain at a regional level.

A regional balance of transfers would provide transparency for all of New Zealand and promote more open democracy where inclusiveness and accountability is strengthened. It would enable better performance measurement and the assessment of outputs in a community against that of other regions and New Zealand.

2. Background to its being raised

Attempts to get a clear picture of a regional balance of transfers – identifying what is paid to and received from central government – have been unsuccessful. There is great inconsistency in reporting and data collection between government agencies and a general unwillingness to be open and transparent in what is spent in regions.

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Official Information Act requests often generate responses such as "our information is not structured in such a way that would enable the questions to be answered".

It is recognised that a full set of actual data may not be able to be provided and assumptions will need to be made in some situations, such as when making "overhead allocations" to the regions for national costs of government.

In recent years there has been a greater focus on measuring the performance of local authorities but not of the performance of central government. A regional balance of transfers would be one factor to help measure equity and the performance of government.

A balance of transfers would also go a long way to build trust in government through transparency and accountability of where public money is spent and where it has come from and in decision-making. This data would also be able to be used by government ministers to help monitor the performance and of their portfolios in an open and consistent manner.

According to Treasury, an objective of the Government "is to continually improve public confidence in the tax system and Inland Revenue. The system should help people meet their obligations, be fair, and inspire confidence. The Government is committed to raising revenue in ways that meet these objectives". It is believed that the gathering and reporting of a regional balance of transfers would greatly assist government in this aim.

3. How the issue relates to objectives in the current Work Programme

This remit is related to the LGNZ and New Zealand Initiative work on localism whereby this data would help ensure that power and authority flows up from citizens and communities, not down from the government.

LGNZ has led the way in the assessment of council performance through the successful CouncilMARK™ programme that provides qualitative assessment of council performance across a wide range of facets. This remit would help LGNZ to do the same for our communities when considering central government performance and equity.

This remit would also contribute to LGNZs six big issues for New Zealand councils – particularly infrastructure and funding, social and economic.

4. What work or action on the issue has been done and what was the outcome

Attempts have been made to gather the required information from government agencies to create a regional balance of transfers. This has been unsuccessful as the data is apparently not gathered.

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5. Any existing relevant legislation, policy or practice

The remit seeks LGNZ to work with Treasury, Statistics New Zealand and other government agencies to develop a regional balance of transfers to show how much each region contributes in taxes and how much each region receives in government funding. To be successful, this would require directives to all government agencies to gather data and give it to either Treasury or Statistics New Zealand to compile and report on.

6. Suggested course of action envisaged

This remit suggests that LGNZ work with Treasury, Statistics New Zealand and other government agencies to develop an annual regional balance of transfers that show how much each region contributes in taxes and how much each region receives in government funding. This is likely to require government Ministers to give such a directive.

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6 Local Government electoral cycle

Remit: That the local government electoral cycle be extended from three to four years.

Proposed by: Northland Regional Council; Rotorua Lakes Council; Whanganui District Council; and Hamilton City Council.

Supported by: Hastings District Council; Palmerston North City Council; Napier City Council; Manawatū District Council, South Taranaki District Council, Rangitīkei District Council

Background information and research

1. Nature of the issue

The election cycle, or term of office, refers to the number of years an elected representative serves between local government elections. In New Zealand, the length of the term of office of a local government elected representative is three years. At a meeting of Northland Regional Council on 18 February 2020, it was agreed to seek formal support for this remit from Zone One as a pre-requisite for proposing at the LGNZ 2020 AGM.

2. Background to its being raised

Northland Regional Council's remit background

Advocates for extending the election cycle to four years would say that a longer electoral term:

- Promotes longer term thinking and decision-making by councillors. An example of this would be a longer electoral cycle would encourage councillors to lengthen their investment horizon when making financial investment decisions;
- Allows for more time to implement a local government vision by extending the productive working time of a council and reducing councillor turnover;
- Gives more time for new councillors to learn and conduct their duties thereby increasing councils' overall productivity as councillors spend more time governing and less time campaigning;
- Reduces voter fatigue and in turn may result in increased voter turnout;
- Reduces the administration costs of setting up and inducting a new council thereby increasing operational efficiency – particularly of governance staff;

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- Provides more opportunity to direct energy and provide certainty for longer term planning and more significant activities such as large capital projects;
- More stable decision-making framework for council through greater opportunity for long term planning;
- Enables implementation of longer term council policies within a single term of office;
- Less pressure on new councillors to get up to speed;
- Longer terms have the potential to be more conducive to stable governance; and
- Provides cost savings by reducing the number of elections. The cost of the last election was approximately $180,000 – a four year cycle would save this complete amount each third electoral cycle.

Opponents would say that:

- A longer electoral term is a barrier to participation as potential councillors must make a longer commitment to their term in office;
- There is additional expense to educate the public of the change as New Zealanders are very accustomed to three year electoral cycles for both local and national government;
- The shorter term enforces more accountability on elected representatives who face getting voted out if they don't perform as expected;
- Elected representatives must engage more frequently with constituents as they seek to stay top of mind for the next election;
- A longer term may be seen by some as reducing accountability as the community must wait a year longer to judge their council's performance through the voting process; and
- A longer time between elections gives voters less opportunity to express their opinions on the performance of their elected officials.

Extending the local government electoral cycle from three to four years would result in local government and central government elections being held in the same year once every three years. If this was considered to be an issue, then the central government electoral cycle could also be extended to four years. Similar advantages and disadvantages to the change would apply.

<u>Rotorua Lakes Council remit background</u>

By international standards, New Zealand's three- year electoral cycle is short. Far more jurisdictions have a four-year term for central government and in most cases, the length of term of office of local government will be the same as that of their central government.

Madden (2013, July 16) notes that "New Zealand is the only liberal democratic country with a unicameral system and a three-year term. Other unicameral democracies with proportional electoral systems – such as Israel, Sweden, Norway, Denmark and Finland, have four year terms."

Boston et al. (2019) state "For decades, numerous politicians, civic leaders and academics have supported extending the term of Parliament to four years. It has been argued that a modest extension of this nature would enhance the capacity for governments to undertake thoroughgoing policy reforms in a more careful, considered, evidence-informed manner…"

The members of the Constitutional Advisory Panel (2013, November) found that while a reasonable proportion of people supported a longer term, others felt that "elections are the best means for voters to hold government to account and should not be made less frequent."

Those in favour of a four-year term provided the following reasons for their support:

- The ability to take more time to develop and implement policy could result in the public having better information about the intention of policy, to weigh the pros and cons and see results.
- The three-year term was seen as reducing certainty as policies are perceived to change every three years.
- Conversations regularly highlighted that any extension to the term of Parliament would need to be counter-balanced by mechanisms to improve law-making and accountability.

An Australian report (Bennett, 2000) promoting four-year terms for the House of Representatives provided a list of benefits that supporters for a four-year term claim.

Those of relevance to New Zealand Central and Local government include:

- Longer terms would encourage governments to introduce policies that were long-term rather than merely politically expedient.
- Longer terms would enhance business confidence.
- Over time money would be saved by having fewer elections.
- Australians dislike the frequency they are required to vote.
- Longer periods between elections would raise the standard of political debate.

Boston et al. (2019) note that any reforms to the electoral cycle would require public endorsement via a referendum and that the main political challenge would be convincing the public of the desirability of change. They also point to the two referenda held in New Zealand in 1967 and 1990 on increasing the parliamentary term, which were both heavily defeated. The Constitutional Advisory Panel (2013, November).

While achieving public support for change would be a challenge, another commentator (Singh, S., 2019) notes that the composition of New Zealand has changed dramatically since the two referenda. He points out that New Zealand's migrant population has significantly increased and that "to many…who have lived overseas and seen a five-year parliamentary term, the idea of a three-year cycle, is an intriguing deviation from an experience they have understood as normal."

While the case for changing the electoral cycle for central government may be stronger, discussion by elected members in local government in New Zealand supports a change to a four-year term for local government also. Their comment is included below.

