DATED THIS **DAY OF** **2024**

NORTHLAND REGIONAL COUNCIL
("NRC")

and

WHANGAREI DISTRICT COUNCIL
("WDC")

and

KAIPARA DISTRICT COUNCIL
("KDC")

and

FAR NORTH DISTRICT COUNCIL
("FNDC")

Heads of Agreement for a Multi-Agency Joint Emergency Management Coordination Centre

THOMSON WILSON
SOLICITORS
WHANGAREI

Agreement made this day of 2024

BETWEEN **NORTHLAND REGIONAL COUNCIL** having its offices at Water Street, Whangarei **("NRC")**

AND **WHANGAREI DISTRICT COUNCIL** having its offices at Rust Avenue, Whangarei **("WDC")**

AND **KAIPARA DISTRICT COUNCIL** having its offices at 32 Hokianga Road, Dargaville **("KDC")**

AND **FAR NORTH DISTRICT COUNCIL** having its offices at Memorial Avenue, Kaikohe **("FNDC")**

(cumulatively "the Councils").

Background

A. The Councils have statutory functions and obligations with respect to emergency management such arising under the Local Government Act 2002 and the Civil Defence Emergency Management Act 2002.

B. The Northland CDEM Group Joint Committee, the governance group for Civil Defence and Emergency Management in Northland, have in their 2021-2026 Northland Civil Defence and Emergency Management Group Plan an action to build a multi-agency Emergency Coordination Centre for the region.

C. The Councils have agreed that for the purposes of their statutory obligations there is a need for the construction of a new purpose built multi agency joint emergency management coordination centre ("MACC") to be the central point for emergency responses for Northland.

D. It is agreed such a centre can provide office space for the daily operations of NRC based civil defence emergency management staff and for the daily operations of Fire and Emergency New Zealand ("FENZ") staff as well as provide space for staff of the other Councils or staff of other agencies who have obligations with respect to emergency management in emergency situations and will provide space for WDC to operate an Emergency Operations Centre ("EOC") to address any localised event.

E. Fire and Emergency New Zealand ("FENZ") has offered to make available land at Mansfield Terrace, Whangarei ("the site") at no charge upon which an MACC can be constructed which offer has been accepted.

F. In pursuance of these commitments the Councils have agreed that they will by various contributions, with Government funding to assist, construct the MACC on the site such construction to be undertaken by NRC in conjunction with FENZ.

G. To enable construction and ongoing use of the MACC FENZ will lease the site free of rent, subject to all usual outgoings being met, to NRC.

H. Upon construction of the MACC NRC will sublease the site and buildings to the Councils as tenants in common in equal shares.

I. The Councils will sub-sublet the site (and the MACC) at no rental, subject to the sub sublessees meeting outgoings and internal maintenance, to NRC as to approximately one half for the daily operations of NRC based civil defence emergency management staff, and the other approximate half to FENZ as its office base, with the areas so leased to be utilised as and to the extent necessary for emergency management when required, including as a WDC EOC to address any localised event (whether a declared emergency or not) and for emergency management training when necessary.

J. The Councils and FENZ have separately agreed that NRC will manage the property and the sublease and sub-subleases on behalf of the parties.

K. Under a separate development agreement NRC will establish a Project Advisory Group ("PAG") with FENZ with its envisaged operation and reporting lines shown on the schematic model annexed as Schedule "A".

L. The PAG will rely upon a design team made up of a representative of each of NRC, WDC and FENZ, with supporting consultants and an independent quantity surveyor to prepare the MACC design.

Provision of the Site

1. The site which is to be developed for the MACC is that part of the FENZ land at Mansfield Terrace, Whangarei as is shown delineated in blue marked "Proposed" on the plan **annexed** hereto marked "B".

2. FENZ will at the cost of the Councils undertake a boundary adjustment subdivision of the lands contained in Records of Title NA648/209 and NA1805/72 to enable a separate title to be issued for the site.

3. Once a new title is available for the site it will be leased by FENZ to NRC for $1.00 per annum such lease to be for a thirty five (35) year term renewable and otherwise on the terms and conditions generally in the form of the current Auckland District Law Society ("ADLS") form of agreement to lease attached as Schedule C ("the head lease").

Construction of the Emergency Coordination Centre

4. NRC will, upon taking possession of the site under the head lease, be responsible for the demolition of the buildings on the site and its preparation for the construction thereon of the MACC.

5. Having applied for and obtained the requisite consents, (both building and resource (if necessary)), NRC shall undertake demolition of existing buildings on the site and then construction of the MACC on the site such in conjunction with FENZ in terms of a development agreement to be agreed upon between NRC and FENZ.

6. The construction will be undertaken generally in accordance with the Feasibility Budget Estimate prepared by Duffield Murray Consultants Limited dated 27 June 2023 attached as Schedule "D" and the attached concept plans attached as Schedule "E".

7. The Councils acknowledge that these concept plans are "concept only" and are applicable only to show that the MACC can be constructed so as to accommodate NRC's civil defence emergency management business, FENZ's business operations and a WDC EOC response combined with a significant region wide emergency co-ordination centre response although the actual final design layout and final design detail is still to be determined.

Relationship, Payment and Occupation Structure

8. During the term of the implementation of this Agreement and the construction of the MACC a Project Collaboration Team will be established from members of the Northland Coordinating Executive Group comprising the Chief Executives of the four Councils and the FENZ District Manager as stationed in Whangarei, in each case such appointed member of the management group having the right to delegate to a representative of their respective organization to appear at meetings on their behalf.

9. NRC will provide monthly updates of progress with the implementation of this agreement and the construction of the MACC to the Councils within the Northland Coordinating Executive Group forum.

10. The cost of the development of the site, the subdivision of FENZ's land and construction of the MACC, (including obtaining all requisite consents), will be met by, and/or funded through, the following contributions:

    (a) NRC - $5,500,000.00.

    (b) WDC - $933,000.00.

    (c) FNDC - $500,000.00.

    (d) KDC - $100,000.00.

    (e) Government - $1,037,000.00

    such, where appropriate, being paid to NRC and applied by NRC upon execution of this agreement.

11. In the event that the cost of the development of the site and the construction of the MACC exceeds the current budget of $8,070,000.00 then such additional sum required shall be provided in the following proportions:

    (a) NRC - 78.20%
    (b) WDC – 13.27%
    (c) FNDC – 7.11%
    (d) KDC – 1.42%

12. In the event that the emergency coordination centre building, or the lessee's interest in the site, is acquired by a third party, including being acquired by a public agency (including one of the Councils), the proceeds from such an acquisition shall be paid to each of the Councils in the proportions documented in clause 11.

13. Following construction of the MACC NRC will sublease the site and the building constructed thereon to the Councils as tenants in common in equal shares such form of sublease to be in the form of the annexed agreement to sublease attached as Schedule "F" with there being no right for any of the Councils as sublessees to assign their interest in the sublease.

14. The purpose of the sublease from NRC to the Councils is to provide that the ongoing maintenance of the MACC and the site is met equally by the councils.

15. Immediately upon the Councils taking a sublease of the site upon the completion of the construction of the MACC the Councils will sublet the site to NRC, and to FENZ on terms and conditions generally in the form of the modern ADLS agreement to lease providing for a nominal rent but meeting usual outgoings and maintenance requirements with a term and renewal rights consistent with the head lease. The areas to be leased are subject to final agreement and measure once the MACC is built.

16. The sub-subleases to NRC and to FENZ will be rent free but both sub-sublessees will be responsible for tenants' maintenance and outgoings on a proportional basis such to be set on a pro rata basis by relation to the actual floor space each is to occupy as determined by final measure.

17. The sublease obligations of NRC as to tenant's outgoings and maintenance is to be met equally by the Councils.

Notices

18. For the purposes of any party giving notice to any other party or parties notices shall be given as follows:

NRC Chief Executive:
Email Address: jong@nrc.govt.nz

WDC – Chief Executive:
Email Address: simonw@wdc.govt.nz

KDC – Chief Executive:
Email Address: jmarris@kaipara.govt.nz

FNDC – Chief Executive:
Email Address: guy.holroyd@fndc.govt.nz

Legal Status

19. The parties to this Agreement agree that this Agreement is legally binding.

20. **Confidentiality**

20.1 Without the prior approval of the other Party, the Parties shall not disclose any confidential information to any person or party, save that disclosure to:

i. the extent required by law; or

ii. the extent that the confidential information legitimately enters the public domain, through no breach of this Agreement.

shall not be a breach of this clause.

20.2 The Parties recognise that they will, during their association and during the course of this Agreement, learn and have access to confidential information about another Party ("the disclosing Party"). Such information may relate (but is not restricted) to personnel, structures, finances, business strategies or arrangements, or intellectual property, which are either identified by the disclosing Party as being confidential, or which by its nature may reasonably be regarded as being sensitive and/or of commercial value to the other Party and therefore confidential, which collectively comprise the "confidential information".

20.3 Where the receiving Party wants to disclose any confidential information to a third party, the receiving Party shall notify the disclosing Party of its desire to disclose, the nature and extent of that disclosure and identify the party to whom disclosure will be made. The receiving Party shall only disclose that confidential information after receiving express written agreement from the disclosing Party. Prior to disclosing any confidential information, the receiving Party will advise the third party of its confidentiality obligations under this Agreement and ensure the third party agrees to be bound by the same obligations of confidence.

20.4 Subject to the requirements set out in clause 20.1 to 20.3, a party or someone acting on a party's behalf can only communicate, disclose or make a public announcement about the terms of the Project contained in this Heads of Agreement if that party first obtains the written approval of the other party.

20.5 The parties acknowledge that the Project will attract a degree of public interest. The Parties agree that where communication with the media and the public has the potential to impact on the interests of the other Party, then the communications shall be mutually agreed between the Parties and which Party manages the communication will be agreed.

20.6 Any dispute about the content of media releases is to be referred to the Project Collaboration Team for resolution.

20.7 The obligations of confidentiality contained in this Agreement will continue after termination or expiration.

21. The parties mutually agree with each other to always act in good faith with each other and (acting reasonably) to do all such acts and things and complete all such documentation and take all such other steps as shall be necessary to give full and proper effect to this agreement to the intent as set out herein.

22. If any dispute arises between any of the parties concerning the rights and obligations contained within this Agreement, the parties in dispute will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.

23. If the dispute is not resolved within 10 Working Days ("Working Days" shall have the same meaning as defined under Part 1 of the Property Law Act 2007), then either party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties in dispute shall in good faith endeavour to agree upon a mediator within 5 Working Days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.

24. If the dispute is not resolved within 20 Working Days of the date on which the mediation is held, the parties in dispute will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties in dispute cannot agree on the arbitrator within a further 10 Working Days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee will appoint an independent arbitrator.

25. In the event that the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee fails or refuses to appoint a mediator or arbitrator, either party to the dispute may request the High Court to make an appointment. The appointment decision of the High Court may not be appealed.

26. Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

27. **Miscellaneous:**

27.1 **Counterparts:** This agreement may be signed in counterparts. All executed counterparts together will constitute one document. Any party may enter into this agreement by signing any such counterpart.

27.2 **Copies:** Any facsimile copy of this agreement, or copy of this agreement sent via email in PDF format, (including any facsimile copy, or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) maybe relied on by any other party as though it were an original copy. This agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.

27.3 **Assignment:** A party must not assign any of its rights or obligations under this document without the prior consent of the other parties.

27.4 **Entire Agreement:** This document (and the option deed dated on or around the same date as this document) contains everything the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.

27.5 **Further Acts:** Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this document and all transactions incidental to it.

27.6 **Governing Law and Jurisdiction:** This document is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

27.7 **No Agency or Partnership:** No party is an agent, representative, partner of any other party by virtue of this document.

27.8 **No Authority to Act:** No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding

relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this document or by express agreement between the parties.

27.9 **Severability:** If a clause or a part of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

27.10 **Variation:** No variation of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

27.11 **Waiver:** The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

28. Interpretation

28.1 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

(i) Headings are inserted for convenience only and do not affect the interpretation of this agreement.

(ii) A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Whangarei, New Zealand.

(iii) If the day on which any act, matter or thing is to be done under this agreement if not a business day, the act, matter or thing must be done on the next business day.

(iv) A reference in this agreement to dollars or $ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars.

(v) A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

(vi) A reference in this agreement to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.

(vii) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.

(viii) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

(ix) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(x) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

(xi) References to the word "include" or "including" are to be construed without limitation.

(xii) A reference to this agreement includes the agreement recorded in this agreement.

(xiii) Any schedules and attachments form part of this agreement.

29. **Costs**

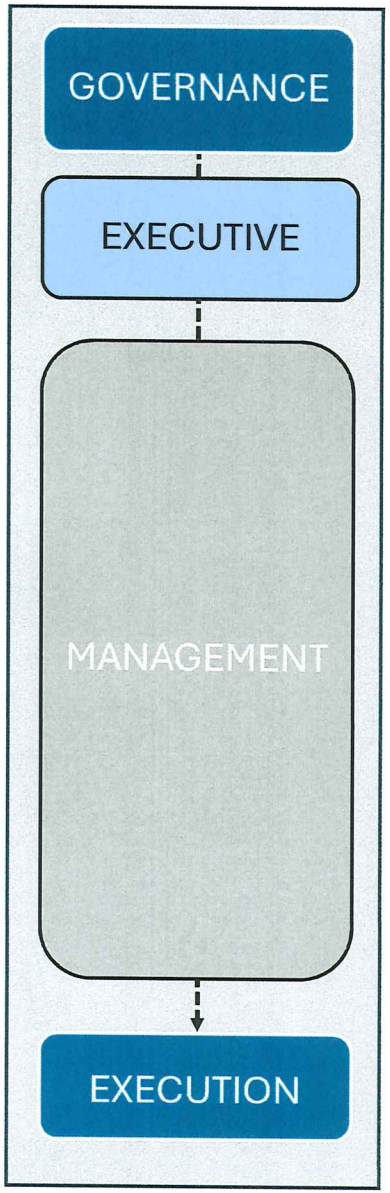
29.1 Each party shall bear its own costs associated with this Heads of Agreement.

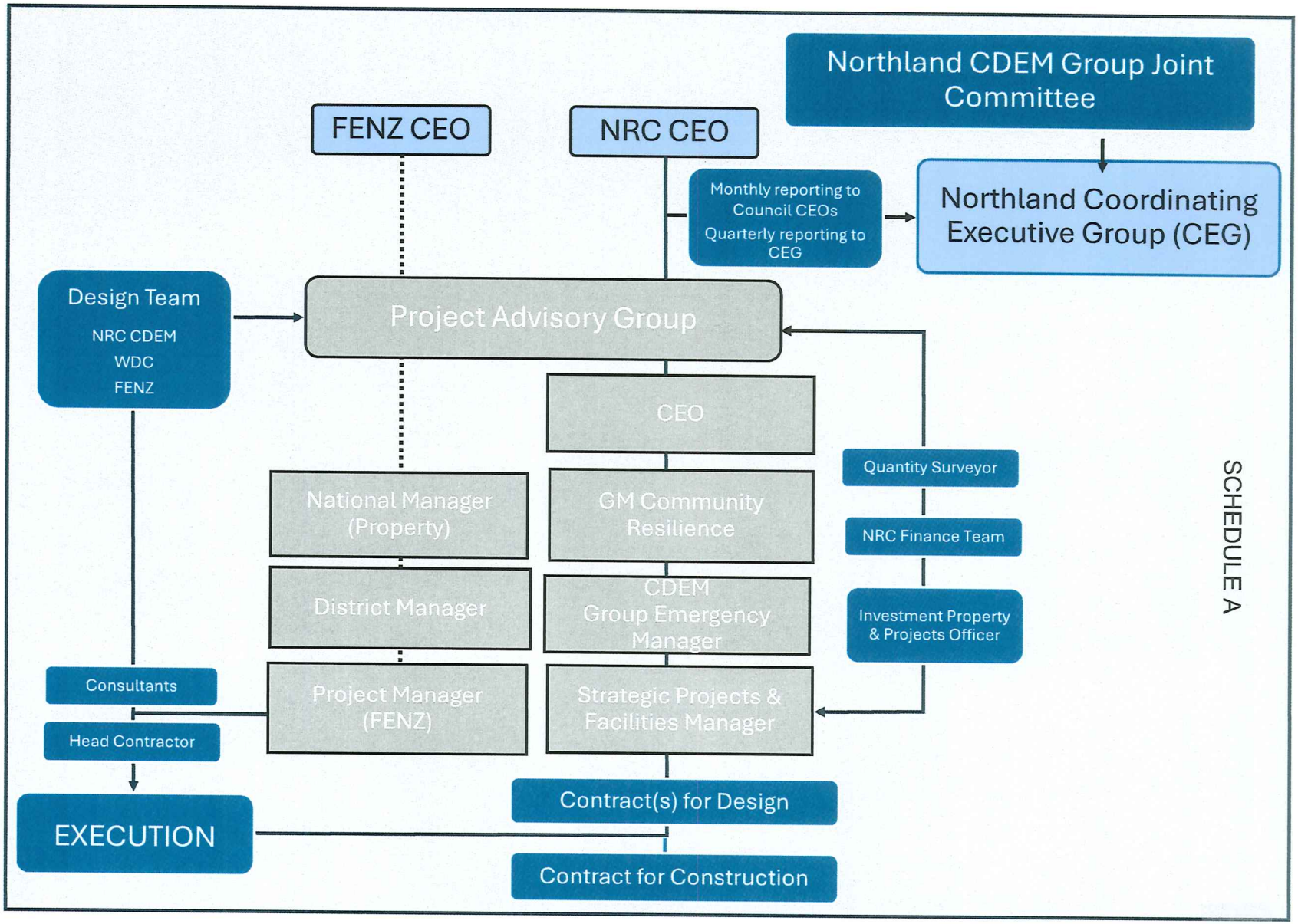
30. **Parties not Partners:**

30.1 Nothing in this Agreement shall create or constitute or be deemed to create or constitute a partnership between the Parties, nor to constitute or create, or be deemed to create or constitute a party as an agent of any other party for any purpose whatsoever.

