

Memorandum of Agreement Pursuant to the Public Works Act 1981

File Reference: TAU001-42-713693

Agreement made this day of2017

between the **Taupo District Council** (*“the Council”*) and **Elizabeth Joubert Parker** (*called “the Owner”*) being the owner of an estate of freehold in possession in all those parcels of land containing:

- i. 1478 square metres more or less being Lot 1 Deposited Plan South Auckland 32515 being all the land contained in Computer Freehold Register SA30A/435 (*“the First Land”*), and
- ii. 393 square metres more or less being Lot 2 on Maori Land Plan 453079, being part of Part Waipahihi 2B2B, being amalgamated with the First Land pursuant to Maori Land Court Order 55 TTK 102-103 (*“the Second Land”*),

The First Land and the Second Land are together called “the Owner’s Land”.

The Owner offers to sell to Council for road for the purposes of the Lake Terrace Land Exchange Project (*“the Project”*) for the compensation set out in **Clause 1 of Schedule B** (*“the Compensation”*) free of all leases and tenancies and discharged from all encumbrances and requisitions all that part of the Second Land comprising 13 square metres (subject to survey) shown outlined yellow and labelled area “Lot 9” on the Land Requirement Plan attached to Schedule One of this Agreement (*“the Land Requirement Plan”*) (*“the Required Land”*)

On and subject to the conditions set out in the Schedules A and B.

1. The Owner agrees to:
 - (a) the Required Land being acquired by Declaration under the Public Works Act 1981, and to
 - (b) Accept the Compensation and other payments described in Schedule B in full settlement of compensation for the Required Land together with all rights, easements, and appurtenances belonging to the Required Land and of all claims and demands in respect of the acquisition of the Required Land including but not limited to damage to the surrounding land or otherwise.
2. The Owner authorises the Council to retain and pay (if demanded) to the persons entitled the whole or a sufficient portion of the Compensation to release the Required Land from all encumbrances affecting the same.
3. The Owner further agrees to provide to the Council a good title to the Required Land and to comply with the requirements set out in the Schedules.
4. This agreement shall not be binding on the Council until signed on behalf of the Council.

SIGNED by

Elizabeth Joubert Parker

In the presence of:

.....
Signature of witness

.....
Name of witness

.....
Address of witness

.....
Occupation of witness

I accept the above offer to sell/confirm the above agreement to take by Declaration.

Signed by:
TAUPO DISTRICT COUNCIL

In the presence of:

.....
Chief Executive

.....
Signature of witness

.....
Name of witness

.....
Address of witness

.....
Occupation of witness

Schedule A: Conditions relating to land taken or to be taken by Declaration

(1) Acquisition of Title

The Council will take title by Declaration and shall register a compensation certificate against Computer Freehold Register SA30A/435 pending issue of the Declaration to facilitate settlement. The Council agrees to prepare and lodge the compensation certificate for registration as soon as practicable following execution of this agreement by all parties and shall notify the Owner when registration of the compensation certificate has been completed.

(2) Possession

- (a) The parties acknowledge that part of the Required Land is already being used as part of Lake Terrace and the Council is already in possession of part of the Required Land.
- (b) Settlement shall be within one month of the later of the date the Council notifies the Owner that:
 - (i) the Minister has executed the declaration pursuant to clause 3.2 of Schedule B of this Agreement or that the road comprising the Roding Land has been stopped pursuant to the Local Government Act 1974; and
 - (ii) a certificate under section 107 of the Public Works Act 1981 (“the s107 Certificate”) to vest the s105 Land has been signed (“the Settlement Date”).
- (c) On the Settlement Date possession and ownership of the Required Land is deemed to pass to the Council.

(3) Mortgagees’ Statements

As the issue of the Declaration will clear or has cleared the Required Land of any encumbrance the Owner shall advise whether the Required Land is, or was, at the date of taking viz, Settlement Date, subject to any registered or unregistered mortgage, lien, or charge. If the Required Land is/was so subject the Owner or her solicitor shall forward to the Council statements signed by each mortgagee and holder of the lien or charge setting out the amount required to be paid to it in discharge or reduction of the mortgage debt or for the release of the lien or charge.

(4) Rates

Net rates shall not be apportioned on the Settlement Date.

(5) Insurance

Insurance premium shall not be apportioned and the Required Land shall remain at the sole risk of the Owner until the Settlement Date. If any damage is done to the Required Land prior to settlement other than by the Council such damage shall be made good by the Owner prior to settlement or the cost of making good such damage shall be deducted from the compensation for the Required Land.

(6) Compensation

The Owner acknowledges that the Compensation is in full settlement of compensation pursuant to the Public Works Act 1981 for the Required Land together with the rights, easements, and appurtenances thereto belonging and of all claims and demands in respect of damage to the surrounding land by severance or otherwise howsoever.

