



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



  
R. W. Muir  
Registrar-General  
of Land

**Identifier** **909263**  
**Land Registration District** **North Auckland**  
**Date Issued** 23 October 2019

**Prior References**  
NA79D/769      NA79D/770      NA79D/771

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**Estate** Fee Simple  
**Area** 5215 square metres more or less  
**Legal Description** Lot 1 Deposited Plan 541270  
**Registered Owners**  
Auckland Council

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**Interests**

11576335.4 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 23.10.2019 at 4:47 pm  
11576335.6 Lease Term 125 years commencing 23 October 2019 Record of Title 918893 issued - 23.10.2019 at 4:47 pm  
12167769.2 Variation of Lease 11576335.6 - 15.7.2021 at 11:18 am





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



  
R. W. Muir  
Registrar-General  
of Land

**Identifier** **918893**  
**Land Registration District** **North Auckland**  
**Date Registered** 23 October 2019 04:47 pm

**Prior References**  
909263

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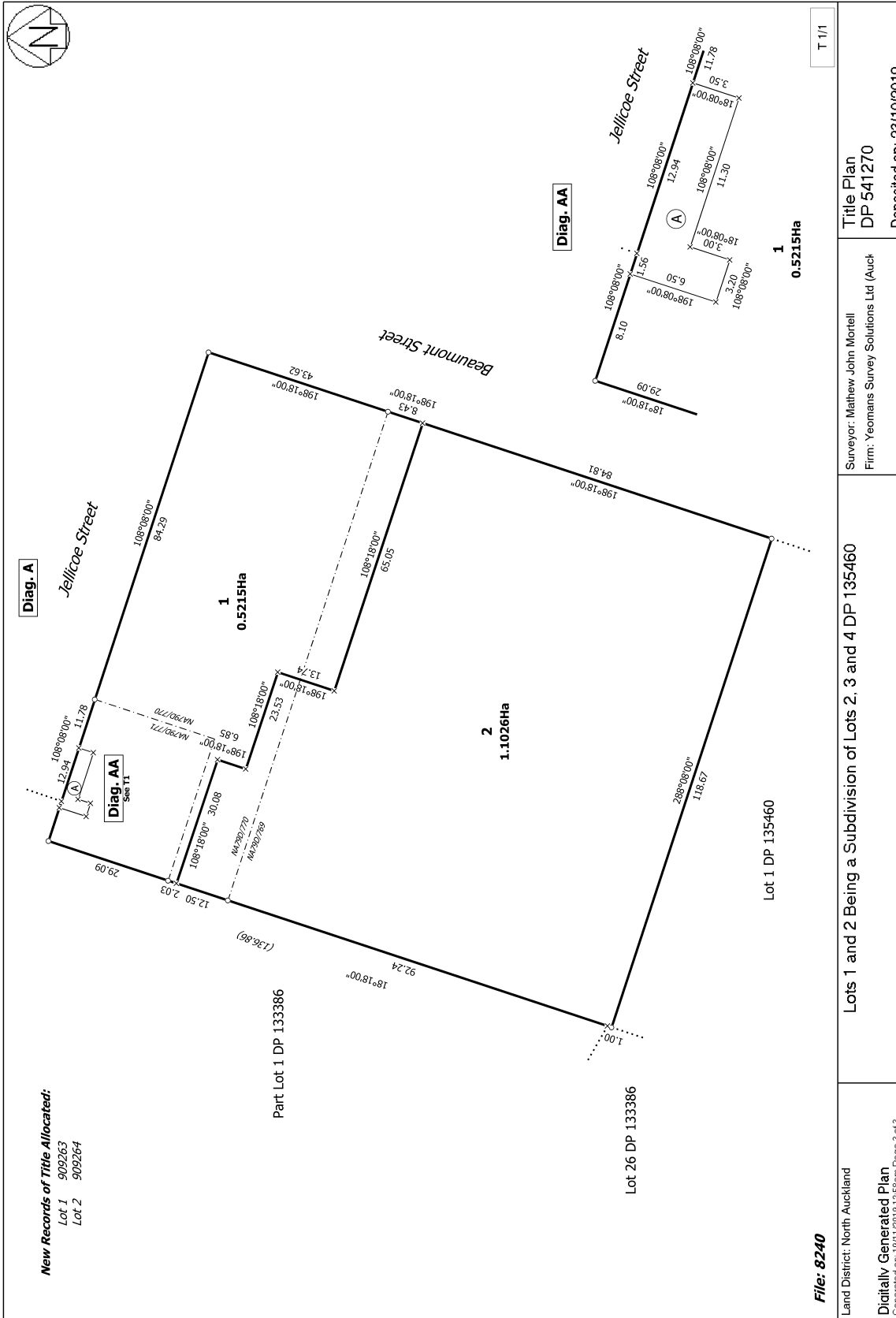
|                          |                                 |                   |                                      |
|--------------------------|---------------------------------|-------------------|--------------------------------------|
| <b>Estate</b>            | Leasehold                       | <b>Instrument</b> | L 11576335.6                         |
| <b>Area</b>              | 5215 square metres more or less | <b>Term</b>       | 125 years commencing 23 October 2019 |
| <b>Legal Description</b> | Lot 1 Deposited Plan 541270     |                   |                                      |