30.2 No party shall have any authority or power to bind or commit, act or represent or hold that party out as having authority to act as an agent of, or in any way to bind or commit the other party to any obligation.

SCHEDULE A


GOVERNANCE
EXECUTIVE
MANAGEMENT
EXECUTION


Northland CDEM Group Joint Committee
FENZ CEO
NRC CEO
Monthly reporting to Council CEOs
Quarterly reporting to CEG
Northland Coordinating Executive Group (CEG)
Design Team
NRC CDEM
WDC
FENZ
Project Advisory Group
CEO
Quantity Surveyor
National Manager (Property)
GM Community Resilience
NRC Finance Team
District Manager
CDEM Group Emergency Manager
Investment Property & Projects Officer
Consultants
Project Manager (FENZ)
Strategic Projects & Facilities Manager
Head Contractor
Contract(s) for Design
EXECUTION
Contract for Construction

SCHEDULE B

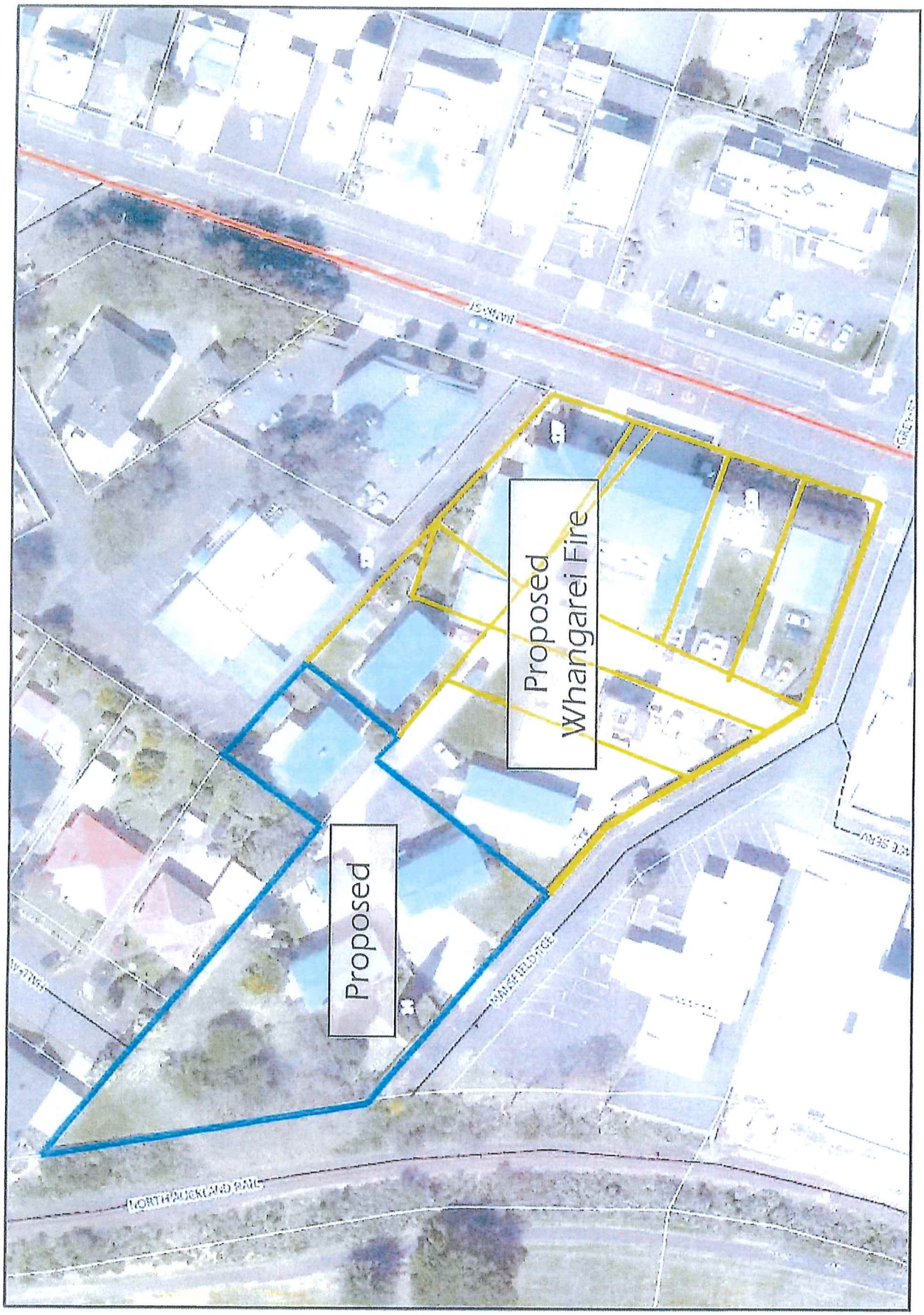


Image 2 – Proposed Sites, WDC GIS Image

AGREEMENT TO LEASE

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

GENERAL address of the premises:
Mansfield Terrace, Whangarei

Schedule C

DATE:

LANDLORD:
FIRE AND EMERGENCY NEW ZEALAND

TENANT:
NORTHLAND REGIONAL COUNCIL

GUARANTOR:

THE LANDLORD agrees to grant and the Tenant agrees to take a lease of the premises and the carparks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT agree

(1) as set out in the First, Second and Third Schedules

(2) that the Landlord's fixtures, fittings and chattels contained in the premises are those described in the Fourth Schedule.

THE GUARANTOR (and if more than one jointly and severally), in consideration of the Landlord entering into this Agreement at the Guarantor's request, agrees with the Landlord to guarantee to the Landlord the obligations of the Tenant and to sign the Lease as a guarantor.

SIGNED by the Landlord:

_____
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

SIGNED by the Tenant:

_____
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

SIGNED by the Guarantor:

_____
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].

WARNINGS *(These warnings do not form part of this contract)*

1. This contract is binding on all parties upon signing. All parties should seek legal advice **before signing.**
2. Before signing this contract the Tenant should make sure that the status of the property under the Resource Management Act 1991 is satisfactory for the Tenant's intended use of it.
3. The parties should agree upon and record the Landlord's fixtures, fittings and chattels and their condition in the Fourth Schedule.
4. The parties are advised to insert a clause requiring inclusion of a report of the condition of the premises as at the commencement of the lease.

FIRST SCHEDULE

1. **PREMISES:** **Area comprising 3150 square metres more or less being that part of the land contained in Records of Title NA648/209 and NA1805/72 as is shown delineated in blue on the attached plan entitled "Proposed"**

2. **CAR PARKS:**

3. **TERM:** **Thirty Five (35) years**

4. **COMMENCEMENT DATE:** **The day that a new title issues for the Premises following a boundary adjustment subdivision involving the land in RTs NA648/209 and NA1805/72**

5. **RIGHTS OF RENEWAL:** **In perpetuity**

6. **RENEWAL DATES:** **Every thirty fifth year anniversary of the Commencement Date**

7. **FINAL EXPIRY DATE:** **N.A.**

8. **ANNUAL RENT:**
(Subject to review if applicable)

Premises	**$1.00**	**plus** GST
Car Parks	$	**plus** GST
TOTAL	**$1.00**	**plus** GST

9. **DEPOSIT:**
(advance rent) **$Nil** **plus** GST

10. **RENT REVIEW DATES:**
(Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)

~~1. Market rent review dates:~~

~~2. CPI rent review dates:~~

11. **DEFAULT INTEREST RATE:**
(subclause 5.1 of the Lease) **0** % per annum

12. **BUSINESS USE:** **Joint emergency coordination centre**
(subclause 16.1 of the Lease)

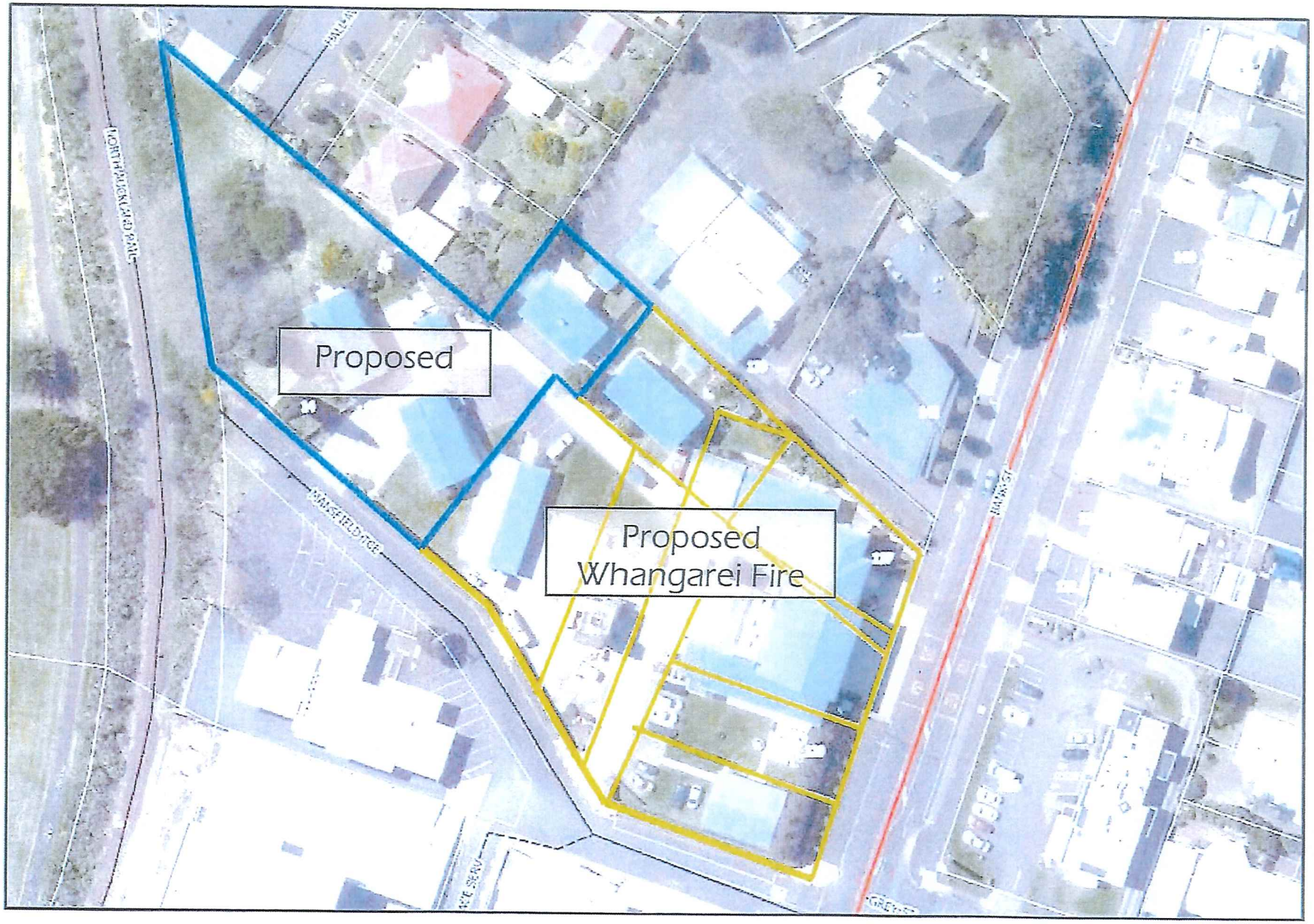


Image 2 – Proposed Sites, WDC GIS Image

13. LANDLORD'S INSURANCE:
(subclause 23.1 of the Lease)

(Delete or amend extent of cover as appropriate)

~~(1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:~~

~~(a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass).~~

(Delete either (a) or (b): if neither option is deleted, then option (a) applies)

~~OR~~

~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).~~

(2) Cover for the following additional risks:

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

~~(a) (i) 12 months~~

~~OR~~

~~(ii) months~~

~~indemnity in respect of consequential loss of rent and outgoings.~~

~~(b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.~~

~~(c) Public liability.~~

14. NO ACCESS PERIOD:
(subclause 27.6 of the Lease)

~~(1) 9 months~~

~~OR~~

(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)

(2)

15. PROPORTION OF OUTGOING:
(subclause 3.1 of the Lease)

100 % which at commencement date is estimated to be $ **plus** GST per annum

16. LIMITED LIABILITY TRUSTEE:

17. OUTGOINGS:
(clause 3 of the Lease)

(1) Rates or levies payable to any local or territorial authority.

(2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.

(3) Rubbish collection and recycling charges.

(4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.

(5) Any insurance excess (but not exceeding $2000) in respect of a claim and insurance premiums and related valuation fees.

(6) Service contract charges for air conditioning, lifts, other building services and security services.

(7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.

(8) The provisioning of toilets and other shared facilities.

(9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.

(10) Yard and carparking area maintenance and repair charges but excluding charges for repaving or resealing.

(11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.

(12) Management expenses.

(13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

DEFINITIONS, NOTICES AND INTERPRETATION

1.1 Definitions

(1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meaning as in section 4 of the Property Law Act 2007 and the Lease.

(2) "Agreement" means this document including the front page, any further terms and any schedules and attachments.

(3) "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; and

(b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and

(c) the day observed as the anniversary of any province in which the premises are situated.

(4) A Working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

(5) Any act done pursuant to this agreement by a party after 5.00 pm on a Working day, or on a day which is not a Working day, shall be deemed to have been done at 9.00 am on the next succeeding Working day.

(6) Where two or more acts (including service of notice) done pursuant to this Agreement 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 1.1(5).

1.2 Notices

All notices must be in writing and must be served by one of the following means:

(1) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and

(2) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

(a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or

(b) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

(3) In respect of the means of service, a notice is deemed to have been served:

(a) In the case of personal delivery, when received by the addressee.

(b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.

(c) In the case of facsimile transmission, when sent to the addressee's facsimile number.

(d) in the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.

(4) In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.

(5) A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.

(6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 1.1(5).

(7) Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

1.3 Interpretation

(1) Headings are for information only and do not form part of this Agreement.

(2) The terms, conditions and covenants contained in this Agreement shall not merge insofar as they either have not been fulfilled at the time of the execution of the Lease or are not reflected in the Lease but shall remain in full force and effect.

1.4 If there is more than one Landlord or Tenant, the liability of the Landlords or the Tenants as the case may be is joint and several.

1.5 Where the Tenant executes this Agreement with provision for a nominee or on behalf of a company to be formed, the Tenant shall remain liable for all the obligations on the part of the Tenant hereunder until such time as the Tenant and the Guarantor have signed the Lease.

1.6 This agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Communication of execution of this agreement may be made by each party transmitting by facsimile or email to the other party or their respective agents a counterpart of this agreement executed by the party sending the facsimile or email.

DEPOSIT

2.1 The Tenant shall pay as a deposit an advance rental payment of the amount specified in the First Schedule. The deposit shall be payable to the Landlord or the Landlord's agent immediately upon execution of this Agreement by all parties and/or at such other time as is specified in this Agreement. The person to whom the deposit is paid shall hold it as a stakeholder until this Agreement is unconditional or is avoided.

2.2 The Landlord shall not be entitled to cancel this Agreement for non-payment of the deposit unless the Landlord has first given to the Tenant three working days' notice in writing of intention to cancel and the Tenant has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.

2.3 Without prejudice to any of the Landlord's rights or remedies, including any right to claim for additional expenses and damages, if the deposit or any portion thereof is not paid upon the due date for payment the Tenant shall pay to the Landlord interest at the default interest rate on the portion of the deposit so unpaid for the period from the due date for payment until payment. Unless a contrary intention appears on the front page or elsewhere in this agreement the default interest rate 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 default interest is payable, plus 5 per cent per annum.