- The new norm is that there is an expectation that central and local government will work together in partnership. The current three-year electoral cycle is unbalanced. In addition, generally seven out of every ten years is an election year for either local or central government. This is disruptive and short-term political decision-making results.
- In local government, a longer electoral cycle would enable new councillors to be better educated and informed on long term, infrastructure and financial planning. Currently the importance of the Long Term Plan window (ten years) is not well understood in the sector.
- Short-term political decision-making by local government results in uncertainty and a lack of investor confidence. This is also detrimental to the new partnership approach that councils are seeking to develop with their local investors and stakeholders.

Dr Mike Reid notes that for a four-year term for local government to be acceptable to New Zealand citizens, there must be an adequate accountability framework to protect communities. He notes that if local government was to move to a four-year term, there must be a way for citizens to call a new election should the governing body become inoperable. An accountability framework could include a recall provision which would, on the basis of a petition signed by a sufficient number of residents, force a new election, as argued for in the LGNZ manifesto in 2017.

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7 Water bottling

Remit: That LGNZ works with the Government to:

1. Place a moratorium on applications to take and/or use water for water bottling or bulk export;
2. Require and enable regional councils to review inactive water bottling consents, with a view to withdrawal of the consent and discourage consent 'banking';
3. Undertake an holistic assessment of the potential effects of the current industry, its future growth and the legislative settings that enable Councils to effectively manage those effects; and
4. Initiate a comprehensive nationwide discussion on the issue of water bottling and implement any changes to legislation and policy settings as required.

Proposed by: Queenstown-Lakes District Council

Supported by: Greater Wellington Regional Council; Tauranga City Council; Thames-Coromandel District Council; Upper Hutt City Council; and Waitaki District Council.

Background information and research

1. Nature of the issue

The water-bottling industry in New Zealand is young and relatively unregulated. A comprehensive review of legislation and policy needs to be developed in order to fully understand and address its potential effects on community wellbeing and resilience.

The sustainability of water bottling and its associated implications for global plastic waste, local property rights and Māori freshwater rights need to be considered. The effects of climate change on groundwater systems are not yet well understood. Further research is required.

The implications of 'banking' water-bottling consents needs to be fully explored. The amount of water bottled reaches 157.8 million litres annually (as at January 2018), however there are consents available to extract 71.575 million litres of water per day for both bottled water and for mixed uses. The consequences of rapid uptake and growth in the industry are unknown, but could artificially raise land values and make access to water unaffordable.

Therefore, where water is unlikely to be bottled, consents should be available to be reviewed, or in the case of mixed-use consents, water bottling removed as a purpose of the water take.

It is timely to reconsider legislation and policy, given many catchments are nearing their allocation limits and the National Policy Statement for Freshwater Management is under development.

It is important to note that the intent of this remit is not to impact existing water-bottling operations, nor to make judgements on the merits or otherwise of the industry. The focus of this remit is on obtaining a comprehensive understanding of the industry, its potential for growth, the range of externalities such growth may cause and the policy and legislative settings required to address this.

2. Background to its being raised

The Industry

Large-scale water bottling is a relatively new industry in New Zealand. As a result, there is no clear policy governing the use of water for bottling, and the industry is not specifically regulated. Managing the effects of the industry requires the alignment of a range of interdependent policies and legislative tools that determine who can access water, for what purpose and under what conditions. A review is required to understand how best to co-ordinate these tools.

The value proposition of water bottling has resulted in the 'banking' and sale of water bottling consents, raising the value of land and effectively creating an unregulated market for water. This can lead to confusion between these outcomes and s122(1) RMA which states that a resource consent is neither real nor personal property. This issue is exacerbated by increasing demand for water, the fact that many catchments are at or approaching full allocation, and the extent to which some regional plans enable existing water consents to be varied to enable water bottling. As the future utilisation of water will become increasingly competed for, understanding what our communities' priorities for this resource are must be fully debated and understood.

Any review needs to also consider the value and reliance placed on consents by owners and operators, and the impact on established property rights, which will need to be addressed.

Overseas Interests

Since 2013, New Zealand Trade & Enterprise (NZTE) has invested in eight water bottling companies through its Focus 700 Group programme, to support the growth of water exports. Although NZTE no longer encourages the sale of NZ's water, it does facilitate the sale of land for the holders of water permits. It is worth noting that certain provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) make it unclear whether NZ drinking water suppliers can be prioritised to ensure NZ communities will always have access to affordable clean drinking water.

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Under the OIA foreign investment in NZ's water cannot be managed effectively as water is not defined as a 'sensitive' asset. Treasury has confirmed that our existing free trade agreements do not allow the creation of new classes of sensitive assets.

Therefore, foreign investment in water bottling can only be limited where the water is to be extracted from sensitive land and only if the 'good character' or 'benefit to NZ' tests are not met.

In 2018 Land Information New Zealand (LINZ) Minister Eugenie Sage was unable to decline Cresswell NZ's application to purchase of sensitive land for a water bottling plant. She stated that the provisions of the Overseas Investment Act prevented her declining the application. Subsequently, the government has proposed amendments to the OIA6 that (if enacted) will allow applications involving the extraction of water for bottling to be declined if they are likely to result in a negative impact on water quality or sustainability.

Community Sentiment and Maori Cultural Values

New Zealand has demonstrated community concern in relation to water bottling in recent years, presenting petitions and participating in protests on a number occasions.

On the matter of water export and Maori cultural values, Ngati Awa has appealed the Environment Court Decision arguing that the application is "for too much water to be sold too far away" (at [35]). Their position is that in these circumstances te mauri o te wai and their tangata whenua right to act as kaitiaki of the water are lost.

Waste and Plastic

On the matter of plastic production, it is unclear under which vehicle this can be managed. In the Minority Judgement of the Environment Court against Cresswell NZ (10 December 2019), Commissioner David Kernohan found (at [346]) that "the pollution created from the production and specifically end use disposal of plastic water bottles does not meet the objectives and policies of the RMA". However, the Majority of the Court found that the end uses of the water which involved putting the water in plastic bottles were found to be "ancillary activities which are not controlled under the Regional Plan" and that there had been "no suggestion that control of such activities comes within the ambit of the functions of the regional council under s30RMA" (at[64]).

Impact on Local Government

The effects of the water bottling industry on local councils, as water suppliers and as the owners of transport networks, may be significant and there are a number of examples of this being the case. However, their ability to submit and appeal may be limited by notification provisions.

There are currently three appeals before the High Court. These challenge applications for consent in Belfast and Otakiri and deal with questions related to the allocation of water for water bottling including the ability to consider the effects of plastic bottle production as an end-use of water, the effects of water export on te mauri o te wai and kaitiaki rights under Te Tiriti and the correct process for changing the purpose of a water take.

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A levy on water bottling is a response to perceived issues of fairness but this policy could itself have unintended consequences if implemented in isolation and without an assessment of the kind proposed by this remit.

QLDC is therefore proposing comprehensive policy and legislation based on consultation with councils and the community.

3. New or confirming existing policy

This Remit represents a new policy position for LGNZ and for central government.

4. How the issue relates to objectives in the current Work Programme

This remit could accelerate the debate on water allocation and highlight any issues within the RMA and/or the NPS-FM. This could significantly influence the existing LGNZ programme of work in relation to strategic and policy advice to Central Government.

The results may feed into Stage 2 of the reform of the RMA as well as LGNZ's Water 2050 project which could lead to changes that ensure communities are resilient in the face of climatic changes that will impact productive land and water bodies, including sources of drinking water.

The following matters may be raised in delivery of the current work programme in relation to this remit:

<u>Resource Management Act</u>

- Adding consideration of the effects of plastic production to the RMA as a Part 2 matter of national importance.
- Adding effects on Climate Change to the RMA as a Part 2 matter of national importance.
- Greater use of regional councils' powers under s30 RMA to allocate water amongst competing activities with a view to:
    - Zoning water and controlling its use in the same way land use is controlled.
    - Using water allocation as a tool to incentivise resilience and sustainable outcomes.
    - Protecting our deep, clean aquifer water for domestic and community supply.
- Reviewing the provisions governing the variation and transferability of water permits and the effects of those on consent holders' rights as well as the possibility for unregulated water markets.