**Registered Owners**  
Westhaven Residential Limited Partnership

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**Interests**

12167769.2 Variation of the within lease - 15.7.2021 at 11:18 am  
13176336.1 Mortgage to Westpac New Zealand Limited - 20.2.2025 at 2:18 pm



# View Instrument Details



**Instrument No** 11576335.4  
**Status** Registered  
**Date & Time Lodged** 23 October 2019 16:47  
**Lodged By** Bradford, Joanna Louise  
**Instrument Type** Consent Notice under s221(4)(a) Resource Management Act 1991



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| <b>Affected Records of Title</b> | <b>Land District</b> |
|----------------------------------|----------------------|
| 909263                           | North Auckland       |
| 909264                           | North Auckland       |

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**Annexure Schedule** Contains 1 Pages.

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## Signature

Signed by Robert Frederick Bennett as Territorial Authority Representative on 18/10/2019 05:28 PM

**\*\*\* End of Report \*\*\***

Council reference: CCT90080478  
164-188 Beaumont Street Auckland Central Auckland 1010



IN THE MATTER OF

Section 221 of the Resource  
Management Act 1991

IN THE MATTER OF

a subdivision of land in the North  
Auckland Land Registration District  
shown on DP 541270

## CONSENT NOTICE

(Pursuant to Section 221 of the Resource Management Act 1991)

I hereby certify that THE AUCKLAND COUNCIL (the Council) granted its consent, reference SUB60341743, to the subdivision of Lots 2, 3 & 4 DP 135460 shown on DP 541270 subject to conditions, including the requirement of the owner(s) of Lots 1 and 2 DP 541270 to comply with the following conditions on a continuing basis at no cost to the Council:

### LOTS 1 and 2

- The Lots 1 and 2 on this proposal will form a single site in regards to the applicable district plan rules in terms of the site intensity required by the rules of the Auckland Unitary Plan (floor area ratio).
- Stormwater and sewage connections are not available within the individual lot boundaries; however any further development or constructions on the lots will require individual service connections to Council standards. It is the responsibility of the lot owner(s) to seek further approvals as necessary at their own costs.
- The site is subject to contamination. Any development on the site will require strict adherence to the relevant conditions imposed under approved Landuse consent BUN60330464.

### LOT 1

The site is identified as subject to Coastal Inundation 1 percent AEP plus 1m sea level rise. No development on the site shall occur until a Landuse consent for that development (stage 2) has been approved and the Coastal Inundation mitigation measures proposed are to the satisfaction of Auckland Council.

Dated this 30<sup>th</sup> day of September 2019.

Authenticated by the Auckland Council pursuant to  
Section 221(2) of the Resource Management Act 1991

Signed by SHEIK HAMID  
Senior Subdivision Advisor  
Authorised officer under delegated authority

# View Instrument Details



**Instrument No** 12167769.2  
**Status** Registered  
**Date & Time Lodged** 15 July 2021 11:18  
**Lodged By** Proudfoot, Hannah Marie  
**Instrument Type** Variation of Lease



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| Affected Records of Title | Land District  |
|---------------------------|----------------|
| 909263                    | North Auckland |
| 918893                    | North Auckland |

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**Affected Instrument** Lease 11576335.6

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**Annexure Schedule** Contains 3 Pages.