LEASE PAYMENTS

3.1 The Tenant shall pay the annual rent by equal monthly payments in advance as from the commencement date specified in the First Schedule.

3.2 The Tenant shall pay the Goods and Services Tax payable by the Landlord in respect of the rent and other payments payable by the Tenant pursuant to the Lease.

3.3 In addition to the rent the Tenant shall pay the outgoings specified in the First Schedule and where any outgoing is not separately assessed in respect of the premises then the Tenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then a fair proportion.

LEASE

form of lease attached.

4.1 The Tenant shall enter into a formal lease with the Landlord to be prepared by the Landlord's lawyer using the/~~current Auckland District Law Society Inc Deed of Lease form amended in accordance with the provisions of this Agreement ("Lease")~~. Each party will pay their own costs of the negotiation and preparation of the Lease and any deed recording a rent review or renewal.

~~**4.2** Unless otherwise set out in the Third Schedule, it is agreed that the Landlord's fixtures, fittings and chattels contained in the premises as more particularly described in the Fourth Schedule are in a good state of repair.~~

4.3 Notwithstanding that the Lease may not have been executed, the parties shall be bound by the terms, covenants and provisions contained in this Agreement and in the Lease as if the Lease had been duly executed.

DISPUTE RESOLUTION

5.1 Unless otherwise provided in this Agreement, if a party considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the notice, failing which the parties will endeavour in good faith within a further ten (10) working days to appoint a mediator and resolve the dispute, time being of the essence.

5.2 Neither party will commence legal proceedings against the other except for injunctive relief before following the procedure set out in subclause 5.1.

NO ASSIGNMENT

6.1 The Tenant shall not assign or agree to assign this Agreement or the Tenant's interest under this Agreement and the Tenant shall not register any caveat against the land in respect of its interest under this Agreement. The Tenant shall not be entitled to exercise the right of assignment contained in the Lease until such time as the Tenant has signed the Lease.

AGENT

7.1 If the name of a licensed real estate agent is recorded on this Agreement it is acknowledged that the lease evidenced by this Agreement has been made through that agent whom the Landlord appoints as the Landlord's agent to effect the Lease. The Landlord shall pay the agent's charges including GST for effecting such Lease.

LIMITATION OF LIABILITY

8.1 If any person enters into this Agreement as trustee of a trust, then:

(1) That person warrants that:

(a) that person has power to enter into this Agreement under the terms of the trust; and

(b) that person has properly signed this Agreement in accordance with the terms of the trust; and

(c) that 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 as a result of fraud or gross negligence 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.

8.2 Notwithstanding subclause 8.1, a party to this Agreement that is named in item 16 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 8.1(2).

THIRD SCHEDULE

FURTHER TERMS (if any)

FOURTH SCHEDULE

LANDLORD'S FIXTURES, FITTINGS AND CHATTELS (if any)

(Subclause 4.2)

DATED _____

BETWEEN

Landlord _____

Ph _____

Fax _____

Email _____

AND

Tenant _____

Ph _____

Fax _____

Email _____

AGREEMENT TO LEASE

General address of the premises:

_____

Landlord's lawyer (indicate individual acting)

_____

Tenant's lawyer (indicate individual acting)

Deposit paid to _____

Amount: $ _____

Date paid _____

_____

LEASE NEGOTIATED BY:

Licensed Real Estate Agent

Office _____

Address _____

_____

Telephone _____

Manager _____

Salesperson _____

_____

DEED OF LEASE

Dated:

Landlord: **FIRE AND EMERGENCY NEW ZEALAND**

Tenant: **NORTHLAND REGIONAL COUNCIL**

IN CONSIDERATION of the Annual Rent hereinafter reserved and of the covenants, conditions and stipulations on the part of the Tenant contained or implied herein the Landlord leases to the Tenant the Land for the Term and at the Annual Rental as set out in the First Schedule subject to the covenants conditions and restrictions set out in the Second Schedule and the Tenant accepts the lease to be held by it as tenant subject to the covenants conditions restrictions and covenants set out in this lease.

The Landlord and the Tenant covenant and agree as set out in the Second Schedule.

Whenever words or phrases appear in this lease and in the Second Schedule that also appear in the First Schedule then those words or phrases shall also mean and include the details supplied after them in the First Schedule.

FIRST SCHEDULE
Reference Schedule

Landlord:	Fire and Emergency New Zealand
Landlord's Address:	Mansfield Terrace, Whangarei
Tenant:	Northland Regional Council
Tenant's Address:	36 Water Street, Whangarei 0110 Private Bag 9021, Whangarei 0148
Land:	Area comprising 3150 square metres more or less being that part of the land contained in Records of Title NA648/209 and NA1805/72 as is shown delineated in blue on the attached plan entitled "Proposed"
Term:	Thirty five (35) years
Commencement Date:	
Renewal Dates:	Every thirty fifth anniversary of the Commencement Date
Annual Rent:	$1.00 per annum
Rent Payment Date(s):	The Commencement Date and every anniversary of the Commencement Date
Permitted Use:	A joint emergency coordination centre
Default Interest Rate:	10%
Minimum Public Liability Insurance Cover:	$2,000,000.00

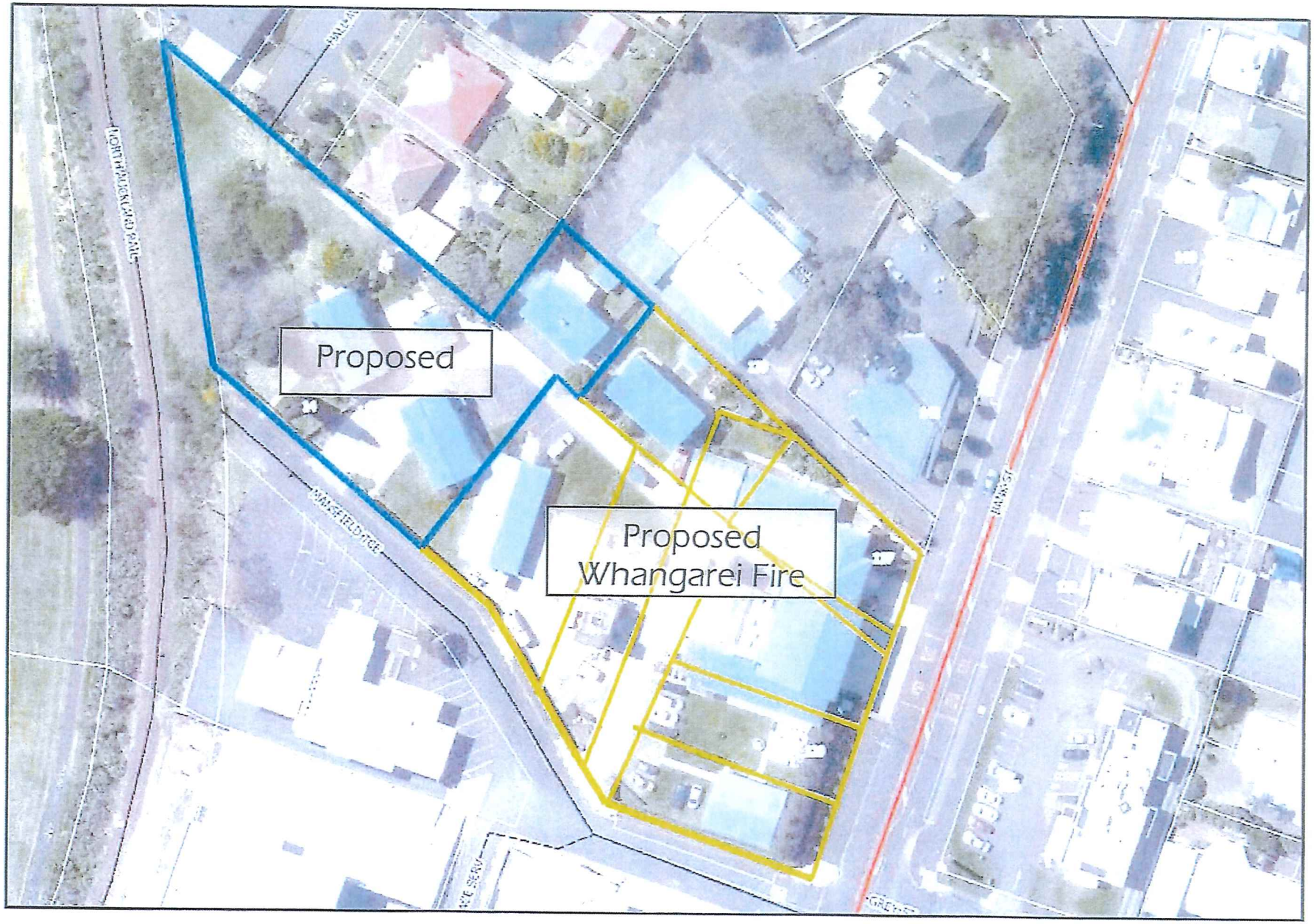


Image 2 – Proposed Sites, WDC GIS Image

SECOND SCHEDULE

1. INTERPRETATION

In this deed unless the context indicates otherwise:

1.1. Definitions:

"Authority" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Land or Building or their use;

"Building" means all buildings erected on the Land by the Tenant;

"Building Work" means work for or in connection with the construction, alteration, demolition or removal of a Building or any fixtures or Improvements and includes earthworks preparatory to or associated with that construction, alteration, demolition or removal and any work of a structural or retaining nature, and services associated with that work;

"Excepted Event" means:

(a) fire, flood, explosion, lightning, storm, earthquake or volcanic activity;

(b) the occurrence of any other peril against the risk of which the Landlord may elect to insure from time to time;

"GST" means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

"Improvement(s)" means any improvement in or on the Land, and includes all pipes, drains, conduits and other connections for utilities that primarily serve the Land, regardless of whether they are located in or on the Land;

"Land" means the area comprising 3150 square metres more or less and being that part of the Property as is shown outlined in blue on the plan attached hereto;

"Landlord" means Fire and Emergency New Zealand together with its transferees, assignees or successors in title;

"Lease" means this lease or any lease in substitution therefore;

"Property" means the property comprised in Records of Title NA648/209 and NA1805/72;

"Rent" means the annual rent specified in the Reference Schedule subject to changes consequent upon Landlord's exercise of any right to review the annual rent;

"Tenant" means Northland Regional Council with its transferees, assignees or successors in title;

"Tenant's Agent" means a person for whose acts or omissions the Tenant is responsible and includes without limitation the Tenant's agents, employees, contractors and invitees;

"Working Day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a Working Day, or on a day which is not a Working Day, shall be deemed to have been served on the next succeeding Working Day.

1.2. Reference Schedule Expressions: the expressions "Term", "Commencement Date", "Default Interest Rate", Renewal Dates", "Annual Rent Payment Date(s)", "Permitted Use" and "Minimum Public Liability Insurance Cover" will be interpreted by reference to the Reference Schedule;

1.3. Defined Expressions: expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;

1.4. Gender: words importing one gender will include the other genders;

1.5. Headings: section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;

1.6. Negative Obligations: any obligation not to do anything will include an obligation not to suffer, permit or cause that thing to be done;

1.7. Parties: references to parties are references to parties to this deed;

1.8. Persons: references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;

1.9. Plural and Singular: words importing the singular number will include the plural and vice versa;

1.10. Schedules: the schedules to this deed and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this deed;

1.11. Sections, Clauses and Schedules: references to sections, clauses and schedules are references to this deed's sections, clauses and schedules;

1.12. Statutes and Regulations: references to any statutory provision will include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

1.13. Reference Schedule Provisions: wherever words appear in the Second Schedule of this Lease (clauses 1 through 24) that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.

2. TERM

2.1. The Term of this Lease will commence on the Commencement Date and will end at 5pm on the Expiry Date.

3. RENEWAL

3.1. On the expiry of the term and on the expiry of every term of thirty three (33) years thereafter the Landlord will grant the Tenant a new lease for a further term of thirty three (33) years on the same terms and conditions as set out in this lease.

4. RENT

4.1. The Tenant shall pay to Landlord an annual rent of $1.00 plus GST payable in advance commencing with a first payment on the Commencement Date and on the annual anniversary of the Commencement Date in each year thereafter during the Term and any renewed Term.

4.2. The Tenant must not reduce any payment of Rent by making any deduction from it or set off against it.

5. OUTGOINGS

5.1. The Tenant must punctually pay:

5.1.1. all rates as defined in the Local Government (Rating) Act 2002 and any other rates, charges, levies, assessments, duties, impositions and fees from time to time payable to any Authority in respect of the Land; and

5.1.2. all charges for electricity, gas, water and any other service or utility charges addressed to either the Landlord or the Tenant for the Land.

6. GST

6.1. The Tenant must pay all GST on the Rent and other payments made by the Tenant under this Lease either to the Landlord or as the Landlord directs. The GST on the Rent shall be payable on each occasion when the Rent falls due for payment and in respect of any other payment shall be payable on demand.

6.2. If the Tenant defaults in payment of Rent or any other payment due under this Lease and the Landlord becomes liable to pay additional GST or penalty tax, the Tenant must on demand pay the additional GST or penalty tax.

7. DEFAULT INTEREST

7.1. If the Tenant fails to pay any Rent or other money payable under this Lease for 10 Working Days after the due date for payment or (if there is no due date) on the date of the Landlord's demand, then the Tenant must on demand pay interest at the Default Interest Rate on the money unpaid from the due date or the date of the Landlord's demand (as the case may be) to the date of payment.

8. REQUIRED USE

8.1. The Tenant must only use the Land for the Permitted Use.

9. CONDUCT ON THE LAND

9.1. The Tenant must not use or permit the Land or Buildings or any part of the Land or Buildings to be used for any activity which is or may become dangerous, offensive, noxious, noisy, illegal or immoral, or which is or may become a nuisance or annoyance to the Landlord or to the owners and occupiers of neighbouring properties.

10. INSURANCE

10.1. The Tenant acknowledges for the purposes of section 271(1) of the Property Law Act 2007 that the Landlord has not insured and is under no obligation to insure the Land or the Buildings or Improvements against destruction or damage to the Land and the Buildings and Improvements by an Excepted Event. Any insurance that the Landlord does elect to effect will only be to the extent, with the excess, under the type of policy and on the terms and conditions that the Landlord from time to time considers appropriate at its absolute discretion.

10.2. The Tenant must at all times during the Term maintain the following insurances:

10.2.1. Public liability insurance (which includes a tenant's liability clause) for at least the Minimum Public Liability Insurance stated in the Reference Schedule (being the amount which may be paid out arising from any single accident or event), or any higher amount the Landlord reasonably requires;

10.2.2. Insurance for the Buildings and Improvements on a full replacement and reinstatement basis against destruction or damage by fire, flood, explosion, lightning, storm, earthquake or volcanic activity and any other risks which Landlord reasonably requires to be insured against; and

10.2.3. Replacement of all glass in the Land, Buildings and Improvements,

10.3. The Tenant's insurance will be on terms and conditions and with a reputable insurer of which the Landlord reasonably approves. The Tenant will provide the Landlord with proof of the insurance and the terms of it on the Commencement Date stated in the Reference Schedule, and every 12 months from the Commencement Date. The insurance will be in the joint names of the Landlord and the Tenant for their respective interests.

10.4. Whenever the Landlord requests it to, the Tenant will provide the Landlord with a copy of the insurance policy for the insurance it must maintain, plus evidence that the Tenant has paid the premium.

11. DAMAGE TO OR DESTRUCTION OF THE LAND

11.1. If the Land, Building or Improvements are damaged or destroyed, the Tenant must meet the cost of making good the damage or destruction to the Land or the Building or Improvements and must indemnify the Landlord against such costs in any of the following circumstances:

11.1.1. (for the purposes of section 271(2) of the Property Law Act 2007) to the extent that:

(a) the damage or destruction arises from an Excepted Event; and

(b) at the time when the damage or destruction occurs, the Landlord is not, in fact, entitled to be indemnified under a policy of insurance for the whole or any part of the destruction or damage; or

11.1.2. where the destruction or damage was intentionally done or caused by the Tenant or the Tenant's Agent; or

11.1.3. where the destruction or damage was the result of an act or omission by the Tenant or the Tenant's Agent that:

(a) occurred on or about the Land and Building or on or about the whole or any part of the Property; and

(b) constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or

11.1.4. where any insurance moneys that would otherwise have been payable to the Landlord for the destruction or damage are irrecoverable because of the act or omission of the Tenant or the Tenant's Agent.

12. BUILDING WORK

12.1. The Tenant may not erect, alter, reinstate, extend, paint or redecorate any Building or Improvement without:

12.1.1. first supplying the Landlord with detailed plans and specifications and a project programme; and

12.1.2. obtaining the prior written approval of the Landlord as landowner.