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National Policy Statement on Freshwater Management Development

- Redefining 'efficient allocation' in the draft NPS-FM and regional plans so that when councils are deciding "how to improve and maximise the efficient allocation of water" and identifying in "methods to encourage the efficient use of water"12 within regional plans, it is clear they are seeking to not only maximise jobs and minimise 'waste', but also to maximise the wider economic, social, cultural, environmental and health benefits of water allocation.
- Re-wording Policy 4 of the draft NPS-FM and the policies for implementing integrated management of land and freshwater (at 3.4 (1) to (4))13. The proposed approach is one directional, considering only the effects of land use on fresh water. Rewording these policies may lead to more efficient and sustainable allocation of water.

5. What work or action on the issue has been done and what was the outcome

QLDC wrote to Minister Parker in February requesting a moratorium on new and existing water bottling consents. This was written in support of an initial proposal by Upper Hutt City Council.

6. Any existing relevant legislation, policy or practice

Existing legislation, policy and practice reflects a complex landscape where far greater alignment is required if effective regulation and understanding is to be achieved.

There is some concern that a levy implemented in isolation may not address the issues that communities and local councils will be faced with if the industry grows. Concerns have also been raised that a levy may incentivise or prioritise the grant of water bottling consents as a result of the revenue stream that would be created.

Section 30 RMA 14 provides regional councils with the power to add rules to their plans to allocate water amongst competing activities, in much the same way as district councils can zone land and prioritise, discourage, prohibit or otherwise control different land uses. This power has not been exercised to any great extent to date. Regional Councils have preferred to allocate water on a 'first complete application, first assessed' basis in line with case law, and to grant consent as long as the water 'take' is sustainable and the purpose reflects efficient use. However, in theory, regional councils could undertake a broader assessment of the effects of using water for bottling, and then either prioritise, discourage or prohibit water bottling (across whole catchments or for specified water bodies or depths).

Christchurch's ground water zones are by and large fully allocated and new applications to take water are prohibited. Consent holders have been applying to Environment Canterbury to vary existing industrial and irrigation consents to enable water bottling. There is no ability to use s127 due to the activity being outside the scope of the original applications.

The process being used to vary the consents involves the grant of a new 'use' consent. Whether this process is lawful under the RMA and the Canterbury Land and Water Regional Plan, will be determined by the Court. This highlights the difficulty for planners implementing resource management provisions that are unclear and inadequate in terms of managing the allocation of water in fully allocated catchments. Three consents have been varied in this way and a fourth is being processed.

Plan changes of this nature would come at significant cost to the ratepayer and could not be implemented quickly. Signalling such a plan change might trigger a wave of applications. Therefore, and given that this an issue that will affect all councils (albeit in different ways), the best way forward is likely to be a moratorium on new consents followed by a review or discussion covering the matters set out below. Any significant policy changes could be required to be implemented via Schedule 1 and an amendment to the NPS-FM, but only if a clear problem is identified and only after consultation with LGNZ and Councils.

The Overseas Investment Amendment Bill (No 3) also references water bottling and this is now with the Select Committee Finance and Expenditure (submissions closing 31 August 2020). Currently the Amendment Bill reads that if overseas investment in sensitive land involves the extraction of water for bottling or other extraction in bulk for human consumption, then an additional factor of the benefit to NZ test would be whether the overseas investment is likely to result in a negative impact on water quality or sustainability. If enacted this would not apply to all investments in water bottling plants by overseas interests.

7. Outcome of any prior discussion at a Zone/Sector meeting

Not considered by a Zone or sector meeting.

8. Suggested course of action envisaged

That LGNZ works with the Government to:

- Place a moratorium on applications to take and/or use water for water bottling or bulk export;
- Require and enable regional councils to review inactive water bottling consents, with a view to withdrawal of the consent and discourage consent 'banking';
- Undertake a holistic assessment of the potential effects of the current industry, its future growth and the legislative settings that enable Councils to effectively manage those effects.
- Initiate a comprehensive nationwide discussion on the issue of water bottling and implement any changes to legislation and policy settings as required.

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8 Quorum when attending local authority meetings

Remit: That LGNZ requests central government amend legislation to enable elected or appointed members, connecting remotely to a public council meeting, be included in the quorum. This would provide an option for local authority meetings to be held completely remotely, if required.

Proposed by: Waikato District Council

Supported by: Hamilton City Council; Hauraki District Council; Thames-Coromandel District Council; Taupō District Council; Ōtorohanga District Council; South Waikato District Council; Waipa District Council; and Waitomo District Council.

Background information and research

1. Nature of the issue

Prior to the COVID-19 pandemic, legislation required that members had to be physically present at a meeting to be included in the quorum. Under the LGNZ template Standing Orders, members attending by audio or audio-visual means can participate and vote on matters presented at meetings.

To enable public meetings to continue during COVID-19, the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Act) amended sections of the Local Government Act 2002 (LGA) and Local Government Official Information and Meetings Act 1987.

These amendments included:

- Local authority or committee members who join a meeting by audio or audio-visual means were counted for the purpose of a quorum.
- Open public meetings to be livestreams, where reasonably practicable to do so.
- Provide either an audio or video recording, or written summary, of the open public meetings on the local authority's website as soon as practicable after the meeting.

For many councils, this has provided an opportunity to adopt an innovative approach to hold public meetings, resulting in benefits for local government democratic processes, financial and resource efficiencies and environmental improvements (detailed further below).

This remit requests that the legislative amendments introduced for COVID-19 are retained (beyond the term of the Epidemic Preparedness (COVID-19) Notice 2020) as an option for local authorities to adopt via their Standing Orders.

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For clarity, the remit:

- Contemplates that:
  - Members attending meetings by audio or audio-visual link are still entitled to participate and vote on agenda items; and
  - Requests to attend a meeting by audio or audio visual link should still be made to the Chairperson, for his/her approval, prior to the meeting, as detailed in the LGNZ template Standing Orders;
- Does not propose that meetings where a quorum (or more) of members attends remotely become the only or dominant means to hold local authority meetings; simply that this is retained as an option for each council to consider using via its Standing Orders; and
- Supports the retention of the COVID-19 LGOIMA amendments to protect transparency and public access to local authority meetings.

2. Background to its being raised

The LGA was amended in 2014 to enable members to join a meeting by audio or audio-visual link, subject to certain procedural requirements being met and the local authority's Standing Orders permitting such remote attendance. However, only members physically present are to be counted toward the meeting's quorum. For council meetings, this requires:

- Half of the members to be physically present (if the number of members, including vacancies, is even); or
- A majority of members to be physically present if the number of members (including vacancies) is odd.

The COVID-19 Act was enacted in response to the restrictions imposed on the New Zealand population, including travel prohibition and social distancing. The COVID-19 Act's amendments to the LGA and LGOIMA (noted above) meant public meetings could be undertaken entirely by remote means (ie audio or audio-visual), subject to certain requirements to protect public access and transparency of local authority meetings. In particular, all members of a local authority or committee could attend remotely and be included in the quorum for a meeting (rather than having to be physically present at a specified meeting venue). These legislative amendments will be repealed on the expiry or revocation of the Epidemic Preparedness (COVID-19) Notice 20201.

The remit's proposal is made in a climate of uncertainty about the long-term impacts of the global pandemic, including financially for communities and councils alike, as well as the opportunities and flexibility that the legislative amendments have brought for local authorities and their respective communities in relation to public meetings.

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3. New or confirming existing policy

This remit supports LGNZ's existing policy framework around local democracy and the environment, in particular. No new policy work is required.