Schedule B: Special conditions relating to this transaction

1. Compensation

1.1 In part consideration of the acquisition of the Required Land, the Council agrees, subject to the provisions of this Schedule B, to vest in the Owner the Exchange Land (as described in Clause 4.1 of this Schedule B).

1.2 Values for the Required Land and Exchange Land are as follows:

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|---|--|
| Value of Required Land | \$ 5,000.00 inclusive of GST (if any). |
| Less: | |
| Value of s105 Land to be vested in exchange (as set out in clause 2) | \$ 1,500.00 inclusive of GST (if any). |
| Balance Compensation | \$ 3,500.00 inclusive of GST (if any) |
| Less: | |
| Less value of Roding Land to be vested in exchange (as set out in clause 3) | -\$63,500.00 inclusive of GST (if any) |
| Equality of Exchange payable by the Owner (“the Equality of Exchange”) | \$60,000.00 inclusive of GST (if any) |
| | |

1.3 Subject to Clause 4.3 and 4.4 of this Schedule B, the Owner will pay the Equality of Exchange to the Council on the Settlement Date by way of cheque or alternatively by way of an electronic transfer of funds pursuant to a protocol agreed to by the parties.

2. Exchange Land – s105 Land

2.1 The Council agrees to vest in the Owner in exchange pursuant to Sections 105 and 107 PWA that area of land held for Functioning Indirectly of a Road (segregation strip) comprised in Computer Interest Register 803073 (“*the s105 Land*”).

2.2 The Council agrees to vest the s105 Land in the Owner by amalgamation with the First Land under Section 107 Public Works Act 1981. The s105 Land shall be formally vested in accordance with the process set out in clause 6.9 of this Schedule B.

2.3 The Owner consents to the vesting of the s105 Land subject to the same encumbrances, liens, mortgages and interests noted against the existing title to the First Land.

2.4 Possession of the s105 Land shall pass to the Owner on the Settlement Date. Net rates shall not be apportioned.

3. Exchange Land – Roding Land to be stopped and vested

3.1 Subject to the Council meeting the necessary statutory requirements in respect to stopping of legal road, the Council agrees to stop that part of the legal road comprising 205 square metres (subject to survey) shown outlined green and labelled “Pt Lot 6” and “Pt Lot 7” on the Land Requirement Plan (“*the Roding Land*”) and once stopped to vest the Roding Land in the Owner by way of amalgamation with the First Land.

3.2 Upon registration of the compensation certificate referred to in Clause 1 Schedule A of this Agreement and on completion of survey, the Council shall with all reasonable expediency request the Minister of Lands (“*the Minister*”) to stop the legal road comprised in the Roding Land under section 116 of the Public Works Act 1981 and to vest the Roding Land in the Owner under section 117(3)(a) of the Public Works Act 1981 by amalgamation with the First Land comprised in Computer Freehold Register SA30A/435 by publication of a notice in the New Zealand Gazette pursuant to section 120(3) of the Public Works Act 1981. The Council shall promptly notify the Owner as to whether the Minister has executed (or not, as the case may be) the declaration.