12.2. The Landlord will not withhold its consent arbitrarily or unreasonably under clause 12.1.2 if the proposed Building Work:

12.2.1. complies with any reasonable standards applicable to the Property which the Landlord may from time to time set as to the design, quality, materials and colour of any Buildings and Improvements;

12.2.2. will not in the opinion of the Landlord overload or endanger the proper working of any services, utilities or amenities;

12.2.3. will be carried out under the supervision of an architect, project manager, engineer or other suitably qualified person; and

12.2.4. is, in the opinion of Landlord, associated with and necessary for the Required Use or otherwise in the public interest.

12.3. If the Landlord as landowner gives its approval under clause 12.1.2 then the Tenant must promptly complete the Building Work in a proper and workmanlike manner in accordance with the approved plans and specifications and all approvals, permits and consents.

12.4. The Tenant must obtain all consents required under the Building Act 2004 and the Resource Management Act 1991 and provide the Landlord (as landowner) with a copy of those consents.

12.5. In granting consent or approval under this clause 12 the Landlord will not be deemed to have warranted that the plans or specifications are suitable for the Tenant's purposes or that any person involved in the work is suitable or adequately qualified.

12.6. During the construction of the Building Work the Tenant must maintain, in the joint names of the Landlord and the Tenant for their respective interests, builders' risk and public liability insurance for amounts approved by the Landlord and will provide the Landlord with a copy of the policies. All Building Work is at the sole risk of the Tenant.

12.7. If during the course of the Building Work the Landlord reasonably considers the Tenant is failing to adhere to the approved plans or specifications, the project programme, the standards referred to in clause 12.2.1, or reasonably considers that the project is not being properly managed, the Landlord may by notice in writing to the Tenant require that all work stop immediately, or require it to take other action as necessary to mitigate the Landlord's concerns.

12.8. On completion of the Building Work, the Tenant must provide the Landlord with a copy of the code compliance certificate under the Building Act 2004 and a complete set of drawings accurately showing the Buildings and Improvements as constructed or altered.

13. MAINTENANCE OF THE LAND

The Tenant shall maintain the Land in a tidy and attractive condition.

14. MAINTENANCE OF BUILDING/IMPROVEMENTS

14.1. The Tenant must keep and maintain all Buildings (both the exterior and the interior) and Improvements on the Land in good, clean, and substantial order, repair and condition. The Tenant will do this to the satisfaction of the Landlord.

14.2. The Tenant must remove any externally visible graffiti from any Buildings or Improvements on the Land within 5 days of any defacement occurring.

14.3. The Tenant shall ensure that the Land is left in clean order repair and condition at the end or earlier determination of the Term and will quietly yield up the Land in clean order repair and condition. The Tenant shall not be liable for fair wear and tear arising from reasonable use.

15. ACTS, REGULATIONS, BY-LAWS, RULES AND MANAGEMENT PLAN

15.1. The Tenant must comply with all statutes, regulations, bylaws, rules and requisitions and District and Regional Plan Rules as they affect the Land and the Tenant's use of the Land.

15.2. Where any Building requires a compliance schedule under the Building Act 2004 ("the Building Act") the Tenant shall at its own cost fully comply with all obligations imposed under the Building Act including but not limited to:

15.2.1. complying with any requirements specified in any compliance schedule issued by the Landlord in its regulatory capacity;

15.2.2. ensuring the Building has at all times a current building warrant of fitness and obtaining any written reports relating to compliance with the compliance schedule;

15.2.3. complying with any notices issued by the Landlord in its regulatory capacity under the Building Act.

15.3. The Tenant shall at all times display at a place in the Building to which users of the Building have ready access, a copy of the current building warrant of fitness showing the location of the compliance schedule.

15.4. The Tenant shall make available to the Landlord in its capacity as Landlord:

15.4.1. prior to the annual anniversary of the issue of the compliance schedule a copy of the compliance schedule together with any written reports relating to compliance with the compliance schedule; and

15.4.2. on every subsequent annual anniversary a copy of the building warrant of fitness for the Building together with any written reports relating to compliance with the compliance schedule.

16. LANDLORD'S RIGHTS OF ENTRY TO INSPECT AND REPAIR

16.1. The Tenant must allow the Landlord or any person authorised by the Landlord at all reasonable times on to the Land and inside Buildings to inspect them or to carry out any works which are not the responsibility of the Tenant.

16.2. If the Landlord gives the Tenant notice of failure to do repairs required by this Lease, the Tenant must carry out work with all speed and complete the work in a diligent and workmanlike manner.

16.3. If the Tenant fails to comply with clause 16.2 then the Landlord is entitled to enter the Land and carry out the work and the Tenant must pay the cost of that work on demand.

17. SUBLETTING

17.1. The Tenant may sublease all or part of the Land, Buildings and Improvements subject to the consent of the Landlord such not to be unreasonably withheld.

18. DEFAULT

18.1. The Landlord may (in addition to the Landlord's rights to apply for an order for possession or any other rights or remedies at law) cancel this Lease by immediately or thereafter re-entering the Land:

18.1.1. if the Rent is in arrears 10 Working Days after the due date to pay any instalment of the Rent and the Tenant has failed to remedy that breach within 10 Working Days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007; or

18.1.2. in the case of breach by the Tenant of any covenant or agreement on the Tenant's part herein expressed or implied (other than the covenant to pay Rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007;

and the Term shall terminate on such cancellation, but without prejudice to the rights of either party against the other.

18.2. It shall be a breach of this Lease if the Tenant:

18.2.1. being a company or incorporated body:

(a) is or is deemed to be unable to pay its debts under section 287 of the Companies Act 1993; or

(b) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Landlord); or

(c) is wound up or dissolved; or

(d) enters into any assignment or other compromise or scheme of arrangement with its creditors or any class of its creditors; or

(e) has a receiver, manager or receiver and manager appointed in respect of any of its assets; or

18.2.2. being an unincorporated association or trust, is wound up, dissolved or becomes defunct.

18.3. The Landlord may without being under any obligation to do so remedy at the Tenant's cost any default by the Tenant under this Lease.

18.4. The Tenant's breach of the following terms is a breach of an essential term of this Lease:

18.4.1. the covenant to pay Rent or other money payable by the Tenant under this Lease;

18.4.2. the terms prohibiting assignment or subleasing;

18.4.3. the terms restricting use of the Land; and/or

18.4.4. the terms dealing with erecting, altering, reinstating, extending, pulling down or removing any Building or Improvement.

18.5. The Landlord's acceptance of any arrears of Rent or other money payable under this Lease is not a waiver of the essential obligation to pay any other Rent or other money payable under this Lease.

19. COMPENSATION AND INDEMNITY

19.1. If any act or omission of the Tenant:

19.1.1. is a repudiation of this Lease or of the Tenant's obligations under this Lease; or

19.1.2. is a breach of any of the Tenant's obligations under this Lease

the Tenant must compensate the Landlord for the loss or damage suffered by reason of the repudiation or breach during the whole of the Term.

19.2. The Landlord's entitlement to recover damages will not be affected or limited by:

19.2.1. the Tenant abandoning or vacating the Land, the Landlord electing to re-renter or to terminate this Lease;

19.2.2. the Landlord electing to re-enter or to terminate this Lease; or

19.2.3. the Landlord accepting the Tenant's repudiation; or

19.2.4. the parties' conduct constituting a surrender by operation of law.

19.3. The Tenant indemnifies the Landlord against all actions, proceedings, calls, costs, claims, demands, losses, damages, expenses and liabilities of any kind suffered or incurred by the Landlord resulting from any negligent act or omission of the Tenant or the Tenant's Agents or any breach of the Tenant's obligations under this lease.

19.4. The indemnity in clause 19.3 will not apply to damage to or destruction to the Land and Buildings to the extent that section 269 of the Property Law Act 2007 applies.

20. DISPUTE RESOLUTION

20.1. If any dispute arises between the Landlord and the Tenant concerning this Lease, the parties will try in good faith to settle the matter by negotiation, and if that is unsuccessful by mediation.

20.2. If the dispute cannot be settled by negotiation or mediation, it will be referred to arbitration (under clause 20.3).

20.3. The dispute will be referred to a sole arbitrator if the parties agree upon one, and if not then the dispute will be referred to an arbitrator appointed by the then President or Vice President of the New Zealand Law Society.

20.4. The Arbitration Act 1996 will govern the arbitration and the arbitral award will be final and binding on the parties. However, either party is entitled to appeal to the High Court on any error of law arising out of the award.

21. IMPLIED PROVISIONS

21.1. The covenants and provisions implied in Leases by the Property Law Act 2007 and the Land Transfer Act 2017 will apply to this Lease except to the extent they are inconsistent with the terms of this Lease.

21.2. The Tenant will not call for this Lease to be registered, or lodge a caveat against the title to the Land.

22. COSTS

22.1. Each party will pay its own legal costs and expenses for the preparation, completion and execution of this Lease or any renewal or variation of it.

23. NO WAIVER

23.1. The Landlord's waiver or failure to act in response to the Tenant's breach of any of the Tenant's obligations in this Lease will not operate as a waiver of the same breach on any later occasion, or any other breach of this Lease.

24. NOTICES

24.1. Any notice or document required or authorised to be delivered or served under this Lease may be delivered or served:

24.1.1. In any manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served; or

24.1.2. By facsimile where permitted by the Property Law Act 2007 for a notice of its type.

24.2. Any notice or other document will be treated as delivered or served and received by the other party:

24.2.1. On personal delivery;

24.2.2. Three days after being posted by prepaid registered post; or

24.2.3. on completion of an error free transmission, when sent by facsimile.

24.3. Any notice or document to be delivered or served under this Lease must be in writing and signed by:

24.3.1. Any attorney, officer, employee or solicitor for the party serving or giving the notice; or

24.3.2. The party serving the notice or any other person authorised by that party.

24.4. Clauses 24.2 and 24.3 apply to any notice or communication from the Tenant to the Landlord.

Schedule D

Feasibility Budget Estimate

Number : 3

Issue : 5.0

Northland Multi Agency Coordination Centre
12 Mansfield Terrace
Whangarei

Instructing Party: Fire and Emergency New Zealand

Lead Designer: Chris McClusky
Architect
Design Composites Ltd

Prepared by: Ralph Murray
Quantity Surveyor / Managing Director
MNZIQS, Reg. QS
Duffield Murray Consultants Ltd

ralph@duffieldmurray.co.nz

+64 7 839 5641

Date: 27 June 2023

Duffield Murray Consultants Ltd
Quantity Surveyors, Construction Cost Consultants, Cost Managers

Contents

Executive Summary

Duffield Murray Consultants have been instructed to prepare a feasibility budget estimate for the Northland Multi Agency Coordination Centre based on a bulk and form plan.

Our mean estimate value for core construction costs is $ 7,570,000.00 excluding GST.

The estimate value includes building and resource consent fees
The estimate value includes professional fees of 9.00%
The estimate value includes construction contingency of 10.00%
The estimate value includes a provisional allowance for market movement from today's date through to an anticipated tender date of June 2024. Actual movement could vary significantly.

Allowance for furniture and the optional provision within the structure for a future first floor would increase the estimate value by $ 635,000.00.

The cost reduction from previous feasibility estimates has been achieved by both a reduction in building area and a rationalisation of the building form / finishes / services, offset by market movement since our last estimate.

Refer to the balance of this report for full details of inclusions and exclusions from this figure, to the estimate accuracy section which clarifies potential cost ranges and to the estimate breakdown which clarifies the specific allowances made.

Specific attention is drawn to the risk of not obtaining truly competitive pricing in the current construction market together with ongoing pricing and supply chain volatility.

Introduction

Fire and Emergency New Zealand have had a bulk and form plan completed by Design Composites Ltd for the Northland Multi Agency Coordination Centre at 12 Mansfield Terrace, Whangarei.

Fire and Emergency New Zealand have in turn requested that Duffield Murray Consultants provide a Feasibility Budget Estimate for the works.

The purpose of this estimate is to provide an indication of the likely range of construction costs that could be expected if the design was fully developed in accordance with the intent of the concept provided and the works were let in a competitive tender situation in today's market.

This report is specifically intended for Design Composites Ltd and their client Fire and Emergency New Zealand only. It is not intended to be used by any other parties or for any other purpose.

Basis of Estimate

Design Composites Ltd have provided the following information up to 17/08/22:

- Design Composites bulk and form plans 01a rev P2 and 06 to 08 rev P1 dated July 2022
- Land Development and Engineering geotechnical assessment report dated 04/03/22
- Revised professional fees and furniture estimates

No architectural design beyond bulk form plans, structural design, services design, fire design, outline specification or fitout design has been provided

The site has not been inspected.

Assumptions

The following forms the basis of pricing for the works:

- Design being fully developed in accordance with the intent of the bulk and form plans provided
- IL4 design but with provision for temporary / short term services resilience
- Medium commercial standard of design / finishes
- Work being competitively tendered on the open market with multiple tenderers
- Tenders being called under NZS 3910 or similar conditions with a typical risk balance between the parties
- Rates based on today's market but assuming competitive tenders are obtained, plus a provisional allowance for market movement through to November 2023
- Full un-interrupted access to the site for the duration of the work
- A reasonable construction period without the need to work out of hours

Clarifications

The estimate has been based on generic costs / m² for construction works dervied from data held on similar projects and industry knowledge. The nature of such an estimate means that specific supplier / subcontractor quotations have generally not been sourced.

Seeking tenders by invitation only, pricing by negotiation, evaluating tenders based on non-price attributes, modified contract conditions, fast tracked procurement, incomplete or ambiguous documentation and the like are likely to result in varied pricing to that established within this estimate. In the current market this variance can be significant but may be unavoidable.

The estimate has been based on bulk and form plans and should therefore be treated as indicative only at this stage for the purpose of evaluating the concept. Total estimate values are likely to move as a specific design is developed and the project brief defined. It is recommended that the estimate be reviewed and updated as further design information becomes available.

Exclusions

The following are specifically excluded from the estimate and separate allowance should be made as considered necessary:

- Exclusions as specifically noted in estimate detail
- Costs associated with unidentified ground conditions including rock excavation, piling, dewatering and deep soil remediation (no requirement indicated by current geotechnical assessment)
- Diversion of any council or network services which may run through the site
- ESD features / greenstar rating
- IL5 resilience including base isolation and the like, full services resilience and the like
- Staging / phasing of the works
- Costs beyond core construction works including;
  - Property purchase / holding costs
  - Finance / legal costs
  - Decanting and relocation costs
  - Information and Communications Technology
  - Security
  - **Temporary accommodation and storage costs**
- **Market movement / cost escalation beyond a projected tender date of June 2024**

Estimate

Area Schedule

The following areas have been measured from the plans provided:

Location	Area (m^2)
Ground floor	810 m^2
Total Gross Floor Area	**810 m^2**

It should be noted that areas are based on the RICS code of measuring practice for gross floor area so may differ from areas noted on plans.

Estimate Summary

A summary breakdown of the estimate follows:

Cost Centre		Amount
Site Clearance / Platform Formation	$	570,000.00
Buildings	$	5,060,000.00
Professional & Consent Fees	$	620,000.00
Contingency	$	630,000.00
Market Movement To Jun 2024 (Provisional)	$	690,000.00
TOTAL OF CORE BUILDING WORKS (excluding GST)	**$**	**7,570,000.00**

Optional Resilience and Furniture

Furniture	$	235,000.00
Optional Resilience (provision for future first floor)	$	400,000.00

Elemental Breakdown

The build-up of the estimate is further clarified as follows:

Cost Centre		Amount		
SITE CLEARANCE / PLATFORM FORMATION			**$**	**570,000.00**
Demolition	$	220,000.00		
Site Clearance	$	100,000.00		
Platform Formation	$	250,000.00		
BUILDINGS			**$**	**5,060,000.00**
Main Building	$	3,260,000.00		
Stores	$	260,000.00		
Site Services	$	300,000.00		
External Works	$	900,000.00		
Services Resilience	$	340,000.00		
PROFESSIONAL & CONSENT FEES			**$**	**620,000.00**
Resource Consent Fees / Levies	$	70,000.00		
Building Consent	$	30,000.00		
Professional Fees	$	520,000.00		
CONTINGENCY			**$**	**630,000.00**
Design Contingency	$	-		
Construction Contingency - 10 %.	$	630,000.00		
MARKET MOVEMENT TO JUN 2024 (PROVISIONAL)			**$**	**690,000.00**
Projection for Market Movement to Jun 2024 - 7.5 %.	$	690,000.00		
TOTAL OF CORE BUILDING WORKS (excluding GST)			**$**	**7,570,000.00**

OPTIONAL RESILIENCE & FURNITURE

Fitout			**$**	**235,000.00**
Information and Communications Technology		No Allowance		
Security		No Allowance		
Furniture	$	235,000.00		
Optional Resilience			**$**	**400,000.00**
Upgrade Foundations For Future First Floor	$	220,000.00		
Upgrade Frame for Future First Floor	$	180,000.00		

Estimate Accuracy / Cost Parameters

Construction costs are affected by a wide range of factors including the scale and complexity of the works, site location relative to suitable resource bases, the level of competition in pricing, the final degree of risk to be carried by the contractor and the like. Where these are known they have been taken into account when establishing the estimated mean value for the works.