4. How the issue relates to objectives in the current Work Programme

The remit supports some of LGNZ's key policy priorities:

Local democracy

- Remote meetings help with LGNZ's goals of reinvigorating local democracy and modernising local government legislation.
- Wider public access to local authority and committee meetings, with potential of a significant increase in members of the public able to view livestreamed coverage compared to travelling to attend a meeting. This is a particular benefit for local authorities with large geographic boundaries or that have a significant rural resident population.
- The wider reach of livestreamed meetings also enhances community engagement and understanding of local government, which may have a positive effect on voter participation at local authority elections.
- The public still being able to participate in open public meetings, if required, via audio-visual tools available.
- Supporting more diversity in representation as this would facilitate people who are unable to travel or be present in person because of workload, family commitments, disability or other factors.

Climate change

- Enabling members and communities to adapt towards a low carbon economy through reduction in travel.

5. What work or action on the issue has been done and what was the outcome

With the advance of COVID-19 Act changes, local authorities have been required to implement, and benefitted from, innovative ways to continue holding public meetings while maintaining the public's access to local government decision-making. This has been able to be achieved at minimal cost to local authorities, which may not otherwise be in a position to put in place more high-tech options for live-streaming of meetings from council offices. As a result, for some councils, returning to a requirement for a quorum to be physically present at all meetings will be a 'step backwards'.

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In addition to the advantages already canvassed, providing an option for local authorities to have a quorum (or more) of members attending meetings remotely has resulted in:

- More efficient use of members' time (eg reduction in travel required) for their other roles and responsibilities; and
- Reduced operating costs associated with holding public meetings at council premises.

6. Any existing relevant legislation, policy or practice

The current, temporary legislative framework that has enabled greater utilisation of remote meetings has been noted above. The remit proposes that the legislative amendments to the LGA and LGOIMA are embedded permanently, with each council having the option of incorporating this framework in its Standing Orders (similar to that contemplated under clause 25A(1)(a), Schedule 7, LGA).

7. Outcome of any prior discussion at a Zone/Sector meeting

The issues in this remit have been discussed at the Waikato Mayoral Forum.

8. Suggested course of action envisaged

LGNZ is to:

- Work with central government and relevant stakeholders to advocate for legislative changes to the LGA and LGOIMA, enabling a quorum (or more) of members to attend a public local authority meeting remotely; and
- Update the Standing Orders template to reflect the proposed legislative changes, which each local authority can adopt as an alternative option to holding 'in person' meetings.

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9 Use of macrons by local authorities

Remit: That LGNZ work with central government to put in place a simplified process for the addition of macrons to council names if requested by that council or its community.

Proposed by: Waipa District Council

Supported by: Zone Two

Background information and research

1. Nature of the issue

Waipā is proposing that LGNZ work with central government to address the issue of the use of macrons by local authorities through legislative or other reform. Local authorities are corporate bodies created by statute under the Local Government Act 2002 (LGA), the legal names are listed in Schedule 2 of the LGA which can only be changed through rather complex legislative processes. Councils are not able to have trading names in the way that companies do, but some councils use a 'trading name' for the name or brand that the council prefers to operate under, which is different from the legal name in the LGA.

This is not uncommon, for instance, Kapiti Coast District Council trades as the Kāpiti Coast District Council, the Rotorua District Council trades as the Rotorua Lakes Council and the Manawatū-Whanganui Regional Council trades as the Horizons Regional Council.

There are some particular situations where Council needs to use its legal names (eg legal proceedings, contracts, invoices, etc) but other than that, it can use a trading name, for example for branding and signage.

2. Background to its being raised

To date, changes to local authority names to include macrons have resulted from applications to the New Zealand Geographic Board, which can alter the name of a district if the local authority consents to (third parties can apply), or requests the alteration. There is no fee for the request but a council will incur costs in preparing an application by undertaking research and preparing evidence to support the application (such as evidence of consultation with local Iwi).

Consideration of applications can take one to two years and involve the Geographic Board undertaking consultation on the matter. Any opposition is referred to the Minister for Land Information for decision. If the application is successful, then there will be a formal change in name for the district and the Government is obligated to instigate an Order in Council process to change the name in Schedule 2 of the LGA.

There are three councils which have gone through this process in the last two-three years. The Manawatū-Whanganui Regional Council applied to change its own name (to include the macron and adding an 'h' in to "Whanganui"). The two other changes for Ōpōtiki and Ōtorohanga District Councils resulted from applications by the Office of Treaty Settlements as part of settlement agreements with local Iwi.

Other councils, including Waipā use macrons but for which there is no macron in the legal name, as follows:

- Kaikōura District Council;
- Kāpiti Coast District Council;
- Rangatīkei District Council;
- Taupō District Council; and
- Whakatāne District Council.

There are other councils which could include macrons but which do not currently use them and for which there is no macron in their legal name. For this reason, Waipā District Council considers that this matter has implications for the local government sector as a whole and that it would not be efficient or cost effective for councils to individually go through the legislative processes to change a name. Perhaps the use of a macron could be managed at a national level through a change for example to the LGA.

3. Suggested course of action envisaged

Based on legal advice from Simpson Grierson, there are five potential options for addressing this issue at a national level as follows:

- Option 1: New Zealand Geographic Board could proactively change the names of districts and regions.
- Option 2: The Minister of Local Government could recommend local authority name changes that involve the addition of the macron (no legislative reform required for either of these options).
- Option 3: Parliament could amend Schedule 2 of the LGA to change all local authority names that should include macrons.
- Option 4: Parliament could amend Schedule 2 of the LGA to change the names of self-elected local authorities who wish to include macrons in their names.
- Option 5: Parliament could insert a new section in the LGA to provide that use of a local authority name, or a district or region name, with the addition of a macron, is lawful and will not invalidate any action.

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There are a number of advantages and disadvantages associated with each of these options. It is more appropriate that LGNZ assess the options and any other possible options and explore them further with central government. Waipā District Council passed the following resolution at its meeting on 31 March 2020 in relation to using a macron and in particular to a proposed LGNZ Remit:

That –

a) The 'Use of Macron in Local Authorities Names' report (document number 10374311) of Jennie McFarlane, Legal Counsel be received;

b) Council adopt a trading name of "Waipā District Council" incorporating the use of a macron to reflect correct pronunciation, which may be used in all circumstances other than when the legal name of Council under the Local Government Act 2002 and other local government legislation is required to be used;

c) Council approve taking a remit to the next Annual General Meeting of Local Government New Zealand (LGNZ), whenever that is held, requesting that LGNZ work with central government to address the use of macrons and changes to the names of local authorities, through legislative or other reform, in the interests of the local government sector and the wider community, in accordance with the process required by LGNZ for remits;

d) Council to approve seeking support at the next Zone Two meeting or directly, from other local authorities in New Zealand for the proposed remit as required by the LGNZ remit process; and

e) Council undertake further consultation with Waikato Tainui.

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10 Rates rebates for low income property owners

Remit: That the Government lift the level of rates rebates available for low and fixed income property owners – with yearly increases taking into account the cost for inputs into local government services.

Proposed by: Whanganui District Council

Supported by: Palmerston North City Council; Napier City Council; Manawatū District Council; South Taranaki District Council; and Rangitikei District Council.

Background information and research

1. Nature of the issue

The following issues have been identified:

(a) The level of rates rebates for low and fixed income property owners as a proportion of rates has gradually reduced for those on low and fixed incomes.

(b) This level of support has not kept pace with the cost of living and provides significant financial hardship for some members of the community.

(c) This level of support has not kept pace with the benchmark for council costs and provides significant financial hardship for some members of the community.

2. Background to its being raised

The rates rebate scheme is a partial refund for people who pay rates to their council, providing financial relief for low income residents who own their own home. This is funded by central government through the Department of Internal Affairs. A person who directly pays local authority rates, and meets the household income criteria, is currently eligible for a rates rebate of up to $640.

In 2006 the rates rebate was significantly increased and over the last decade there have been incremental yearly adjustments, however, these have lagged behind CPI increases. A further small boost to the scheme was introduced in 2019 – lifting the rate from $630 to $640 and the income abatement threshold from $25,180 to $25,660.