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## Lessor Certifications

I certify that I have the authority to act for the Lessor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

I certify that the Mortgagee under Mortgage 11576335.7 has consented to this transaction and I hold that consent

## Signature

Signed by Robert Frederick Bennett as Lessor Representative on 07/07/2021 12:13 PM

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## Lessee Certifications

I certify that I have the authority to act for the Lessee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

## Signature

Signed by Samuel John Greenwood as Lessee Representative on 13/07/2021 04:20 PM

\*\*\* End of Report \*\*\*

**Lease Variation instrument**

(Section 92 Land Transfer Act 2017)

**Lease Number**

11576335.6

**Lessor**

Auckland Council

**Lessee**

Orams Group Limited

**Variation of Lease***Continue in Annexure Schedule, if required*

The covenants and conditions contained or implied in the above Lease **are hereby varied** as follows:

1. Schedule A is varied as follows:

1.1 The definition of Land is deleted and replaced with the following:

*"LAND: Site 18B, Wynyard Quarter, being the land contained in Lot 1 Deposited Plan 541270 comprised in Record of Title 909263."*

2. Clause 1.1 in Schedule B of the Lease is varied as follows:

2.1 the definition of "Development Agreement" is deleted and replaced with the following:

*"**Development Agreement**" means the agreement dated on or about 30 June 2021 between Auckland Council as Lessor and Orams Residential Limited as Developer providing (among other things) for the carrying out of the Initial Development on the Land;"*

2.2 the definition of "Initial Development" is deleted and replaced with the following:

*"**Initial Development**" means the development of the Premises to be carried out by the Lessee under the Development Agreement (and referred to as the Works);"*

2.3 the definition of "Site 18" is deleted and replaced with the following:

*"**Site 18A**" means the land currently described as Lot 2 Deposited Plan 541270 comprised in Record of Title 909264;"*

2.4 the definition of "Site 18A Lease" is inserted as follows:

*"**Site 18A Lease**" means lease 11773931.5 as may be varied from time to time;"*

2.5 the definition of "Stage 1" is deleted;

3. Clause 18 in Schedule B of the Lease is deleted and replaced with the following:

**"18 Subdivision**

- 18.1 *Subject to the provisions in this clause 18, the Lessee must not subdivide the Lessee's leasehold interest in the Land in accordance with the RMA or UTA or otherwise and will not be entitled to call on the Lessor to subdivide its fee simple interest in the Land in accordance with the RMA or UTA or otherwise.*
- 18.2 *Notwithstanding the prohibition in clause 18.1, following Practical Completion of the Initial Development the Lessee may subdivide the Lessee's interest in the Land in accordance with the UTA. Upon such subdivision of the Lessee's interest in this Lease in accordance with the UTA, the Lessor agrees to release the body corporate (but not the original Lessee or any prior Lessee) from liability to meet any obligation under the Development Agreement not then fulfilled or properly fulfilled subject to satisfaction of the following conditions:*
- (a) *Practical Completion must have been achieved in accordance with the requirements of the Development Agreement; and*
  - (b) *the Super Profit Share must have been paid in full to the Lessor in accordance with the terms of the Development Agreement.*
- 18.3 *If the Lessee subdivides its interest in the Land in accordance with the UTA:*
- (a) *The Lessee will ensure that the initial body corporate manager and any replacement during the Term is reputable and suitably qualified and shall keep the Lessor informed as to the identity of the body corporate manager;*
  - (b) *The Lessee will on request provide the Lessor with copies of any notices, minutes or plans issued or prepared in relation to the body corporate; and*
  - (c) *The Lessee will ensure that the body corporate maintains and implements a long term maintenance plan at all times during the Term which is consistent with good building management and compliance with the repairing and maintenance obligations contained in this Lease and shall provide a copy to the Lessor from time to time on request.*
- 18.4 *Following Practical Completion of the Initial Development, the Lessee may require on one occasion only, a fee simple boundary adjustment or fee simple subdivision between Site 18A and the Land such that any part of the Land that is used for the Marine Use may be incorporated within Site 18A (it being acknowledged that such boundary adjustment or subdivision may result in lots having a reduced level(s) so as to enable ground level Marine Uses to be included within Site 18A) provided always that the Lessee obtains the Lessor's approval (which approval will not be unreasonably withheld or delayed). The Lessor acknowledges that until such time as the fee simple boundary adjustment or fee simple subdivision contemplated by this clause 18.4 has been completed, the Permitted Use shall include Marine Uses. The parties acknowledge that the Site 18A Lease contains a corresponding boundary adjustment provision, pursuant to which the lessee under the Site 18A Lease has covenanted (in favour of the Lessee) to execute all documents and do all things required to implement the boundary adjustment upon request by the Lessee.*
- 18.5 *Following any approval of a subdivision pursuant to clause 18.4, the Lessee and not the Lessor will be responsible for carrying out the subdivision (entirely at the Lessee's cost) with the Lessor's involvement being limited to approving certain matters pursuant to clause 18.7 and providing additional assistance pursuant to clause 18.8. The Lessee will indemnify the Lessor for any costs incurred by the Lessor in connection with the proposed subdivision.*