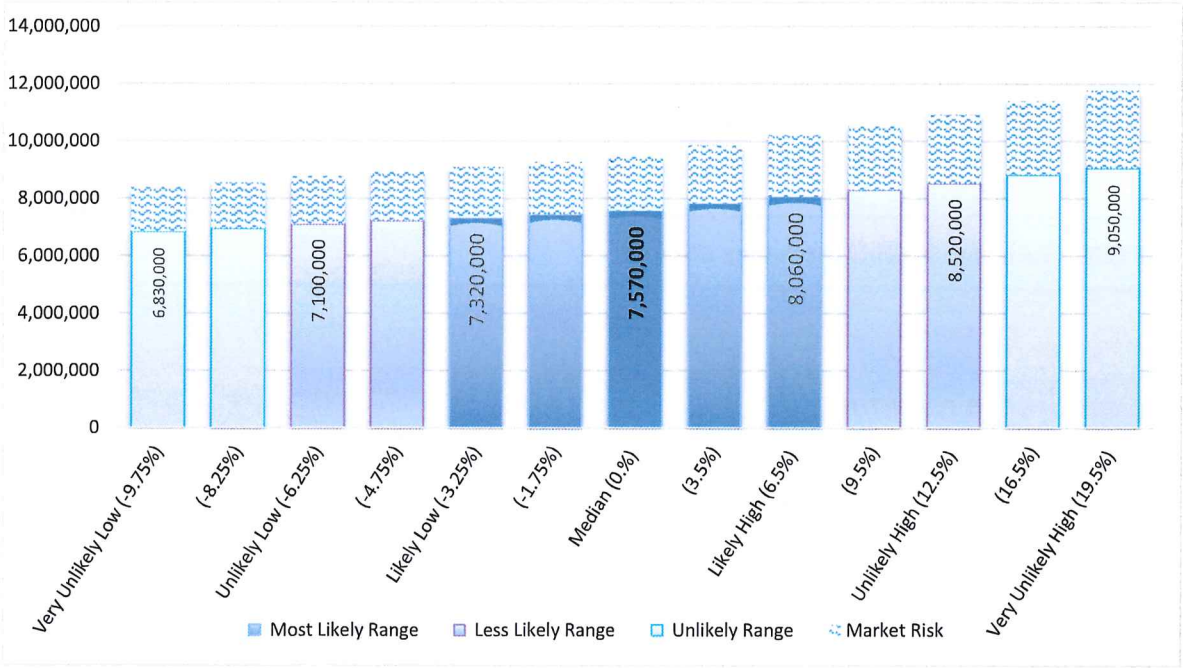
It is important to be aware however that many of these factors also affect the range in pricing that can be expected to be received.

In addition to this the level of design detail available at time of estimate preparation will also have a significant impact on pricing variability. While design development may result in lower costs than projected, it is more common for costs to move upward during design development as issues are identified and resolved. The earlier cost estimates are prepared in the design process, the greater the degree of likely cost movement.

An assessment of all of these variables indicates a current volatility profile for this project as follows:

Extremely variable	Typical preliminary estimate	Very robust

Based on this volatility profile it is recommended that when setting budgets the following cost parameters be considered in relation to the estimated mean value of $ 7,570,000.00 excluding GST:



Market risk category above offers an indication of the likely risk to overall project value should market conditions not allow multiple competitive tenders to be obtained on typical contractual terms. These values are however potentially open ended.

It is noted that in the current market there is a reasonably significant risk that it may not be possible to obtain truly competitive pricing for a project of this type. In such circumstances the estimated mean value provides a benchmark against which to measure pricing received so that an informed decision on whether to accept any pricing premium can be made.

Note that the range identified does not account for future changes in the scope of the project, which are unable to be pre-quantified.

Appendix A

Full Estimate Breakdown

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE	AMOUNT
1 - 2	AREAS				
	Floor Areas				
	Basement - Deleted				
1	Ground floor	810	m²		
	First floor - Deleted				
2	Total	810	m²		
3 - 13	SITE CLEARANCE / PLATFORM FORMATION				**570,000.00**
3 - 6	Demolition				**220,000.00**
3	Asbestos removal (Provisional, no asbestos report so actual requirements could vary considerably).		SUM		120,000.00
4	Demolish two storey light timber framed building with timber floor.	816	m²	98.04	80,000.00
5	Demolish single storey light timber framed building with concrete foundations / floor.	100	m²	100.00	10,000.00
6	Demolish decks, ramps, covered areas	117	m²	85.47	10,000.00
7 - 10	Site Clearance				**100,000.00**
	No allowance for contaminated soil.				
7	Break up and remove paving.	760	m²	39.47	30,000.00
8	Demolish fencing and remaining site development.		SUM		10,000.00
9	Clear trees and planting.		SUM		10,000.00
10	Strip topsoil / disturbed ground (300mm assumed), remove from site.	907	m³	55.13	50,000.00
11 - 13	Platform Formation				**250,000.00**
	Generally good ground indicated but have allowed to excavate to 1.2m below existing level with engineered gravel pad for IL4 requirements and to avoid expansive soils. No allowance for rock excavation.				
11	Platform formation at main building, 900 cut below topsoil, 600 fill to underside of foundations, geotex fabric at 300 c/c.	964	m²	82.99	80,000.00
12	Platform formation at store, 900 cut below topsoil, 800 fill to underside of foundations, geotex fabric at 300 c/c.	145	m²	137.93	20,000.00
13	Platform formation at roading and paving, 900 cut below topsoil, 600 fill to underside of basecourse, geotex fabric at 300 c/c.	1,800	m²	83.33	150,000.00

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE	AMOUNT
14 - 52	BUILDINGS				**5,060,000.00**
14 - 34	Main Building				**3,260,000.00**

Indicative rate build-up. Actual values will be design dependant.

Design brief simplified to a single storey regular building form with the following attributes:

- Shallow concrete foundations and uninsulated floor slab, to suit single storey building.
- Light steel portal frame supporting 10 degree pitch simple roof falling to fascia spouting with no parapets.
- 3m knee height to suit 2.7m ceilings throughout.
- Timber framed external walls with mid-range cladding and 30% of area in double glazed but not thermally broken aluminium joinery.
- Standard commercial grade interior finishes.
- Type 4 fire alarm with no more than 3 fire cells, no sprinklers, no fire rating requirement to structural frame.
- Detailed fitout works by others.

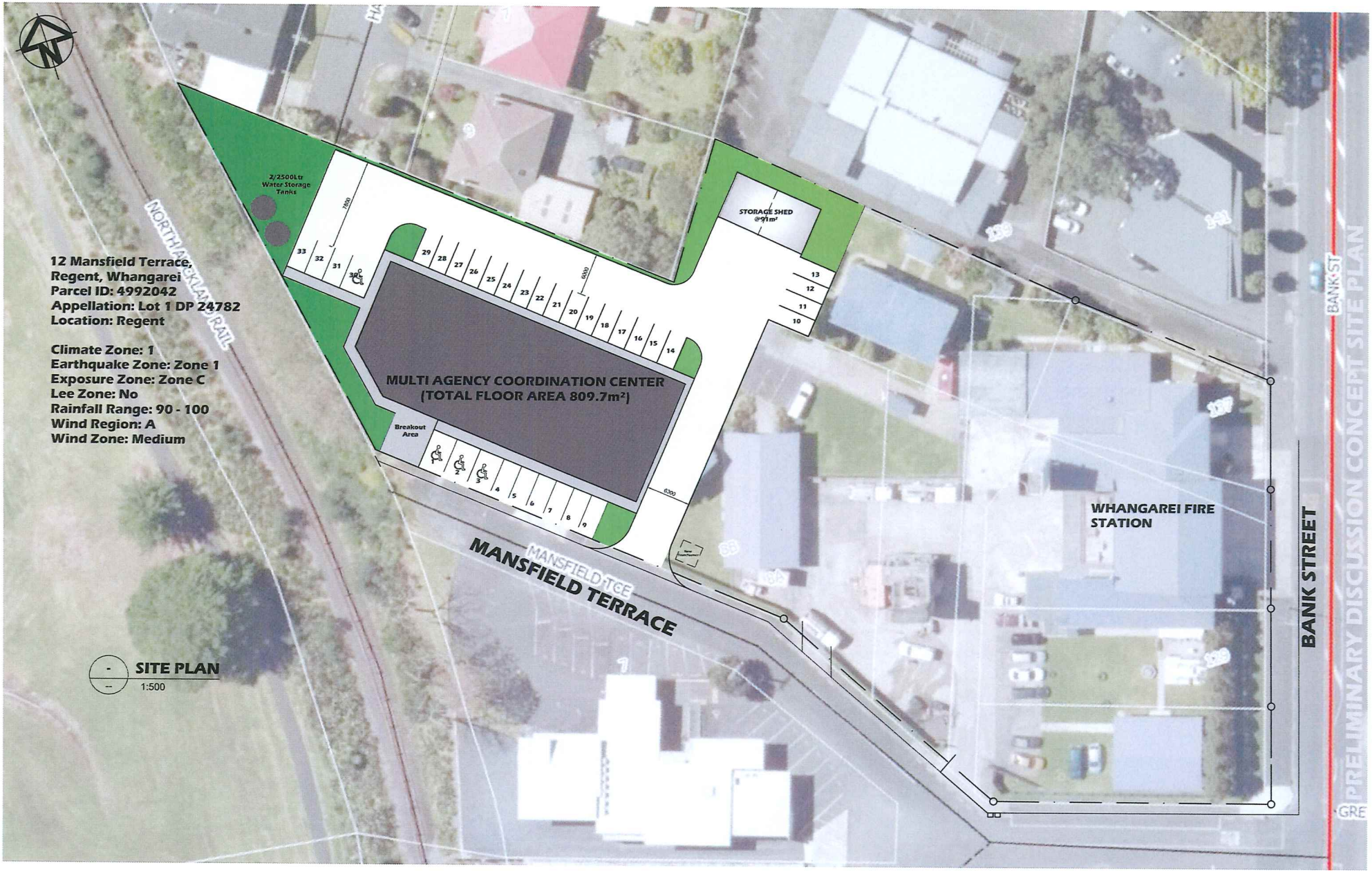
14	Preliminary & general.	810	m²	246.91	200,000.00
15	Work below lowest floor finish.	810	m²	345.68	280,000.00
16	Superstructure.	810	m²	296.30	240,000.00
17	Roof.	810	m²	370.37	300,000.00
18	External walls and external finish.	810	m²	296.30	240,000.00
19	Windows and external doors.	810	m²	123.46	100,000.00
20	Partitions.	810	m²	246.91	200,000.00
21	Internal doors & windows.	810	m²	345.68	280,000.00
22	Floor finishes.	810	m²	148.15	120,000.00
23	Wall finishes.	810	m²	74.07	60,000.00
24	Ceiling finishes.	810	m²	123.46	100,000.00
25	Fixed fittings and fixtures.	810	m²	98.77	80,000.00
26	Window treatments.	810	m²	74.07	60,000.00
27	Kitchen cabinetry and appliances.	810	m²	123.46	100,000.00
28	Sanitary plumbing.	810	m²	148.15	120,000.00
29	Heating and ventilation services.	810	m²	296.30	240,000.00
30	Fire services.	810	m²	24.69	20,000.00
31	Electrical services.	810	m²	222.22	180,000.00
32	Audio visual, data & comms wiring.	810	m²	123.46	100,000.00
33	Security.	810	m²	24.69	20,000.00
34	Contractors margin.	810	m²	271.60	220,000.00

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE	AMOUNT
35 -	Stores				**260,000.00**
35	Lightweight storage building.	91	m²	2857.14	260,000.00
36 - 41	Site Services				**300,000.00**
36	Preliminary & general.		Sum		20,000.00
37	Plumbing.		Sum		10,000.00
38	Drainage.		Sum		80,000.00
39	Electrical.		Sum		40,000.00
40	Transformer and street connection.		Sum		130,000.00
41	Contractors margin.		Sum		20,000.00
42 - 48	External Works				**900,000.00**
42	Street crossing.		SUM		10,000.00
43	Carparks.		SUM		400,000.00
44	Paving.		SUM		50,000.00
45	Fencing.		SUM		210,000.00
46	Breakout area.		SUM		50,000.00
47	Entry canopy and feature.		SUM		120,000.00
48	Landscaping.		SUM		60,000.00
49 - 52	Services Resilience				**340,000.00**
49	Water - inground storage tanks x 2 with pumps and filtration.		SUM		50,000.00
50	Wastewater - inground storage and connections for truck disposal.		SUM		30,000.00
51	Electrical - UPS and connections for mobile generators (note, cost is extremely dependant on capacity i.e. loadings attached to critical supply and duration of protection required). Costs could vary significantly.		SUM		230,000.00
52	Comms - link to adjacent fire station systems for redundancy.		SUM		30,000.00

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE	AMOUNT
53 - 55	PROFESSIONAL & CONSENT FEES				**620,000.00**
53 -	Resource Consent Fees / Levies				**70,000.00**
53	Non notified resource consent application and development contributions - as advised.		SUM		70,000.00
54 -	Building Consent				**30,000.00**
54	Lump sum allowance.		SUM		30,000.00
55 -	Professional Fees				**520,000.00**
55	Percentage allowance - including independent project manager - 9%.		SUM		520,000.00
56 -	CONTINGENCY				**630,000.00**
-	Design Contingency				**0.00**
	No allowance - refer Estimate Accuracy for commentary.				
56 -	Construction Contingency - 10 %.				**630,000.00**
56	Percentage allowance for unforeseen costs during the construction phase - 10%.		SUM		630,000.00
57 -	MARKET MOVEMENT TO JUN 2024 (PROVISIONAL)				**690,000.00**
57 -	Projection for Market Movement to Jun 2024 - 7.5 %.				**690,000.00**
57	Percentage allowance for market movement from Jun 2023 to Jun 2024 - Provisional based on nominal 10%.		SUM		690,000.00

ESTIMATED MEAN VALUE (Excluding GST) $ 7,570,000.00

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE	AMOUNT
-	**OPTIONAL RESILIENCE & FURNITURE**				
58 - 62	FITOUT				**235,000.00**
58 - 60	Information and Communications Technology				**0.00**
58	Comms - backbone equipment, mast, transmitters.		SUM		No Allowance
59	Comms - user interfaces, seat licenses.		SUM		No Allowance
60	IT - servers, terminal servers, patch panels, display panels.		SUM		No Allowance
61 -	Security				**0.00**
61	CCTV, Cardax master control and licensing.		SUM		No Allowance
62 -	Furniture				**235,000.00**
62	Loose furniture as Frontstage estimate.		SUM		235,000.00
63 - 64	OPTIONAL RESILIENCE				**400,000.00**
	Values are indicative only - actual values would be dependant on specific engineering design and may vary significantly.				
63 -	Upgrade Foundations For Future First Floor				**220,000.00**
63	Work below lowest floor finish.	810	m²	271.60	220,000.00
64 -	Upgrade Frame for Future First Floor				**180,000.00**
	Columns upgraded to suit loadings and rafters constructed as primary floor beams with lightweight roof packed above this. No allowance for secondary floor beams or first floor slab.				
64	Superstructure.	810	m²	222.22	180,000.00



DESIGN COMPOSITES LTD
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CLIENT FIRE AND EMERGENCY NEW ZEALAND
PROJECT NORTHLAND MULTI AGENCY COORDINATION CENTRE
12 MANSFIELD TERRACE, WHANGAREI
DRAWING CONCEPT SITE PLAN (SINGLE STOREY)