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As local authority costs have increased above that of inflation, this has resulted in local authorities either needing to increase rates or reduce existing levels of service. The effect of this is that, over time, the level of rates rebates as a proportion of the total local authority rates has significantly decreased.

This issue is of particular concern for low and fixed income property owners who may be experiencing housing stress, notwithstanding the fact that they may own their own family home mortgage-free (eg superannuitants).

As at 2 March 2020 the Department of Internal Affairs had approved payments for 103,367 applications – a total of $60,201,285 (GST inclusive).[1]

Table 1: Increase in rates rebate, CPI and local authority costs from 2010 to 2020

Year	Max Rebate	% Change	CPI (Stats NZ)	Difference between CPI and Max Rebate increases	Benchmark for local authority costs (Berl)	Difference between local authority costs and Max Rebate increases
2010/11	$ 570	3.64%	5.35%	-1.72%	2.28%	1.36%
2011/12	$ 580	1.75%	9.51%	-7.76%	3.05%	-1.30%
2012/13	$ 590	1.72%	7.23%	-5.51%	1.94%	-0.21%
2013/14	$ 595	0.85%	1.64%	-0.79%	1.68%	-0.83%
2014/15	$ 605	1.68%	3.80%	-2.12%	2.09%	-0.41%
2015/16	$ 610	0.83%	4.28%	-3.45%	1.29%	-0.47%
2016/17	$ 610	0.00%	1.74%	-1.74%	1.49%	-1.49%
2017/18	$ 620	1.64%	1.48%	0.16%	1.88%	-0.25%
2018/19	$ 630	1.61%	1.67%	-0.05%	2.77%	-1.16%
2019/20	$ 640	1.58%				

3. New or confirming existing policy

This remit would build on existing policy and would require the level of rates rebate to increase, with yearly adjustments taking into account the cost increases for inputs into local government services.

[1] https://www.stuff.co.nz/national/119883361/productivity-commission-recommends-scrapping-rates-rebate-scheme Retrieved 12 March 2020.

The Productivity Commission suggests that: "the rates rebate scheme is poorly targeted and unfair". It recommends that it be replaced with a national rates postponement programme, or that the scheme at least shift to being online. Local Government Minister Nanaia Mahuta has indicated that the government is carefully considering the recommendations.

4. How the issue relates to objectives in the current Work Programme

'Social' is one of LGNZ's five policy priorities. This focuses on disparity, housing issues and ageing communities:

> "Social: Working alongside central government and iwi to address social issues and needs in our communities, including an aging population, disparity between social groups, housing (including social housing) supply and quality, and community safety."

5. What work or action on the issue has been done and what was the outcome

This remit was originally prepared in 2018 and submitted for consideration. The LGNZ Remits Committee reviewed this and referred it instead to officials to raise with the Productivity Commission as part of the review of local government funding.

The Productivity Commission has since recommended that the government remove the rates rebate system and replace it with a national scheme for postponing rates. The Commission considered that central government is in the best position to tackle pressures on low-income households facing high housing pressures and the current scheme is inequitable, as well as administratively 'cumbersome' and modest in its approach (amounting to little over $12 a week).

This has not found favour with many groups – particularly those who advocate for older New Zealanders. For example, the national president of Grey Power has stated that the organisation "absolutely disagreed" with abolishing the scheme. In addition, a local association (Tauranga and Western Bay of Plenty) submission to the Commission recommended a resetting of the maximum rebate to restore it to previous levels and to align this with cost of living increases. This suggested a maximum rebate of $1,000 – indexed each year by the average rate increase across the country.

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6. Any existing relevant legislation, policy or practice

Rates Rebate Act 1973

- Provides for a rates rebate on local council rates by a specified amount each year, dependant on income.
- Since 2008 the specified amount has been adjusted each year through Orders in Council.
- 2019/20 – Maximum rebate - $640.

Accommodation Supplement

- Available for very low incomes.

7. Outcome of any prior discussion at a Zone/Sector meeting

With the relevant Zone meeting postponed, support was sought from councils directly. The following councils endorse this remit:

- Palmerston North City Council;
- Napier City Council;
- Manawatū District Council;
- South Taranaki District Council; and
- Rangitīkei District Council.

8. Suggested course of action envisaged

That LGNZ pursue an increase in the rates rebate for low income property owners and that this should match ongoing cost increases for local government.

9. Discussion and conclusion

The affordability of rates is not just a question of the quantum of rates and charges but also the ratio of rates and charges relative to income. The rates rebate scheme was introduced in 1974 and was designed to provide assistance to low income residential ratepayers. Over the longer term the quantum of the rates rebate has generally matched CPI, however, this ignores the fact that local authority core inputs are rising well above those of core inflation. Furthermore, over time the Act has not kept pace with the changing nature of tenure or technology. It is requested that the Government lift the level of rates rebates available for low and fixed income property owners.

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11 Local Government's CO2 emissions

Remit: That the Government implement an independent scheme, based on the United Kingdom model operated by the Department of Business, Energy and Industrial Strategy, to measure and report on carbon emissions at a district level.

Proposed by: Whanganui District Council

Supported by: Palmerston North City Council; Napier City Council; South Taranaki District Council; Hastings City Council; and Horizons Regional Council.

Background information and research

1. Nature of the issue

The following issues with the current system have been identified:

- There is no national standard for reporting on carbon emissions at a district or regional level.
- The system lacks incentives, structures and information sharing mechanisms that would enable and encourage local government authorities, regional economic development agencies and individual businesses to:
    - Identify best practice in similar regions; and
    - Undertake targeted work that prioritises the reduction of their CO2 emissions.
- The proposal that large energy users publish Corporate Energy Transition plans as outlined in MBIE's Discussion Document: *Accelerating Renewable Energy and Energy Efficiency*, will only address these concerns to a limited degree.

2. Background to its being raised

New Zealand is committed to both domestic and international climate change progress. As a party to the United Nations Framework Convention on Climate Change (UNFCC) and the Kyoto Protocol, progress towards meeting our commitments is documented in New Zealand's National Communication and Biennial Reports.

These summarise New Zealand's domestic greenhouse gas emissions profile, climate change policies and measures, our support for developing countries, and progress on implementing our obligations under the UNFCCC. At present, New Zealand is not meeting its international targets and further actions need to be taken.

A feature of our national psyche is the pride New Zealanders place on performing above our weight in the sporting arena. There is significant, untapped potential for the nation's competitive streak to be harnessed in pursuit of fulfilling our climate change mitigation ambitions. Developing and reporting on an externally administered measure of each district's progress in reducing its climate impact in terms of CO2 outputs is one such way of doing this.

3. New or confirming existing policy

The remit may require minor amendment to the Local Government Act to ensure that information that is needed for calculations to be made is required to be produced at specified intervals.

4. How the issue relates to objectives in the current Work Programme

This remit directly aligns with LGNZ's 'Environment' policy priority. In particular, it supports the Climate Change Project and is related to Outcome three: "A local government view on emission reduction targets for New Zealand, and how to achieve these."

It assists with the following project deliverable: "Support councils to take action to mitigate the impacts of climate change, and encourage greater action by their communities on contributing to the reduction of greenhouse gas emissions."

5. What work or action on the issue has been done and what was the outcome

No work has been undertaken specifically on this. However, the proposed model recommends use of the United Kingdom's approach, which is administered by the Department of Business, Energy and Industrial Strategy:

https://www.gov.uk/government/statistics/uk-local-authority-and-regional-carbon-dioxide-emissions-national-statistics-2005-to-2017

The United Kingdom Greenhouse Gas inventory (GHGI) is compiled annually and reported on an end-user basis using international best practice guidance, drawing on a variety of National Statistics and sector specific data sources.

This is a technically complex statistical analysis which individual local authorities would be unable to replicate, but provides consistent inventories and emissions projections of greenhouse gases and air quality pollutants.

The credibility of the report allows the results to be reported each year to the UNFCCC and the European Monitoring Mechanism Regulation (MMR). It is also used to assess compliance with the United Kingdom's domestic and international emissions.