- 3.3 For the purposes of Section 116 Public Works Act 1981, the Owner consents to the stopping of the legal road comprised in the Roding Land and for the purposes of Section 117(3)(a) of the Public Works Act 1981 the Owner consents to the Roding Land being vested in the Owner subject to the same encumbrances, liens, mortgages and interests as the land comprised in the Computer Freehold Register **SA30A/435**, and subject to the approval of the Land Information New Zealand.
- 3.4 In the event the Minister declines to stop the legal road comprised in the Roding Land, the Council agrees, subject to Clauses 3.6 and 3.7 to stop the road under the 10th Schedule to the Local Government Act 1974 (“LGA”) and vest the Roding Land in the Owner by amalgamation with the First Land in accordance with section 345 of the LGA.
- 3.5 The Owner further agrees that the Owner will not lodge any submission or objection to the stopping of the legal road comprised in the Roding Land.
- 3.6 In the event of any objection being raised to any notice issued by the Council pursuant to Clause 2 of the tenth schedule of the LGA, the Council shall notify the Owner in writing whether the Taupo District Council acting in its regulatory capacity allows the objection or will submit the matter to the Environment Court for determination
- 3.7 If the Council allows the objection, or if the Council submits the matter to the Environment Court and should the Environment Court allow the objection, or not confirm the stopping, then the Council’s obligations to vest the Roding Land in the Owner shall be at an end, and Clause 4.3 shall apply.
- 3.8 Unless an objection is allowed by the Taupo District Council or the Environment Court pursuant to Clause 3.7, the Council shall with all reasonable expediency stop the legal road comprising the Roding Land pursuant to the Tenth Schedule of the LGA, obtain a Computer Freehold Register for the Roding Land and notify the Owner. The transfer of the Roding Land to the Owner shall occur in accordance with Clause 3.10.
- 3.9 Should the legal road comprised in the Roding Land be stopped under either 3.1 or 3.4 of this Schedule B the Council shall notify the Owner in writing of the stopping of the legal road and arrange for the legal vesting of the Exchange Land in the Owner as follows:
- 3.9.1 Where the road is stopped pursuant to section 116 Public Works Act 1981, the vesting shall occur under section 117(3)(a) and 120 of the Public Works Act 1981, as set out in clauses 3.2 and 6.9.1 Schedule B.
- 3.9.2 Where the road is stopped pursuant to Schedule 10 of the LGA, the Council shall transfer the Exchange Land to the Owner pursuant to Section 345 of the LGA as set out in clause 3.10 below.
- 3.10 Should the legal road comprised in the Roding Land be stopped pursuant to the 10th Schedule of the LGA, the Council shall transfer the Roding Land to the Owner pursuant to Section 345 of the LGA and the following shall apply:
- 3.10.1 For the purposes of section 345 of the LGA the Owner consents to the vesting of the Roding Land in the Owner by amalgamation with the First Land subject to:
- (i) The same encumbrances, liens, mortgages and interests as the Owner’s Land; and
- (ii) The approval of the Land Registry Office of Land Information New Zealand.
- 3.10.2 When called upon to do so by the Council, the Owner shall procure the Owner’s solicitor to create a Landonline Workspace for the transaction and sign, certify and pre-validate the transfer instrument in such Landonline Workspace.
- 3.10.3 The Council shall procure the Council’s solicitor to prepare, certify, sign and pre-validate, in the Landonline Workspace created by the Owner’s solicitor, the transfer instrument and all other instruments required to confer title on the Owner in terms of the Council’s obligations under this Agreement a reasonable time prior to the Settlement Date.
- 3.10.4 The transfer instrument shall contain such directions as may be appropriate to enable the Roding Land to be amalgamated with the First Land pursuant to section 345(2) of the LGA.

3.10.5 The Council shall procure the Council's Solicitor to release the transfer instrument in the Landonline Workspace so that the Owner's solicitor can then submit it immediately after settlement for registration.

4. Exchange Land – general provisions

- 4.1 The Roding Land and the s105 Land are together called “the Exchange Land”.
- 4.2 The Council shall notify the Owner of the completion of the vesting of the Exchange Land and shall also notify the Local Authority of the change of ownership of the Exchange Land. All outgoings in respect of the Exchange Land shall be the responsibility of the Owner when struck by the local authority.
- 4.3 If the legal road comprised in the Roding Land cannot be stopped by virtue of the events described in Clause 3.7 or the s105 Land cannot be vested in the Owner then the consideration payable by the Owner to the Council shall decrease by the respective amount as set out in clause 1 of this Schedule B.
- 4.4 If the Exchange Land cannot be vested in the owner then the Council shall pay the Owner the sum of \$5,000.00 inclusive of GST (if any) in compensation for the acquisition of the Required Land. The Council shall pay such sum to the Owner within one month of the Council notifying the Owner in writing that the Exchange Land cannot be vested in the Owner.

5. GST

- 5.1 The Owner warrants that the Owner is not registered (nor liable to register) for GST for the supply pursuant to this agreement.

6. Survey and Legalisation

- 6.1. If the Owner has not already done so, the Owner shall, at the Owner's cost, as soon as reasonably practicable following registration of the compensation certificate referred to in Clause 1 Schedule A of this Agreement survey:
- 6.1.1. The Required Land from the balance of the Owner's Land, separately showing the existing and proposed segregation strips; and
- 6.1.2. The Roding Land; and
- 6.1.3. The s105 Land.
- and forward the draft survey plan to the Council for approval in the Council's capacity as an affected land owner, not their regulatory capacity.
- 6.2 Within 15 Working Days' of receipt of the draft survey plan, the Council will either:
- 6.2.1 provide its approval to the survey plan, which will be deemed to have been given unless the Council gives notice under clause 6.2.2; or
- 6.2.2 if it is not satisfied with the survey plan, provide the Owner with reasons as to why it is not satisfied.
- 6.3 The Council must not unreasonably or arbitrarily withhold its approval to the survey plan so long as it reflects the Land Requirement Plan as to the formal depiction for surveying and land registration purposes of the Required Land and the Exchange Land as closely as is practicable.
- 6.4 Following the Council's approval of the survey plan, the Owner will lodge the survey plan with LINZ for approval as to survey.
- 6.5 On the completion of the survey the Council shall, at the Owner's cost, undertake all legalisation actions.
- 6.6 Upon approval of the survey plan by Land Information New Zealand, the Council will:
- 6.6.1 Procure the Crown to declare the Required Land to be road pursuant to section 114 of the Public Works Act 1981 and shall obtain such consents as may be necessary from Taupo District Council for the land required for road to be declared road under the authority of that section. For the purposes of section 114 (2)(b) of the Public Works Act 1981 the Owner consents to the land