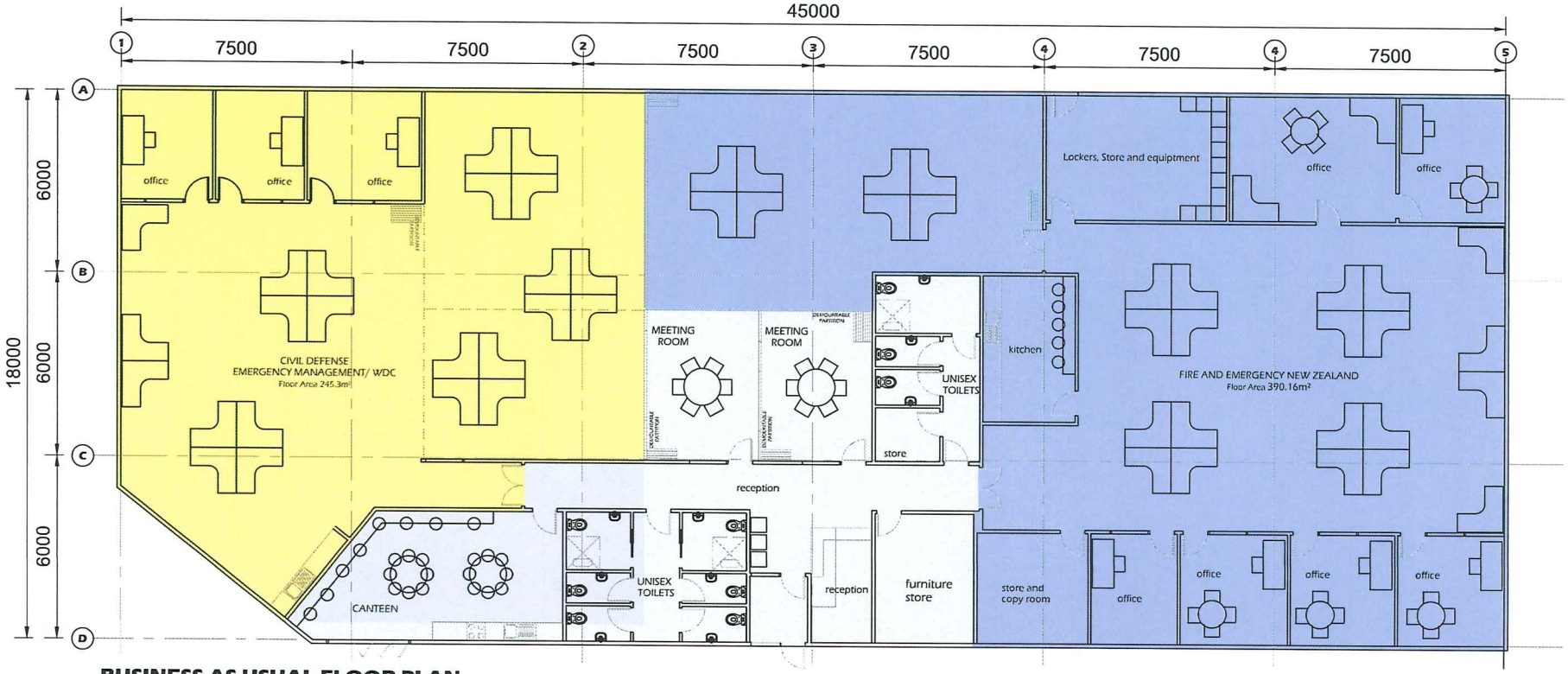
DRAWING TO BE READ IN CONJUNCTION WITH SPECIFICATION AND DESCRIPTION OF WORKS. ORIGINAL SCALE @ A3, WRITTEN DIMENSIONS TAKE PRECEDENCE.

SHEET No. 01A DATE JULY 22 REVISION P1

REV	REVISION NOTES	DATE
P1	DRAWING ISSUED FOR CLIENT REVIEW	-

Schedule E

BUSINESS AS USUAL FLOOR PLAN



BUSINESS AS USUAL FLOOR PLAN

1:150 - (Gross Floor Area 809.70m²)

CIVIL DEFENSE
EMERGENCY MANAGEMENT/ WDC
BAU Floor Area 245.3m²

SHARED CIRCULATION, FACILITIES & MEETING AREAS
Floor Area 174.2m²

FIRE AND EMERGENCY NEW ZEALAND
Floor Area 390.2m²

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CLIENT FIRE AND EMERGENCY NEW ZEALAND
PROJECT NORTHLAND MULTI AGENCY COORDINATION CENTRE
12 MANSFIELD TERRACE, WHANGAREI
DRAWING BUSINESS AS USUAL CONCEPT FLOOR LAYOUT

DRAWING TO BE READ IN CONJUNCTION WITH SPECIFICATION AND DESCRIPTION OF WORKS. ORIGINAL SCALE @ A3, WRITTEN DIMENSIONS TAKE PRECEDENCE.

SHEET No. 07 DATE JULY REVISION P1

REV	REVISION NOTES	DATE
P1	DRAWING ISSUED FOR CLIENT REVIEW	-
		-

AGREEMENT TO SUBLEASE

Schedule F

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

GENERAL address of the premises:
Mansfield Terrace, Whangarei
DATE:

SUBLANDLORD: **NORTHLAND REGIONAL COUNCIL**

SUBTENANT: **NORTHLAND REGIONAL COUNCIL, WHANGAREI DISTRICT COUNCIL, FAR NORTH DISTRICT COUNCIL and KAIPARA DISTRICT COUNCIL as tenants in common in equal shares**

~~**GUARANTOR:**~~

THE SUBLANDLORD agrees to grant and the Subtenant agrees to take a sublease of the premises and the carparks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE SUBLANDLORD AND SUBTENANT agree:

(1) as set out in the First, Second and Third Schedules; and

(2) that the Sublandlord's fixtures, fittings and chattels contained in the premises are those described in the Fourth Schedule.

~~**THE GUARANTOR** (and if more than one jointly and severally), in consideration of the Sublandlord entering into this Agreement at the Guarantor's request, agrees with the Sublandlord to guarantee to the Sublandlord the obligations of the Subtenant and to sign the Sublease as a guarantor.~~

WARNINGS *(These warnings do not form part of this contract)*

1. This contract is binding on all parties upon signing. All parties should seek legal advice **before signing.**
2. Before signing this contract the Subtenant should make sure that the status of the property under the Resource Management Act 1991 is satisfactory for the Subtenant's intended use of it.
3. The parties should agree upon and record the Sublandlord's fixtures, fittings and chattels and their condition in the Fourth Schedule.
4. The parties are advised to insert a clause requiring inclusion of a report of the condition of the premises as at the commencement of the Sublease.
5. This contract is intended to be used with the current ADLS Sublease form. The parties are advised to review that form of Sublease.

SIGNED by the Sublandlord:

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

SIGNED by the Subtenant:

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

SIGNED by the Guarantor:

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].

FIRST SCHEDULE

1.	**HEAD LANDLORD:**	**FIRE AND EMERGENCY NEW ZEALAND**
2.	**PREMISES:/ LAND**	**Area comprising 3150 square metres more or less being that part of the land contained in Records of Title NA638/208 and NA1805/72 as shown delineated in blue on the attached Plan A being the area shown marked "Proposed"**
3.	**CAR PARKS:**	**As shown on attached Plan B**
4.	**TERM:**	**Thirty five (35) years**
5.	**COMMENCEMENT DATE:**	**Five (5) days after the Sublandlord notifies the Subtenant that a Certificate of Practical Completion has issued for the Emergency Coordination Centre that has been built on the Land**
6.	**RIGHTS OF RENEWAL:**	**In perpetuity**
7.	**RENEWAL DATES:**	**Every thirty fifth anniversary of the Commencement Date**
8.	**FINAL EXPIRY DATE:** (Note the final expiry date of the Sublease should not be later than the final expiry date of the Headlease)	**Not applicable**

9.	**ANNUAL RENT:** (Subject to review if applicable)	Premises	**$1.00**	**plus** GST
		Car Parks	$	**plus** GST
		TOTAL	**$1.00**	**plus** GST
10.	**DEPOSIT:**		**$ 1.00**	**plus** GST

11.	**RENT REVIEW DATES:** (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)	1. Market rent review dates: **N.A.** 2. CPI rent review dates: **N.A.**
12.	**PROPORTION OF OUTGOINGS:** (Clause 4 of the Sublease)	**100%**
~~13.~~	~~**ESTIMATED OUTGOINGS PAYABLE BY SUBTENANT** (Clause 4 of the Sublease)~~	~~$ (specify appropriate period) **plus** GST for the period~~
~~14.~~	~~**DEFAULT INTEREST RATE:** (Clause 5 of the Sublease)~~	~~% per annum~~
15.	**BUSINESS USE:** (Clause 7 of the Sublease)	**Emergency Coordination Centre**

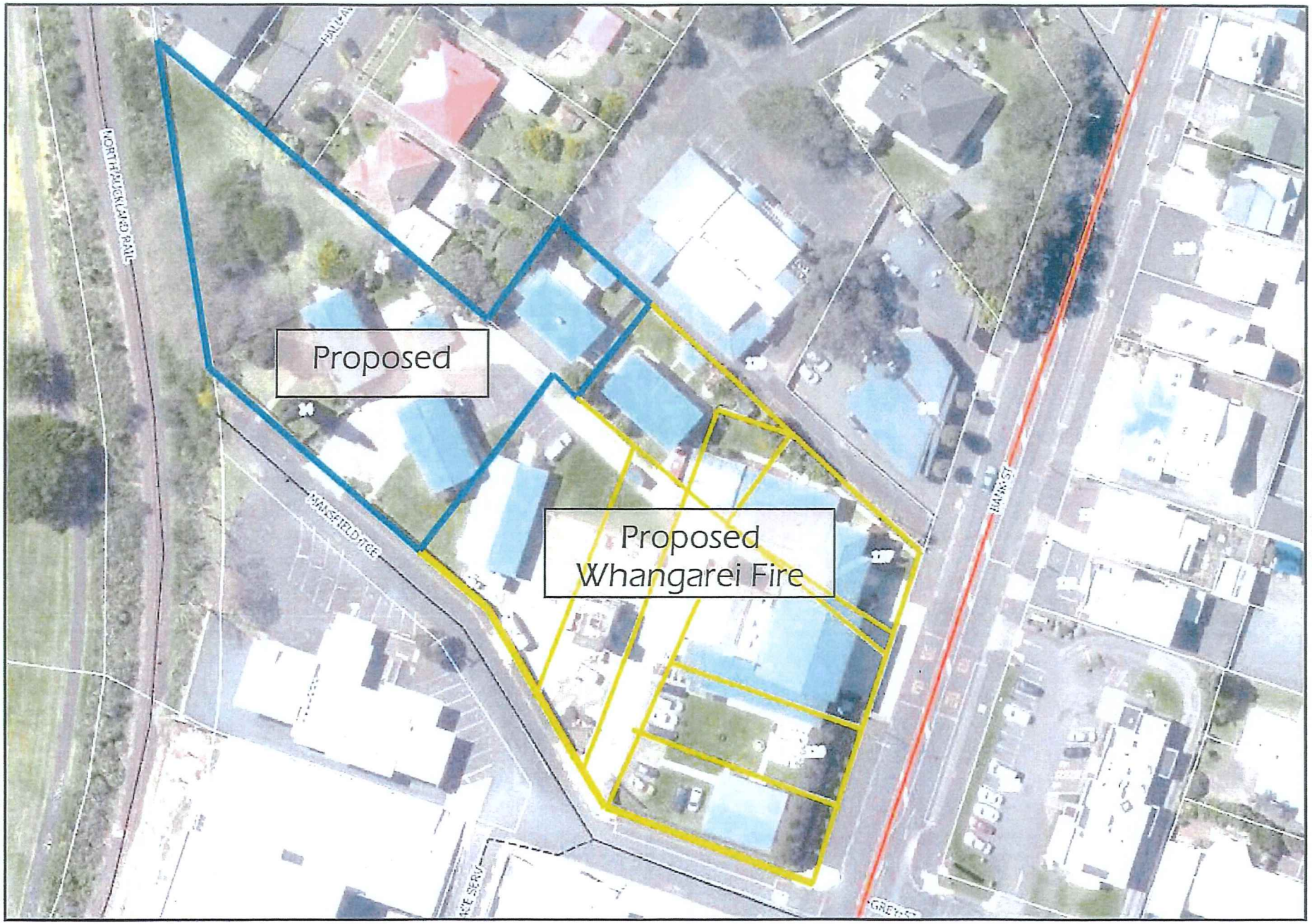
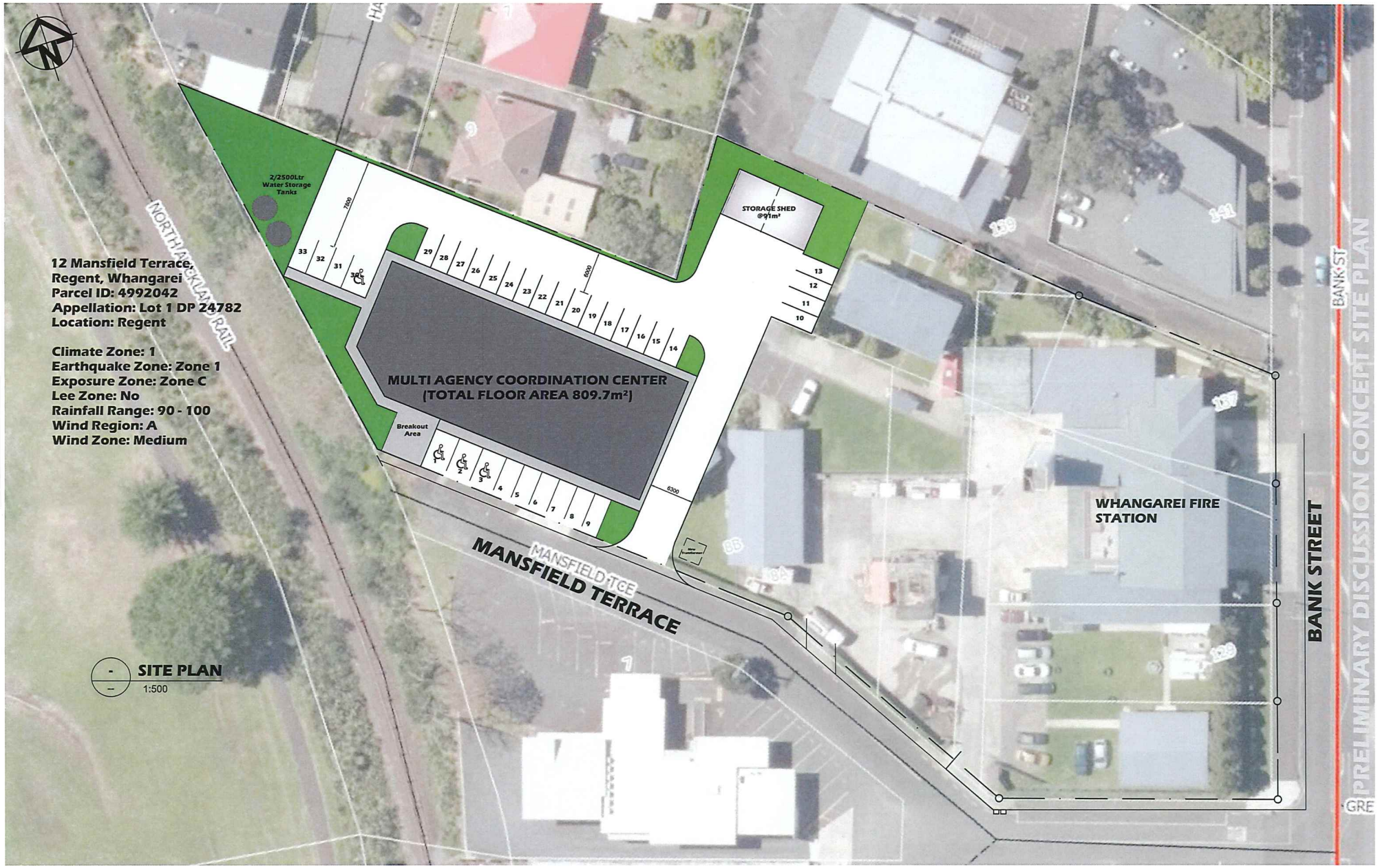


Image 2 – Proposed Sites, WDC GIS Image



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SHEET No. 01A DATE JULY 22 REVISION P1

REV	REVISION NOTES	DATE
P1	DRAWING ISSUED FOR CLIENT REVIEW	-

16.	**LIMITED LIABILITY TRUSTEE:** (Clause 6 of the Sublease)	N.A.
17.	**HEAD LANDLORD'S CONSENT REQUIRED:** (Subclause 3.1 of this Agreement to Sublease)	~~Yes~~ / No (if neither deleted Yes applies)
18.	**OUTGOINGS:** (Clause 4 of the Sublease)	100%

(1) Rates or levies payable to any Authority.

(2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.

(3) Rubbish collection and recycling charges.

(4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.

(5) Any insurance excess (but not exceeding $2,000) in respect of a claim and insurance premiums and related valuation fees.

(6) Service contract charges for air conditioning, lifts, other building services and security services.

(7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.

(8) The provisioning of toilets and other shared facilities.

(9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.