18.6 Following completion of a subdivision in accordance with clause 18.4 that clause will be deemed to be deleted from this Lease. In carrying out any subdivision under clause 18.4, the Lessee must obtain all relevant Authority consents as required by the RMA and must comply with the terms and conditions of such consents, and any other relevant laws.

18.7 In preparing and completing any such subdivision pursuant to this clause 18, the Lessee must obtain the Lessor's written consent (not to be unreasonably withheld) to the following:

(a) the grant, reservation or receipt of the benefit of any easements, building line restrictions, covenants, encumbrances, rights or other obligations in respect of the fee simple interest in the Land; and

(b) the terms and conditions on which any such instruments or interests may be granted,

the Lessor acknowledging that in particular the Lessee intends to register a no complaints covenant so as to expressly permit the Marine Uses undertaken on Site 18A.

18.8 Subject to clause 18.9, the Lessor will provide all consents, sign all documentation (including without limitation, plans, consent applications, title documentation and instruments) and otherwise do all acts matters and things necessary to facilitate and effect any subdivision in accordance with this clause 18).

18.9 If at any time the Lessee exercises its rights to require a boundary adjustment in terms of clause 18.4 then immediately following completion of that boundary adjustment:

(a) the Lessor will surrender and the Lessor will accept the surrender of that part of the Land subject to this Lease that is to be included in the Site 18A Lease (**Surrendered Premises**); and

(b) the Lessor and the Lessee will enter into a variation of this Lease to remove the Surrendered Premises from the Premises demised by this Lease.

18.10 Each of the new leases will preserve the liability of the Lessee under the surrendered Lease that accrued prior to the date of surrender insofar as such liability relates to the premises demised by that new lease."

19. Clause 26.2(a) in Schedule B of the Lease is deleted.

# View Instrument Details



**Instrument No** 11576335.6  
**Status** Registered  
**Date & Time Lodged** 23 October 2019 16:47  
**Lodged By** Bradford, Joanna Louise  
**Instrument Type** Lease



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| Affected Records of Title | Land District  |
|---------------------------|----------------|
| 909263                    | North Auckland |
| 918893                    | North Auckland |

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**Annexure Schedule** Contains 58 Pages.

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## Lessor Certifications

I certify that I have the authority to act for the Lessor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

## Signature

Signed by Robert Frederick Bennett as Lessor Representative on 13/11/2019 06:07 PM

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## Lessee Certifications

I certify that I have the authority to act for the Lessee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

## Signature

Signed by Samuel John Greenwood as Lessee Representative on 13/11/2019 05:00 PM

**\*\*\* End of Report \*\*\***

Stage 2 Lease

**Lease Instrument**

(Section 91 Land Transfer Act 2017)

| Affected instrument Identifier and type (if applicable) | All/part | Area/Description of part or stratum |
|---|----------|-------------------------------------|
| 909263  | All      |                                     |

**Lessor**

Auckland Council

**Lessee**

Orams Group Limited

**Estate or Interest**

Fee simple

**Lease Memorandum Number** *(if applicable)*

Not applicable

**Term**

Refer Schedule A

**Rental**

Refer Schedule A

**Lease and Terms of Lease** *If required, set out the terms of lease in Annexure Schedules*

For the purposes set out in the Background, the Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure schedules.