The model has been used since 2005 and provides: "an important body of information [for] local authorities (LAs) and other relevant organisations to help identify high emitting sources of CO2 and energy intensive sectors, monitor changes in CO2 emissions over time and to help design carbon reduction strategies." (Local and Regional Carbon Dioxide Emissions Estimates for 2005–2017 for the UK Technical Report:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812146/Local_authority_C02_technical_report_2017.pdf)

Over the period for which this model has been used, and where figures are currently available (2005-17), emissions have decreased in all regions of, and for all 391 local authorities, in the United Kingdom. A scan of local authorities suggests that performing well on these measures is a key ambition that drives decision-making for many of these bodies.

6. Any existing relevant legislation, policy or practice

- Local Government Act 2002.
- Climate Change Response Act 2002.
- Climate Change Response (Zero Carbon) Amendment Act 2019.

7. Outcome of any prior discussion at a Zone/Sector meeting

With the relevant Zone meeting postponed, support was sought from councils directly. The following councils endorse this remit:

- Palmerston North City Council;
- Napier City Council;
- South Taranaki District Council;
- Hastings District Council; and
- Horizons Regional Council.

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8. Suggested course of action envisaged

That a suitable government department be tasked with:

(a) Analysing and publishing each district's carbon emissions, in order to provide the most reliable and consistent possible breakdown of CO2 emissions across the country; and

(b) Publishing interactive local authority level emissions maps that allow users to zoom in to any district and see the emissions for the area, as well as identify the significant point sources. Such maps should be possible to filter by different sectors, to view how emissions have changed across the time series so that areas of best practice can be identified.

This system would provide incentives, structures and low cost information sharing mechanisms that would enable and encourage local government authorities, regional economic development agencies and individual businesses to identify best practice in similar regions or businesses. It would also encourage them to undertake targeted work to reduce their CO2 emissions.

9. Discussion and conclusion

This proposal aligns with New Zealand's international commitments, our national direction and LGNZ's work programme in terms of the mitigation of climate change. It is a system that has been shown to have positive benefits in the United Kingdom and leverages existing characteristics of New Zealanders to achieve these collective goals.

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Remits not going to AGM

The Remit Screening Committee's role is to ensure that remits referred to the AGM are relevant, significant in nature and require agreement from the membership. In general, proposed remits that are already LGNZ policy, are already on the LGNZ work programme or technical in nature will be referred directly to the National Council for their action. Remits that fail to meet criteria will be declined.

1. Chief Executive remuneration

Remit: That LGNZ works with central government to investigate the potential of a centralised and independent organisation (such as the State Services Commission or the Remuneration Authority) to establish recommended remuneration levels/packages of local government chief executives.

Proposed by: Hamilton City Council

Supported by: Tauranga City Council; Waipa District Council; Tasman District Council; and Napier City Council.

Recommendation: That the remit is referred to the National Council for consideration.

2. Loans for low cost housing

Remit: That the Government provide interest-free loans to support the delivery of new low cost housing by relevant agencies, including councils, and that central government consider any additional mechanisms that would support councils and other relevant community agencies to respond to the housing crisis.

Proposed by: Whanganui District Council

Supported by: Palmerston North City Council; Napier City Council; Manawatū District Council; South Taranaki District Council; and Hastings District Council.

Recommendation: That the remit is declined on the basis that it is largely the same as the social housing remit adopted in 2019.

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33rd Annual General Meeting of Local Government New Zealand

Registration form

Date: Friday 21 August 2020

Venue: Oceania Room, Museum of New Zealand Te Papa Tongarewa, Wellington

MEMBERSHIP

As Otago Regional Council is a member of Local Government New Zealand, it is entitled to representation at the 2020 Local Government New Zealand Annual General Meeting (AGM).

The representation of each member authority is determined by the Mayor or Chair of each local authority. Representation is made up of members which include elected members and staff of all fully financial local authorities.

The Annual General Meeting is open to members only.

VOTING ENTITLEMENTS

Otago Regional Council is entitled to 3 votes at the 2020 AGM. The voting entitlement of each member authority is determined by that authority's subscription levels. No member authority whose annual subscription is in arrears is entitled to vote at the AGM. A list of voting entitlements can be found in rule H1 of the constitution.

DELEGATES

All delegates for the Annual General Meeting must register by Friday 31 July 2020.

The maximum number of delegates for each local authority at the AGM is determined by that local authority's population. Otago Regional Council is entitled to be represented by 3 delegates at the 2020 AGM.

Please note that the number of delegates at the AGM does not affect the number of delegates able to attend the conference.

PRESIDING DELEGATE

A presiding delegate is the person responsible for voting on behalf of the authority at the AGM. You must appoint one presiding delegate.

Presiding delegate's name: _____Signature:_____

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117 Lambton Quay,
Wellington 6011

PO Box 1214
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New Zealand

P: 64 4 924 1200

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OTHER DELEGATES

Otago Regional Council may be represented by up to 3 other delegates.

If your presiding delegate is absent from the AGM, 'other delegates' may vote on behalf of the local authority. Please tick the box next to the delegate's name if they are to have this right.

Other Delegate name:_____Signature:_____ Voting rights: ☐

Other Delegate name:_____Signature:_____ Voting rights: ☐

Other Delegate name:_____Signature:_____ Voting rights: ☐

Other Delegate name:_____Signature:_____ Voting rights: ☐

OBSERVERS

Persons attending the AGM as observers will have no speaking or voting rights and will be seated separately from the main delegation. Please list any observers below.

Observers name:_____Signature:_____

Observers name:_____Signature:_____

Observers name:_____Signature:_____

Observers name:_____Signature:_____

Please ensure that all delegates are aware of the delegate role they have been nominated for.

Once this form is complete, the Mayor/Chair and Chief Executive of the local authority must sign the form below.

Mayor's/Chair's Name:_____ Signature:_____

Chief Executive's Name:_____ Signature:_____

Please return this form by **Friday 31 July 2020** either by email to leanne.brockelbank@lgnz.co.nz *or* post this form to:

Leanne Brockelbank
Deputy Chief Executive Operations
Local Government New Zealand
PO Box 1214
WELLINGTON 6140

Level 1
117 Lambton Quay,
Wellington 6011

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New Zealand

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REMIT PROCESS

Remits proposed for consideration at the Local Government New Zealand AGM must be received no later than **5pm Tuesday 16 June 2020.** All proposed remits and accompanying information must meet the remit policy. Those meeting this policy will be screened by the Remit Screening Committee on **Wednesday 17 June 2020**, and following approval, will move forward to the Annual General Meeting for consideration by the membership.

OBITUARIES

Local Government New Zealand request obituary notices for inclusion in the AGM proceedings for the period from the last AGM on **Sunday 7 July 2019** onwards. These should be advised in writing no later than **Monday 3 August 2020.**

PROXIES

The votes provided for in H1 may be exercised be a member authority by Proxy. Proxies must be appointed in writing at least 48 hours before the time in which the AGM is to commence (Rule G22). Therefore a completed proxy form must be received before **9am on Wednesday 19 August 2020.** If you require a proxy form, please let us know.

For further clarification of the requirements regarding the Annual General Meeting, please contact Leanne Brockelbank on 04 924 1212. Alternatively, you can email Leanne at leanne.brockelbank@lgnz.co.nz.

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117 Lambton Quay,
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11.1. Consultant and Legal Spend

Prepared for: Council

Report No. CS1946

Activity: Governance Report

Author: Sarah Munro, Manager Finance - Reporting

Endorsed by: Nick Donnelly, General Manager Corporate Services

Date: 20 July 2020

PURPOSE

[1] To provide a detailed report on consultant and legal spend at Council for the 11-month period 1 July 2019 to 31 May 2020.

EXECUTIVE SUMMARY

[2] Consultant expenditure for the 11-month period ending 31 May 2020 was $5,163,000. Policy, Consents, Public Transport, Science and Operations departments spent 84% of Council consultant expenditure.

[3] Legal expenditure for the 11-month period ending 31 May 2020 was $1,535,000. Policy, Consents, Executive Advisor, Compliance and Homebase departments spent 84% of Council legal expenditure.