(10) Yard and carparking area maintenance and repair charges but excluding charges for repaving or resealing.

(11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.

(12) Management expenses.

(13) The costs incurred and payable by the Head Landlord or Sublandlord in supplying to any Authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

1.0 Definitions, notices and interpretation

1.1 Definitions

(1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meaning as in the Sublease.

(2) "Agreement" means this document including the front page, any further terms and any schedules and attachments.

(3) "Authority" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the premises or their use.

(4) "Headlease" means the lease attached at the Fifth Schedule.

(5) "Sublease" means the Sublease entered into in accordance with subclause 5.1.

(6) "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 in the following year, both days inclusive; and

(d) the day observed as the anniversary of any province in which the premises are situated.

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

(8) Any act done pursuant to this Agreement by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.

(9) Where two or more acts (including service of notice) done pursuant to this Agreement 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 1.1(8).

1.2 Notices

All notices must be in writing and must be served by one of the following means:

(1) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and

(2) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

(a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or

(b) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

(3) In respect of the means of service, a notice is deemed to have been served:

(a) In the case of personal delivery, when received by the addressee.

(b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.

(c) In the case of facsimile transmission, when sent to the addressee's facsimile number.

(d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.

(4) In the case of a notice to be served on the Subtenant, if the Sublandlord is unaware of the Subtenant's last known address in New Zealand or the Subtenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Subtenant on the day on which it is affixed.

(5) A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.

(6) Any period of notice required to be given under this Agreement shall be computed by excluding the date of service.

1.3 Interpretation

(1) Headings are for information only and do not form part of this Agreement.

(2) The terms, conditions and covenants contained in this Agreement shall not merge insofar as they either have not been fulfilled at the time of the execution of the Sublease or are not reflected in the Sublease but shall remain in full force and effect.

(3) A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

1.4 If there is more than one Sublandlord or Subtenant, the liability of the Sublandlords or the Subtenants as the case may be is joint and several.

1.5 Where the Subtenant executes this Agreement with provision for a nominee or on behalf of a company to be formed, the Subtenant shall remain liable for all the obligations on the part of the Subtenant hereunder until such time as the Subtenant and the Guarantor have signed the Sublease.

1.6 This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Communication of execution of this Agreement may be made by each party transmitting by facsimile or email to the other party or their respective agents a counterpart of this Agreement executed by the party sending the facsimile or email.

~~**2.0 Deposit**~~

~~2.1 The Subtenant shall pay as a deposit an advance rental payment of the amount specified in the First Schedule. The deposit shall be payable to the Sublandlord or the Sublandlord's agent immediately upon execution of this Agreement by all parties and/or at such other time as is specified in this Agreement. The person to whom the deposit is paid shall hold it as a stakeholder until this Agreement is unconditional or is avoided.~~

~~2.2 The Sublandlord shall not be entitled to cancel this Agreement for non-payment of the deposit unless the Sublandlord has first given to the Subtenant three working days' notice in writing of intention to cancel and the Subtenant has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.~~

~~2.3 Without prejudice to any of the Sublandlord's rights or remedies, including any right to claim for additional expenses and damages, if the deposit or any portion thereof is not paid upon the due date for payment the Subtenant shall pay to the Sublandlord interest at the default interest rate on the portion of the deposit so unpaid for the period from the due date for payment until payment. Unless a contrary intention appears on the front page or elsewhere in this Agreement the default interest rate 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 default interest is payable, plus 5 per cent per annum.~~

~~**3.0 Consent**~~

~~3.1 This Agreement is conditional on the Sublandlord obtaining, at the Sublandlord's cost, the consent of the Head Landlord to the Sublease within 10 working days of the date of this Agreement.~~

~~3.2 The Sublandlord and the Subtenant shall do all things that may reasonably be necessary to enable the condition in subclause 3.1 to be fulfilled by the date for fulfilment.~~

~~3.3 The condition shall be deemed not to be fulfilled until the Sublandlord serves a notice of fulfilment on the Subtenant.~~

~~3.4 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 Subtenant shall be entitled to the immediate return of the deposit and any other monies paid by the Subtenant under this Agreement, and neither party shall have any right or claim against the other arising from this Agreement or its termination.~~

~~3.5 The condition in subclause 3.1 is for the benefit of both parties and can only be waived by both parties.~~

4.0 Sublease payments

4.1 The Subtenant shall pay the annual rent by equal ~~monthly~~ **annual** payments in advance as from the commencement date specified in the First Schedule.

4.2 The Subtenant shall pay the Goods and Services Tax payable by the Sublandlord in respect of the rent and other payments payable by the Subtenant pursuant to the Sublease.

4.3 In addition to the rent the Subtenant shall pay the outgoings specified in the First Schedule and where any outgoing is not separately assessed in respect of the premises then the Subtenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then a fair proportion. The estimated outgoings payable by the Subtenant is specified in the First Schedule.

5.0 Sublease

*** the attached form of Sublease**

5.1 The Subtenant shall enter into a formal sublease with the Sublandlord, to be prepared by the Sublandlord's lawyer using the current Auckland District Law Society Inc. Deed of Sublease form, as amended in accordance with the provisions of ~~this Agreement.~~ * The Subtenant acknowledges that the terms of the Headlease will apply (with the necessary changes) to the sublease. Each party will pay their own costs of the negotiation and preparation of the sublease and any deed recording a rent review or renewal.

5.2 Unless otherwise set out in the Third Schedule, it is agreed that the Sublandlord's fixtures, fittings and chattels contained in the premises as more particularly described in the Fourth Schedule are in a good state of repair.

5.3 Notwithstanding that the Sublease may not have been executed, the parties shall be bound by the terms, covenants and provisions contained in this Agreement and in the Sublease as if the Sublease had been duly executed.

6.0 Dispute resolution

6.1 Unless otherwise provided in this Agreement, if a party considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the notice, failing which the parties will endeavour in good faith within a further ten (10) working days to appoint a mediator and resolve the dispute, time being of the essence.

6.2 Neither party will commence legal proceedings against the other except for injunctive relief before following the procedure set out in subclause 6.1.

7.0 No assignment

7.1 The Subtenant shall not assign or agree to assign this Agreement or the Subtenant's interest under this Agreement and the Subtenant shall not register any caveat against the land in respect of its interest under this Agreement. ~~The Subtenant shall not be entitled to exercise the right of assignment contained in the Sublease until such time as the Subtenant has signed the Sublease.~~

~~8.0 Agent~~

~~8.1 If the name of a licensed real estate agent is recorded on this Agreement it is acknowledged that the Sublease evidenced by this Agreement has been made through that agent whom the Sublandlord appoints as the Sublandlord's agent to effect the Sublease. The Sublandlord shall pay the agent's charges (including GST) for effecting the Sublease.~~

9.0 Limitation of liability

9.1 If any person enters into this Agreement as trustee of a trust, then:

(1) That person warrants that:

(a) that person has power to enter into this Agreement under the terms of the trust;

(b) that person has properly signed this Agreement in accordance with the terms of the trust;

(c) that 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 as a result of fraud or gross negligence 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.

9.2 Notwithstanding subclause 9.1, where a party to this Agreement is named in item 16 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 9.1(2).

THIRD SCHEDULE

FURTHER TERMS (if any)

FOURTH SCHEDULE

SUBLANDLORD'S FIXTURES, FITTINGS AND CHATTELS (if any)

(Subclause 5.2)

FIFTH SCHEDULE

HEAD LEASE

AGREEMENT TO SUBLEASE

DATED:

Sublandlord:
NORTHLAND REGIONAL COUNCIL

Ph:

Fax:

Email:

Subtenant:
NORTHLAND REGIONAL COUNCIL, WHANGAREI DISTRICT COUNCIL, FAR NORTH DISTRICT COUNCIL and KAIPARA DISTRICT COUNCIL

Ph:

Fax:

Email:

General address of the premises:
Mansfield Terrace, Whangarei

Sublandlord's lawyer (indicate individual acting):

Subtenant's lawyer (indicate individual acting):

Deposit paid to:

Amount: $

Date paid:

SUBLEASE NEGOTIATED BY:

Licensed Real Estate Agent:

Office:

Address:

Telephone:

Manager:

Salesperson:

SUB DEED OF LEASE

Sixth Edition 2012 (5)

GENERAL address of the premises:

Mansfield Terrace, Whangarei

DATE:

LANDLORD:
Northland Regional Council

TENANT:
Northland Regional Council, Whangarei District Council, Far North District Council and Kaipara District Council as tenants in common in equal shares

~~**GUARANTOR:**~~

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT covenant as set out in the First, Second and Third Schedules.

~~**THE GUARANTOR** covenants with the Landlord as set out in the Fourth Schedule~~.

SIGNED by the Landlord

in the presence of:

Signature of Landlord

Print Full Name
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

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Landlord

Print Full Name
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

SIGNED by the Tenant

in the presence of:

Signature of Tenant

Print Full Name
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

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Tenant

Print Full Name
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

Note: If signing by a company or as an Attorney - please refer to the notes on page 3

~~SIGNED by the Guarantor~~

in the presence of:

Signature of Guarantor

Print Full Name
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

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Guarantor

Print Full Name
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** (ADLS form code: 4098WFP); or
(ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (ADLS form code: 4997WFP).

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].

Note: Signing by a company – Companies must sign this document in accordance with section 180 of the Companies Act 1993, to ensure it is binding as a deed. In general, this means:
(a) if there are two or more directors of the company, two directors must sign and no witnessing is necessary;
(b) if there is only one director of the company, that director signs and the signature must be witnessed.
Other methods of signing may be permitted by the company's constitution or if an attorney has been appointed.

FIRST SCHEDULE

1. **PREMISES:** **Area comprising 3150 square metres more or less being that part of the land contained in Records of Title NA648/209 and NA1805/72 as is shown delineated in blue on the attached Plan A and being the area marked on that plan as "Proposed"**

2. **CAR PARKS:** **As shown on attached Plan B**

3. **TERM:** **Thirty five (35) years**

4. **COMMENCEMENT DATE:**

5. **RIGHTS OF RENEWAL:** **In perpetuity**

6. **RENEWAL DATES:** **Every thirty fifth anniversary of the Commencement Date**

7. ~~**FINAL EXPIRY DATE:**~~

8. **ANNUAL RENT:** (Subject to review if applicable)

Premises	**$ 1.00**	**plus** GST
Car Parks	**$**	**plus** GST
TOTAL	**$ 1.00**	**plus** GST

9. ~~**MONTHLY RENT:** $ plus GST~~

10. **RENT PAYMENT DATES:** The **1st** day of each ~~month~~ **year** commencing on the day of 20

11. **RENT REVIEW DATES:** (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)

~~1. Market rent review dates:~~

~~2. CPI rent review dates:~~

12. **DEFAULT INTEREST RATE:** (subclause 5.1) **10** **%** per annum

13. **BUSINESS USE:** (subclause 16.1) **Joint Emergency Coordination Centre**

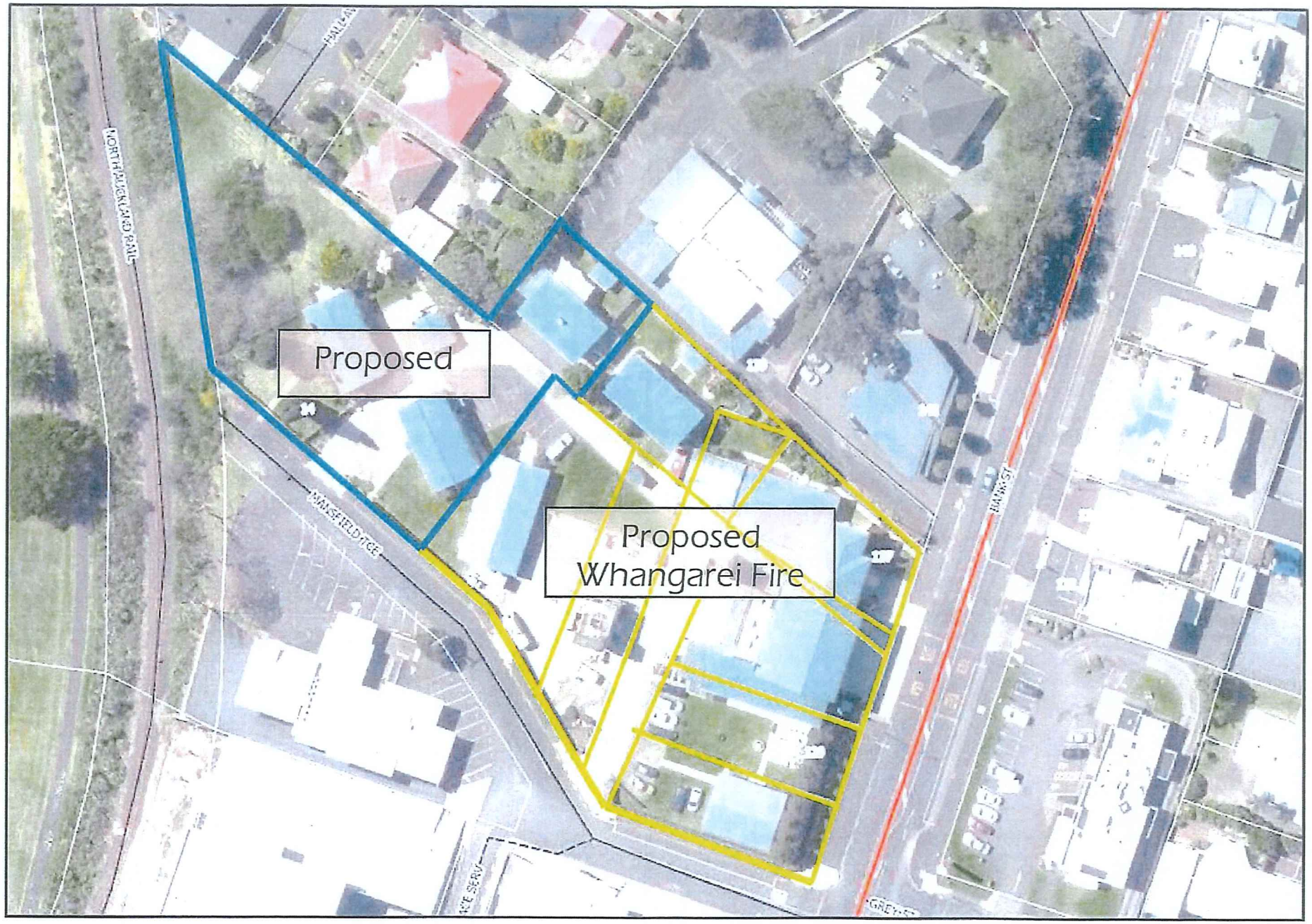
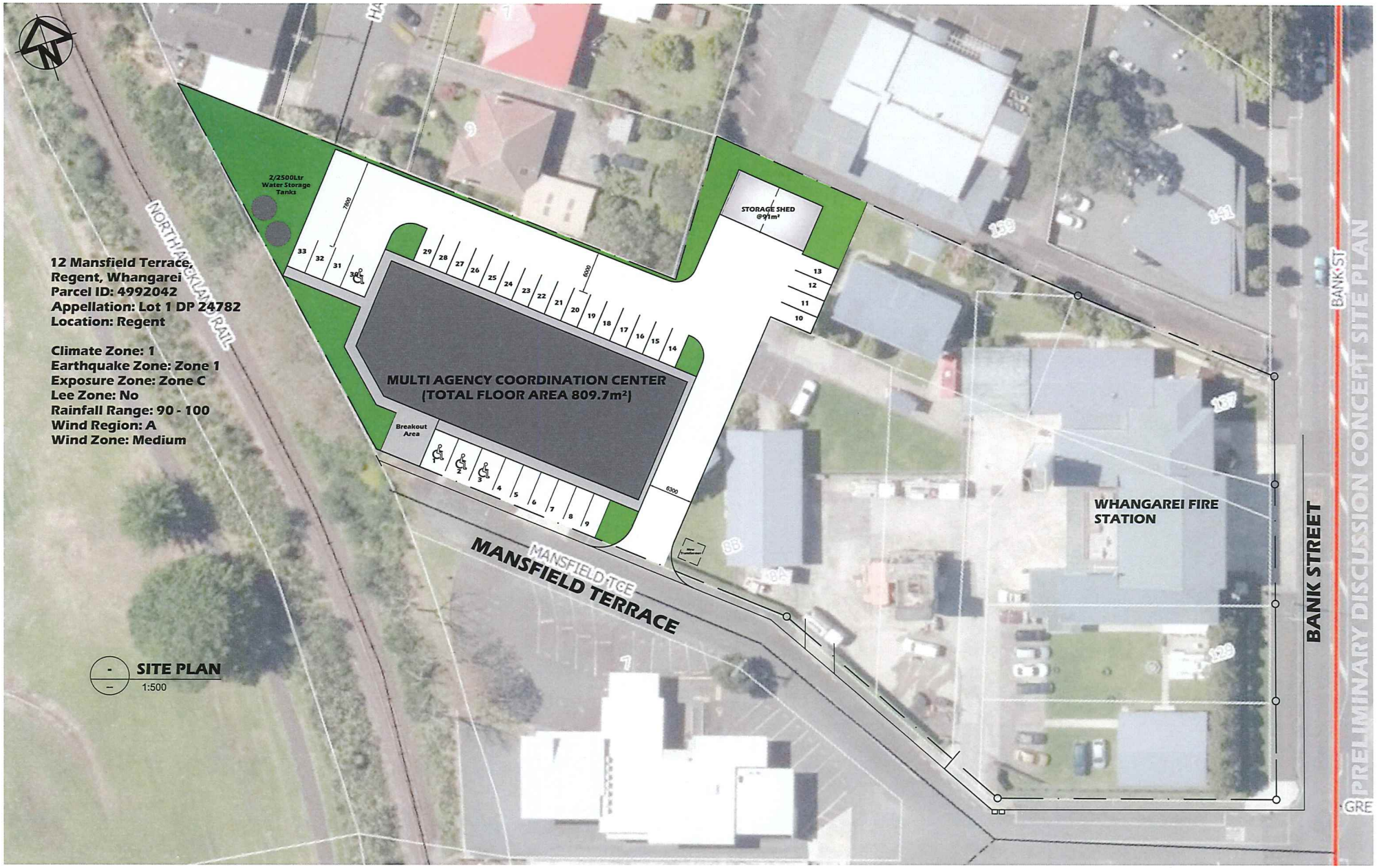


Image 2 – Proposed Sites, WDC GIS Image



DESIGN COMPOSITES LTD
103B MILLINGTON ROAD, RD9, MAUNU, WHANGAREI
Mob021301354 Email desgn.composites@gmail.com

CLIENT FIRE AND EMERGENCY NEW ZEALAND
PROJECT NORTHLAND MULTI AGENCY COORDINATION CENTRE
12 MANSFIELD TERRACE, WHANGAREI
DRAWING CONCEPT SITE PLAN (SINGLE STOREY)

DRAWING TO BE READ IN CONJUNCTION WITH SPECIFICATION AND DESCRIPTION OF WORKS. ORIGINAL SCALE @ A3, WRITTEN DIMENSIONS TAKE PRECEDENCE.