required for road being declared road and vested in the Council, and acknowledges that the area shown as a thick black line and labelled "Lot 8 (Segregation Strip to be created) 6m²" on the Land Requirement Plan shall be taken for the functioning indirectly of a road (segregation strip).

- 6.6.3 Contemporaneously with the legalisation of the Required Land as road and segregation strip, carry out the legalisation actions set out in Clause 2 and 3.
- 6.7 On the Settlement Date (as set out in Clause 2(b) of Schedule A), the Owner shall perform its obligations under Clause 1.3 of this Schedule B, and the Council will as a precondition of settlement, provide the Owner with a copy of the s107 Certificate and the signed declaration referred to in clause 3.2 of this Schedule B (if applicable).
- 6.8 On the Settlement Date the Council shall give vacant possession of the Exchange Land to the Owner.
- 6.9 Immediately following the Settlement Date and payment by the Owner of the Equality of Exchange to the Council, the Council will:
- 6.9.1 lodge for registration the s107 Certificate vesting the s105 Land in the Owner; and
- 6.9.2 publish the declaration referred to in clause 3.2 of this Schedule B (if applicable) by way of notice in the New Zealand Gazette and register the published notices at the Land Registry office.
- 6.10 In the event of there being a 10% or greater increase in the net difference between the area of the Exchange Land and the area of the Required Land on completion of survey a rate of \$309.50 per m² inclusive of GST (if any) shall be paid by the Owner to the Council in respect of the difference between the areas stated in the agreement and the areas confirmed by survey.

7. Legal and Valuation Costs

- 7.1 The parties acknowledge that the Owner is a willing seller and not entitled to reimbursement of legal and valuation fees in accordance with section 66 of the Public Works Act 1981.
- 7.2 The Owner agrees to reimburse Council's fair and reasonable legal and valuation fees associated with the negotiation, preparation and execution of this Agreement, together with the Council's associated costs as set out in its letter to the Owner dated 3 August 2016.

8. Warranties

- 8.1 The Owner warrants and undertakes that at the date of this agreement:
- (a) To the best of the Owner's knowledge and belief there is no contamination on the Required Land.
- (b) The Owner has no knowledge of any requirement and has not received any notice from any tenant or any local or government authority which affects the Required Land in any way and which has not been disclosed to the Council.
- (c) The Owner warrants and undertakes that at the settlement date the Owner has delivered to the Council all notices and requirements received after the date of the agreement from any tenant or any local or governmental authority unless the Owner has satisfied the notice of requirement. If the Owner has failed to satisfy the notice or demand then the Owner shall be liable for any costs or penalties arising from such failure.
- 8.2 Settlement shall not be deferred, but the Council reserves its rights to seek compensation from the Owner and reserves all its remedies at Common law and equity if the Owner breaches any Warranty granted by Clause 8.1 of this Schedule B.
- 8.3 The Owner acknowledges that the Exchange Land shall be vested in its existing condition and the Council is not required to make any improvements to the Exchange Land.
- 8.4 Any and all warranties or representation as to the condition and fitness of the Exchange Land for any particular use made on behalf of the Council or implied by Law are expressly negated. The Owner shall be deemed to have accepted the vesting of the Exchange Land in full reliance of the Owner's own skill and knowledge.

9. General

- 9.1 The Owner acknowledges and agrees that, until accepted in writing, this document is only an offer to sell to the Council and its acceptance will not be anticipated and the Owner will not enter into any consequential commitments in reliance of this offer being accepted by the Council.
- 9.2 This agreement shall not be binding on the Council until signed on the Council's behalf. Any variation of this agreement shall not be binding on the Council unless signed on the Council's behalf.

10. Execution of Agreement

- 10.1 This Agreement may be executed in any number of counterparts and by parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- 10.2 The parties agree that:
- (a) The execution and transmission of a faxed (or a scanned and emailed) copy of this agreement by each of them to the other of them shall constitute a valid binding offer or acceptance (as the case may require); and
 - (b) The production of a facsimile (or scanned and emailed) copy or copies of the agreement signed by all parties shall be deemed to be sufficient to satisfy the requirements of the Property Law Act 2007.

SCHEDULE ONE: LAND REQUIREMENT PLAN