RECOMMENDATION

That the Council:

1) ***Receives*** *this report.*

BACKGROUND

[4] During the 3 June 2020 Finance Committee meeting a report was requested detailing the annual spend on consultants and external legal counsel. This report was to be compiled and provided to Council by the 22 July Council meeting. The full financial year, 12-month period to 30 June 2020 was not able to be provided due to Council paper deadline requirements.

CONSULTANT EXPENDITURE

[5] The definition of consultant expenditure used in the compilation of this report is the following:

- Any external third party that has been used to either provide or produce a report that provides expert advice to Council or has been used in Council processes instead of a Council employee due to staff capacity restrictions.
- Legal advice has been excluded from this definition as that is reported separately in the report.
- Hearing commissioners have also been excluded from the definition of consultants.

[6] Consultants are engaged by Council to assist with the delivery of a range of work. Consultants can be used to deliver core services due to either vacancies in the existing structure, or a shortage of resources to deliver the required workload. They are also engaged where specific staff expertise does not exist for a particular project or piece of work.

[7] Where consultants are used to either process or provide expert technical input into a consent their costs are recovered in accordance with the fees and charges policy.

[8] There a number of initiatives underway that should lead to reductions in expenditure on consultants in the future. These include:

- Filling vacancies with permanent staff members
- Creating new roles or adjust existing positions where consultants are traditionally relied on where it is cost effective to do so and/or to do so reduces business risk
- Where senior consultants are relied on to augment capability ensure that mentoring is formally part of their service to upskill existing staff members
- Endeavour to increase consultation with stakeholders, including TLAs, prior to changes in their or our RMA plans to minimise costs post notification

[9] The top 5 departments of Council that utilised consultants were:

Council area	Consultant spend	% of consultant spend of total Council consultant spend
Policy	$1,491,771	29%
Consents	$1,196,786	23%
Public Transport	$780,189	15%
Science	$487,809	9%
Operations	$360,584	7%
Total for top 5 departments	**$4,317,140**	**84%**

The top 5 Council departments from the table above, spent consultant expenditure on the following projects:

Council area	Project Code	Project name	Consultant spend
Consents	R1	RC Apps, Reviews, Appeals, Admin & Dams	$1,189,694
Policy	W1	Regional Plan Water	$891,722
Science	W1	Regional Plan Water	$129,681
Public Transport	T2	Public Passenger transport	$777,689
Science	W2	Water Quality & Quantity SOE	$336,638
Policy	Y400	Staff management consulting cost	$263,877
Policy	P1	Regional Planning	$245,121
Operations	F3	Lwr Clutha Flood Protection & Drainage	$187,528
Operations	L5	Regional Pest Plan Review	$147,298
Policy	G4	Response to Issues	$91,050
Science	W3	Freshwater Implementation	$21,490
Operations	W3	Freshwater Implementation	$6,260
Operations	M2	Clutha River Management	$15,986
Consents	Y900	Staff management consulting cost	$7,092
Public Transport	T1	Regional Land Transport Planning	$2,500
Operations	M1	Dunedin River Management	$2,629

Operations	Other small projects less than $500 spent	$883

[10] The top 20 consultants paid were:

Consultant company	Amount	Council area
Incite (CHCH) Ltd	$381,665	Policy
Boffa Miskell	$329,076	82% Consents 18% Policy
Aukaha (1997) Ltd	$274,570	97% Policy 3% other areas of Council
Mitchell Daysh Ltd	$255,096	76% Consents, 19% Biodiversity, 5% other areas of Council
Incite (Dunedin) Ltd	$236,877	Policy
Ryder Environmental Ltd	$226,163	86% Science, 13% Consents
Sequoia Smart Solutions Pty Ltd	$205,163	Public Transport
Strome Advisory Ltd	$198,073	Policy/ Acting GM
Pattle Delamore Partners Ltd	$190,526	97% Consents, 2% Policy
Tonkin & Taylor Ltd	$173,987	40% Consents, 39% Operations, 20% Compliance
Planwrite	$173,714	Policy
Timperley Partners	$172,890	Public Transport
Aecom NZ Ltd	$159,902	78% Public Transport, 22% Compliance
Wildland Consultants Ltd	$128,959	86% Biodiversity, 10% Policy
Cawthron Institute	$125,640	68% LAWA, 32% Science
Aqueus Consulting	$111,677	Operations
Beca Ltd	$99,440	78% Public Transport, 16% Consents
E3 Scientific Ltd	$89,747	79% Consents, 21% Compliance
Water Ways Consulting Ltd	$85,805	60% Science, 40%Consents
Better Biosecurity Solutions Ltd	$83,606	60% Operations, 40% Biodiversity

Highlighted suppliers in the table above are suppliers which have an office located in Otago.

LEGAL EXPENDITURE

[11] The definition of legal expenditure used in the compilation of this report is any external third party that has been used to either provide legal advice or perform legal functions for Council.

[12] The top 5 areas of Council that used legal expenditure were:

Council area	Legal spend	% of legal spend of total Council legal spend
Policy	$589,346	38%
Consents	$239,921	16%
Executive Advisor	$203,927	13%
Compliance	$156,509	10%
Homebase	$92,801	6%
Total for top 5 departments	**$1,282,504**	**84%**

[13] The top 5 Council departments from the table above, spent legal expenditure on the following projects:

Council area	Project Code	Project name	Consultant spend
Policy	G4	Response to Issues	$299,687
Consents	R1	RC Apps, Reviews, Appeals, Admin & Dams	$239,921
Executive Advisor	G8	Governance & Democracy, specifically Councillors and committees	$203,927
Policy	P1	Regional Planning	$170,554
Compliance	I1	Incident Response	$156,509
Policy	W1	Regional Plan Water	$119,115
Homebase	Y100	Chief Executive HB	$84,156
Homebase	Y600	Operations HB	$8,370

[14] The top 5 Legal companies were:

Legal company	Amount	Council area
Ross Dowling	$705,551	67% Policy, 14% Compliance, 5% Legal Counsel, 3% Public Transport, 3% Engineering, 2% Consents, 2% Support Services, 5% other areas of council
Chen Palmer Public Law Specialist	$266,424	70% CE, 30% CE homebase All costs relate to Councillor conflict of interest legal advice, other governance advice, Councillor requested conflict of interest process, HR
Wynn Williams	$223,516	50% Consents, 31% Policy, 13% Operations, 5% Information Systems
Buddle Findlay	$151,177	57% Consents, 33% Policy, 9% CE
Luke Cunningham	$60,786	Compliance

Highlighted suppliers in the table above are suppliers which have an office located in Otago

ATTACHMENTS

Nil

11.2. Staff submission on DCC bylaws

Prepared for:	Council
Report No.	P&S1862
Activity:	Governance Report
Author:	Warren Hanley, Senior Liaison Planner, and Tom De Pelsemaeker, Team Leader, Freshwater and Land
Endorsed by:	Gwyneth Elsum, General Manager Strategy, Policy and Science
Date:	13 July 2020

PURPOSE

[1] To summarise key aspects of the Dunedin City Council's proposed new Trade Waste Bylaw 2020 and the Stormwater Quality Bylaw 2020 and outline key messages to be included in a staff submission on the proposed bylaws.

EXECUTIVE SUMMARY

[2] The Dunedin City Council (DCC) is consulting on two new bylaws to regulate the quality of discharges to the DCC's stormwater system and to strengthen the Dunedin City Council's ability to manage the environmental effects of discharges from its stormwater and wastewater systems.

[3] The two proposed bylaws – the Trade Waste Bylaw 2020 and the Stormwater Quality Bylaw 2020 – set out provisions and rules about the way in which contaminants are discharged through the stormwater and wastewater systems, what contaminants can and cannot be discharged, and how they need to be treated.

[4] The DCC is seeking feedback on bylaws and staff are proposing to lodge a submission by the closing date of 17 August 2020.