SHEET No. 01A DATE JULY 22 REVISION P1

REV	REVISION NOTES	DATE
P1	DRAWING ISSUED FOR CLIENT REVIEW	-

'B'

14. LANDLORD'S INSURANCE:
(subclause 23.1)
(Delete or amend extent of cover as appropriate)

(1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:

(a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);

(Delete either (a) or (b): if neither option is deleted, then option (a) applies)

~~OR~~

~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).~~

(2) Cover for the following additional risks:

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

(a) (i) 12 months

~~OR~~

~~(ii) months~~

indemnity in respect of consequential loss of rent and outgoings.

(b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.

(c) Public liability

15. NO ACCESS PERIOD:
(subclause 27.6)
(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)

(1) 9 months

OR

(2)

16. PROPORTION OF OUTGOINGS:
(subclause 3.1)

100 % which at commencement date is estimated to be $ **Plus** GST per annum

17. LIMITED LIABILITY TRUSTEE:
(subclause 45.2)

18. OUTGOINGS:
(clause 3)

(1) Rates or levies payable to any local or territorial authority.

(2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.

(3) Rubbish collection and recycling charges.

(4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.

(5) Any insurance excess (but not exceeding $2,000) in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).

(6) Service contract charges for air conditioning, lifts, other building services and security services.

(7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.

(8) The provisioning of toilets and other shared facilities.

(9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.

(10) Yard and car parking area maintenance and repair charges but excluding charges for repaving or resealing.

(11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.

(12) Management expenses (subject to subclause 3.7).

(13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

TENANT'S PAYMENTS

Rent

1.1 The Tenant shall pay the annual rent by equal ~~monthly~~ annual payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first ~~monthly~~ annual payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.

~~Market Rent Review~~

~~2.1 The annual rent payable as from each market rent review date (except for a market rent review date that is a renewal date) shall be determined as follows:~~

~~(a) Either party may not earlier than 3 months prior to a market rent review date and not later than the next rent review date (regardless of whether the next rent review date is a market or CPI rent review date) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant market rent review date.~~

~~(b) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2.2.~~

~~(c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.~~

~~(d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable as at the commencement date of the then current lease term.~~

~~(e) The annual rent agreed, determined or imposed pursuant to subclause 2.1 shall be the annual rent payable as from the relevant market rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to subclause 2.3 and 2.4.~~

~~(f) The market rent review at the option of either party may be recorded in a deed.~~

~~Rent Determinations~~

~~2.2 Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:~~

~~(a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or~~

~~(b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:~~

~~(1) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent.~~

~~(2) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.~~

~~(3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.~~

~~(4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert.~~

~~(5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.~~

~~(6) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.~~

~~(7) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2.~~

~~When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.~~

~~Interim Market Rent~~

~~2.3 Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:~~

~~(a) if both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or~~

~~(b) if only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or~~

~~(c) if no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date,~~

~~but in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.~~

~~The interim rent shall be payable with effect from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 2.4, shall not be subject to adjustment.~~

~~2.4 Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.~~

~~GPI Rent Review~~

~~2.5 The annual rent payable from each GPI rent review date shall be determined as follows:~~

~~(a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the GPI by giving notice to the Tenant of the increase (if any) using the formula:~~

~~A = B x (C÷D)~~

~~Where:~~

~~A = the GPI reviewed rent from the relevant GPI rent review date~~

~~B = the annual rent payable immediately before the relevant GPI rent review date~~

~~C = GPI for the quarter year ending immediately before the relevant GPI rent review date~~

~~D = GPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the lease (and in the case where A is the GPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)~~

~~where (C÷D) shall not be less than 1.~~

~~(b) If the GPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the GPI, or a resetting of the GPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice-president of the New Zealand Law Society will be used.~~

~~(c) If the relevant GPI is not published at the relevant GPI rent review date, as soon as the GPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant GPI rent review date.~~

~~(d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant GPI rent review date shall not be less than the annual rent payable immediately preceding the GPI rent review date (and in the case where the relevant GPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).~~

~~2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant GPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the GPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.~~

Outgoings

3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.

3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.

3.3 If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.

3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.

3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of a reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.

3.6 After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.

3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing.

Goods and Services Tax

4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.

4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

Interest on Unpaid Money

5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.

5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate 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 default interest is payable, plus 5 per cent per annum.

Costs

6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

LANDLORD'S PAYMENTS

Outgoings

7.1 Subject to the Tenant's compliance with the provisions of clause 3 the ~~Landlord~~ Tenant shall pay all outgoings in respect of the property ~~not payable by the Tenant direct.~~ The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax ~~prior to receiving payment from the Tenant.~~

MAINTENANCE AND CARE OF PREMISES

Tenant's Obligations

8.1 The Tenant shall be responsible to:

(a) **Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease (or where the lease is renewed, the commencement date of the initial term of this lease) and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.

(b) **Breakages and minor replacements**

Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.

(d) **Floor coverings**

Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.

(e) **Damage or Loss**

Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.

8.2 ~~Where the Tenant is leasing all of the property, the~~ The Tenant shall:

(a) **Care of grounds**

Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.

(b) **Water and drainage**

Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.

(c) **Other works**

Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.

~~**8.3** Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.~~

~~**8.4** Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.~~

8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

Toilets

9.1 The toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

Rubbish Removal

10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.

Tenant's ~~Landlord's~~ Maintenance

11.1 The Tenant ~~Landlord~~ shall keep and maintain the building, all building services and the car parks in good order and repair and weatherproof ~~but the Landlord shall not be liable for any:~~

~~(a) Repair or maintenance which the Tenant is responsible to undertake.~~

~~(b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord.~~

~~(c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks.~~

~~(d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.~~

11.2 The Tenant ~~Landlord~~ shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord. Whenever building services cannot be maintained in good order and repair through regular maintenance, the Tenant ~~Landlord~~ will if reasonably required replace the services with services of a similar type and quality.

11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

Notification of Defects

12.1 The Tenant shall give to the Landlord prompt written notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

Landlord's Right of Inspection

13.1 The Landlord and the Landlord's employees contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

Landlord may Repair

14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

Access for Works

15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any statutes, regulations, by-law or requirement of any competent authority. All repairs inspections and works shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.

15.2 If the Tenant's business use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.

15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord.

15.4 The Landlord shall act in good faith and have regard to the nature, extent and urgency of the works when exercising the Landlord's right of access or possession in accordance with subclauses 15.1 and 15.3.

USE OF PREMISES

Business Use

16.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. ~~The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:~~

~~(a) not in substantial competition with the business of any other occupant of the property which might be affected by the use; and~~

~~(b) reasonably suitable for the premises; and~~

~~(c) compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.~~

~~If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium~~.

~~**16.2** If any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.~~

~~**16.3** If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.~~

Lease of Premises and Car Parks Only

17.1 The tenancy shall relate only to the premises and the car parks (if any) and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

Neglect of Other Tenant

18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.

Signage

19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord ~~but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage~~.

Additions, Alterations, Reinstatement and Chattels Removal

20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.

20.2 The Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.

20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. In addition to the Tenant's obligations to reinstate the premises pursuant to subclause 20.1 the Tenant will make good at the Tenant's own expense all resulting damage and if the chattels are not removed by the end or earlier termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.

20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.

Compliance with Statutes and Regulations

21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant provided that:

(a) The Tenant shall not be required to make any structural repairs alterations or additions nor to replace or install any plant or equipment except where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.

(b) The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises.

(c) The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.

21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement addition or alteration to the property which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine this lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration.

21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.

21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.

21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.

No Noxious Use

22.1 The Tenant shall not:

(a) Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of a weight size or shape as is likely to cause damage to the building or any surfaced area.

(b) Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991.

(c) Use the premises or allow them to be used for any noisome noxious illegal or offensive trade or business.

(d) Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

INSURANCE

Landlord shall insure

23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. If insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.

23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule

Tenant not to void insurance

24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:

(a) Shall make void or voidable any policy of insurance on the property.

(b) May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

When Tenant to have benefit of Landlord's insurance

25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:

(a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or

(b) The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:

(1) occurred on or about the property; and

(2) constitutes an imprisonable offence; or

(c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

DAMAGE TO OR DESTRUCTION OF PREMISES

Total Destruction

26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged:

(a) as to render the premises untenantable then the term shall at once terminate from the date of destruction or damage; or

(b) in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

Partial Destruction

27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenantable and:

(a) the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and

(b) all the necessary permits and consents are obtainable,

the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises or the building but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.

27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.

27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

No Access in Emergency

27.5 If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

(a) a prohibited or restricted access cordon applying to the premises; or

(b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or

(c) restriction on occupation of the premises by any competent authority,

then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.

27.6 This subclause 27.6 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclauses 26.1 or 27.4. Either party may terminate this lease by giving 10 working days written notice to the other if:

(a) the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or

(b) the party that terminates this lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the premises for that period.

Any termination shall be without prejudice to the rights of either party against the other.

DEFAULT

Cancellation

28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this lease by re-entering the premises at the time or at any time after that:

(a) If the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.

(b) In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.

(c) If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.

(d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.

(e) If the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars ($5,000).

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

29.1 Failure to pay rent or other moneys payable under this lease on the due date shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

29.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

Repudiation

30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

QUIET ENJOYMENT

31.1 The Tenant paying the rent and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

RENEWAL OF LEASE

32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:

(a) If the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term.

(b) If the renewal date is a CPI rent review date, the annual rent shall be determined in accordance with subclause 2.5.

(c) Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date.

(d) The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule.

(e) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice or the security of a bank guarantee that has been given.

(f) If the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4.

(g) Notwithstanding anything contained in subclause 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term.

(h) The parties will not be released by the renewal of the lease from any liability for any breach under this lease.

ASSIGNMENT OR SUBLETTING

33.1 The Tenant shall not assign sublet or otherwise part with the possession of the premises, ~~the carparks (if any) or any part of them without first obtaining the written consent of the Landlord which the Landlord shall not unreasonably withhold or delay if the following conditions are fulfilled:~~

~~(a) The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord.~~

~~(b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.~~

~~(c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed~~ and delivered to the Landlord.

~~(d) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord.~~

~~(e) The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.~~

~~**33.2** Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.~~

~~**33.3** Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed.~~

UNIT TITLE PROVISIONS

~~34.1 Clause 34 applies where the property is part of a unit title development.~~

~~**Body Corporate**~~

~~34.2 The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.~~

~~**Act and Rules Paramount**~~

~~34.3 This lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.~~

~~**Insurance**~~

~~34.4 Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.~~

Landlord's Obligations

34.5 The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

~~**Tenant's Obligations**~~

~~34.6 The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.~~

~~**Consents**~~

~~34.7 Where in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.~~

CARPARKS

35.1 The Tenant shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.

35.2 The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 26.1 or 27.3.

35.3 The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.

35.4 The provisions of the Second Schedule shall apply to the car parks as appropriate.

GENERAL

Holding Over

36.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy only terminable by at least 20 working days notice given at any time with the tenancy terminating on the expiry of the notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.

Access for Re-Letting or Sale

37.1 The Tenant will during the term permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:

(a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.

(b) The inspection is conducted in a manner which does not cause disruption to the Tenant.

(c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

Suitability

38.1 No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

Affirmation

39.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

Waiver

40.1 No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

Land Transfer Title or Mortgagee's consent

41.1 The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.

Notices

42.1 All notices must be in writing and must be served by one of the following means:

(a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and

(b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

(1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or

(2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:

(a) In the case of personal delivery, when received by the addressee.

(b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.

(c) In the case of facsimile transmission, when sent to the addressee's facsimile number.

(d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.

42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.

42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.

42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).

42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.

43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.

43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.

43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

45.1 If any person enters into this lease as trustee of a trust, then:

(a) That person warrants that:

(1) that person has power to enter into this lease under the terms of the trust; and

(2) that person has properly signed this lease in accordance with the terms of the trust; and

(3) that 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 lease; and

(4) all of the persons who are trustees of the trust have approved entry into this lease.

(b) 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 lease 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 as a result of fraud or gross negligence 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.

45.2 Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

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

DEFINITIONS AND INTERPRETATION

47.1 In this lease:

(a) "building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.

(b) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.

(c) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord 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 lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.

(d) "emergency" for the purposes of subclause 27.5 means a situation that:

(1) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and

(2) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and

(3) the event is not caused by any act or omission of the Landlord or Tenant.

(e) "GST" means the 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.

(f) "premises" includes all the Landlord's fixtures and fittings provided by the Landlord and those set out in the Fifth Schedule.

(g) "premises condition report" means the report as set out in the Sixth Schedule.

(h) "renewal" means the granting of a new lease as provided for in subclause 32.1.

(i) "rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.

(j) "structural repair" means a repair, alteration or addition to the structure or fabric of the building but excluding building services.

(k) "term" includes, where the context requires, a further term if the lease is renewed.

(l) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.

(m) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.

(n) "the property" and "the building" mean the land, building(s) or improvements of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.

(o) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees.

(p) "working day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.

(q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

(r) A reference to the words "include" or "including" are to be interpreted without limitation.

(s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.

(t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.

(u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.

(v) Where the Landlord's consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:

(1) must not unreasonably withhold consent or approval, and

(2) must, within a reasonable time of the Landlord's consent or approval being requested:

(i) grant that consent or approval; or

(ii) notify the Tenant in writing that the consent or approval is withheld.

THIRD SCHEDULE

FURTHER TERMS (if any)

~~FOURTH SCHEDULE~~

~~GUARANTEE~~

~~**IN CONSIDERATION** of the Landlord entering into the lease at the Guarantor's request the Guarantor:~~

~~(a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease.~~

~~(b) Indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.~~

~~**THE GUARANTOR** covenants with the Landlord that:~~

~~1. No release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.~~

~~2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.~~

~~3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.~~

~~4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.~~

~~5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several.~~

~~6. The Guarantee and indemnity shall extend to any holding over by the Tenant.~~

FIFTH SCHEDULE

LANDLORD'S FIXTURES AND FITTINGS

(Subclause 47.1(f))

SIXTH SCHEDULE

PREMISES CONDITION REPORT

(Subclause 8.1)

Dated

Between
Northland Regional Council

Landlord

and
Northland Regional Council, Whangarei District Council, Far North District Council and Kaipara District Council as tenants in common in equal share

Tenant

and

Guarantor

SUB DEED OF LEASE

General address of the premises:

Mansfield Terrace, Whangarei