[5] Staff have reviewed both proposals and are generally supportive of the intent and approach taken by the DCC in both proposals, subject to minor amendments where appropriate that seek to increase the clarity of the proposed provisions and safeguard the long term resilience and effectiveness of the existing networks.

RECOMMENDATION

That the Council:

1) ***Receives*** *this report.*
2) ***Notes*** *the draft submission points recommended by staff.*

BACKGROUND

[6] The Dunedin City Council's 2008 Trade Waste Bylaw regulates the discharge of trade wastes to the DCC's wastewater system to protect people, the environment, and the wastewater system from the impacts of the discharge of trade wastes to the system. It

also includes some provisions to regulate the quality of discharges to the DCC's stormwater system.

[7] The 2008 Bylaw establishes three categories of trade waste - permitted, conditional, and prohibited - and a regime to enable the DCC to evaluate trade waste discharges against established criteria for these categories. In doing so, the Bylaw requires pre-treatment of some trade waste before discharge. The Bylaw also provides for sampling and monitoring of trade waste discharges and for administration, compliance, and enforcement.

[8] A review of the 2008 Bylaw commenced in February 2018. The review found that a bylaw remains the most appropriate way to manage the matters addressed in the 2008 Bylaw, but concluded that two separate, system-specific bylaws would facilitate improved management of trade waste and stormwater matters and better promote compliance. On 28 May 2019 the DCC approved the development of a separate stormwater quality bylaw in parallel with the development of an updated trade waste bylaw. The two proposed bylaws are the Trade Waste Bylaw 2020 and the Stormwater Quality Bylaw 2020.

[9] Key changes/proposals in the Stormwater Quality Bylaw include:

- Clarifying the types of contaminants that do not meet stormwater performance standards and therefore should not be discharged to the stormwater system.
- Provision of examples of pre-treatment that may be appropriate for some discharges.
- Strengthened provisions on monitoring, enforcement and offences.

[10] Key changes/proposals in the Trade Waste Bylaw include:

- Clarifying, simplifying and updating the provisions of the bylaw.
- Removing registration and application forms.
- Removing the stormwater provisions.
- Additional provisions requiring pre-treatment for specified activities.
- A requirement to hold a trade waste consent for the disposal of tankered waste.
- A requirement to hold a trade waste consent for all discharges of organic waste so Biochemical Oxygen Demand (BOD_5) limits can be set.
- Amendment to the provisions for sulphate limits to remove allowance for limits "after reasonable mixing".
- Amendment to provisions for the management of fats, oils or grease (FOGs) to improve clarity and remove inconsistency.

ISSUE

[11] The DCC is seeking feedback on these proposals. The period for making a submission ends 17 August 2020.

[12] ORC has an interest in the matters addressed by the proposed bylaws as Council has an overall responsibility for managing the effects of discharges of contaminants into

freshwater and coastal waters through its plan development processes and the issuing of discharge consents.

DISCUSSION

[13] Following review of these proposals, ORC staff are generally supportive of Trade Waste Bylaw 2020 and the Stormwater Quality Bylaw 2020, subject to relatively minor amendments.

[14] The following amendments are suggested:

- Amending the list of matters DCC will take into account when considering applications for a trade waste consent to allow for the consideration of practices, technologies and measures that can assist with reducing or minimising contaminant discharges into the stormwater and wastewater systems by the end users of these systems; and
- Amending the provisions of the Stormwater Quality Bylaw 2020 to incentive the use of technologies and measures to reduce stormwater discharges, especially where the future resilience of existing stormwater network is threatened by capacity constraints; and
- Amending the provisions of the Trade Waste Bylaw 2020 and the Stormwater Quality Bylaw 2020 to make it clear that the controls apply to direct as well as indirect discharges to the reticulated wastewater or stormwater systems.
- Amend the provisions of the proposed Stormwater Quality Bylaw 2020 and Trade Waste Bylaw 2020 to include information provision and education as potential responses available to DCC in the case of any offices against these bylaws.

[15] In addition, ORC considers that it is desirable for the Dunedin City Council to develop a framework that provides for the effective and regular monitoring of high-risk discharges into its stormwater and wastewater systems in order to improve their performance.

CONSIDERATIONS

Financial Considerations

[16] This consideration is not relevant to this report.

Significance and Engagement

[17] This consideration is not relevant to this report.

Legislative Considerations

[18] This consideration is not relevant to this report.

Risk Considerations

[19] This consideration is not relevant to this report.

NEXT STEPS

[20] ORC staff will draft a submission which will include the some of the suggested amendments outlined in this report and lodge the submission with DCC by 17 August 2020.

ATTACHMENTS

Nil

12.1. Recommendations of the Strategy and Planning Committee 8 July 2020

9.2. Proposed Amendments to the National Environmental Standards for Air Quality
Resolution
That the Committee:

1) *Receives this report.*
2) *Make a recommendation to Council to approve the attached submission as amended be submitted to Ministry for the Environment prior to 31 July 2020.*

Moved: Cr Laws
Seconded: Cr Robertson
CARRIED

9.3. Annual Air Quality Report
Resolution
That the Council:
1) ***Receives*** *this report.*
Moved: Cr Scott
Seconded: Cr Malcolm
CARRIED

9.4. Arrowtown Air Quality Implementation
Resolution
That the Council:
1) ***Receives*** *this report.*
Moved: Cr Wilson
Seconded: Cr Hobbs
CARRIED

10.1 Water Bottling Issues and Options
Resolution
That the Council:
1) ***Receives*** *this report.*

a) ***Notes*** *that the effects of taking water for commercial water bottling on freshwater values, on catchment hydrology, and on existing lawful uses, are actively managed under the operative resource management framework.*

b) ***Notes*** *that, with the current state of knowledge and understanding, the review of the Regional Policy Statement and Regional Plan: Water for Otago is unlikely to set a specific management regime for commercial water bottling in the region given the lack of evidence of any particular adverse direct effect resulting from the activity.*

c) ***Notes*** *that, as stated by the Environment Court in Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council[1], the use of plastic bottles by water bottling companies is not a matter for consideration in the consenting of water permits for water bottling.*

d) ***Notes*** *that there are reputational risks in diverging from the general approach of the RMA framework, and by targeting a specific industry for reasons which also apply to other industries (Options 1 and 3).*

Moved: Cr Laws
Seconded: Cr Hope
CARRIED

Resolution

That the Council

1) ***Supports*** *Option 2 (Status Quo) with the inclusion of Option 3, Advocate central government to discourage, or put a stop to, water bottling in New Zealand.*

Moved: Mr Ellison

Seconded: Cr Robertson

CARRIED

10.2 Action for health waterways – Decisions on national direction and regulations for freshwater management

Resolution

That the Council:

1) ***Receives*** *this report.*
2) ***Notes*** *this report.*
3) ***Notes*** *the updated implementation plan for Plan Changes 8 to the Regional Plan: Water for Otago and Plan Change 1 to the Regional Plan: Waste for Otago.*
4) ***Notes*** *the implementation plan for the 'Action for Healthy Waterways' reform package.*

Moved: Cr Laws

Seconded: Cr Hope

CARRIED

12.2. Recommendations of the Regulatory Committee, 9 July 2020

1.1 Regulatory Group Quarterly Activity Report

Resolution

That the Council:

1) ***Receives*** *this report.*
2) ***Notes*** *the update report from the Regulatory Group for the period 1 January to 31 May 2020*

Moved: Cr Noone
Seconded: Cr Hope
CARRIED

1.2 Report on Dairy Inspections 2019/20

Resolution

That the Committee:

1) ***Notes*** *the report on the Dairy Inspection Compliance Programme for the 2019/20 year.*

Moved: Cr Wilson
Seconded: Cr Forbes
CARRIED

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(1) for the passing of this resolution
1.1 Employment Committee Report Back – July 2020	Section 48(1)(a): Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds: (a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist,	Section 7(2)(a); To protect the privacy of natural persons, including that of deceased natural persons – Section 7(2)(a)

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act or section 6 or section 7 or section 9 of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.