Insert instrument type

Lease

| <b>SCHEDULE A</b>      |  |
|------------------------|--|
| LAND:                  | Stage 2, Site 18, Wynyard Quarter, being the land contained in Lot 1 DP 541270 comprised in CFR 909263.  |
| PREMISES:              | The Land together with any buildings, carparks drains, sea walls or other structures existing on the Land at the Commencement Date or that may be erected, placed or made on the Land by the Lessee during the Term. |
| TERM:                  | 125 years from the Commencement Date.  |
| COMMENCEMENT DATE:     | 23 October 2019  |
| FINAL EXPIRY DATE:     | 22 October 2144  |
| RENTAL:                | See clause 3.1.  |
| PERMITTED USE:         | Residential apartments and any ancillary and complimentary commercial and retail uses as permitted by the operative district or unitary plan.  |
| DEFAULT INTEREST RATE: | Double the 90 day bank bill buy rate applicable during the continuance of the default.   |

*Insert instrument type*

Lease

**SCHEDULE B**

The Lessor and the Lessee covenant:

**1. DEFINITIONS AND INTERPRETATION****Definitions**

1.1 In this lease, unless the context otherwise requires:

"**Authority**" means any government, regulatory, local, regional, territorial, or other authority having jurisdiction or authority over, or in respect of, the Land or the Premises or their use;

"**BA**" means the Building Act 2004;

"**Building**" means any building and other improvements (including but not limited to any landscaping and paved/sealed areas) from time to time situated on the Land after Practical Completion of the Initial Development and "**Buildings**" shall be construed accordingly;

"**Building Work**" means any physical work to:

- (a) the exterior of a Building or the Premises;
- (b) the external appearance of a Building or the Premises;
- (c) external services or utilities; or
- (d) external landscaped or paved areas,

but excludes:

- (i) the Initial Development;
- (ii) any Redevelopment; and
- (iii) any minor works which do not require the consent and approval of a relevant Authority and which are in the nature of maintenance or repair of existing improvements;

"**Commencement Date**" means the commencement date of the Term as specified in Schedule A;

"**Contaminant**" has the meaning given to it in section 2 of the RMA and "Contaminate" and "Contamination" have corresponding meanings;

"**Council**" means Auckland Council and includes any successor to that body;

"**Development Agreement**" means the agreement and side letter dated 5 February 2019 and a variation agreement dated on or about the Commencement Date made between the Lessor and the Lessee providing (among other things)

*Insert instrument type*

Lease

for the carrying out of the Initial Development on the Land and the grant of this Lease;

"**GST**" means goods and services tax charged or chargeable under the Goods and Services Tax Act 1985;

"**HSWA**" means the Health and Safety at Work Act 2015;

"**Initial Development**" means the development of the Premises to be carried out by the Lessee under the Development Agreement (and referred to as the "Stage 2 Works");

"**Land**" means the land specified in Schedule A;

"**Lease**" means this lease and any Schedule attached to and forming part of this lease;

"**Lessee**" means the lessee named on the front page of this Lease and includes that party's executors, administrators, successors and assigns and, where not repugnant to the context, includes the servants and agents of the Lessee;

"**Lessor**" means the lessor named on the front page of this Lease and that party's executors, administrators, successors and assigns and, where not repugnant to the context, includes the servants and agents of the Lessor;

"**Marine Use**" means the haulage, storage, repair, maintenance, refurbishment and painting of vessels, boat building, marine engineering and associated trades, vessel commissioning, operating lifting machinery, vessel concierge and brokerage (all as those uses change and evolve to respond to market dynamics over time) together with any ancillary and complimentary commercial and retail uses as permitted by the operative district or unitary plan;

"**Permitted Use**" means the permitted use specified in Schedule A;

"**PLA**" means the Property Law Act 2007;

"**Precinct Rules and Regulations**" means the rules and regulations for the Lessor's properties in Wynyard Quarter as may be varied from time to time in accordance with their terms (the current form of which is annexed as Schedule C), subject to clause 15;

"**Practical Completion**" means the date on which "Practical Completion" for the Initial Development is achieved in accordance with the Development Agreement;

"**Premises**" means the premises described in Schedule A;

"**Redevelopment**" means:

*Insert instrument type*

|       |
|-------|
| Lease |
|-------|

- (a) the demolition of the whole or any part or parts of any Building or Buildings and erection of any new Building or Buildings on the Land; and/or
- (b) the extension of any existing Building or Buildings on the Land,

in each case following Practical Completion of the Initial Development and "Redevelop" shall be construed accordingly;

"**Related Company**" has the meaning given to that phrase under the Companies Act 1993;

"**RMA**" means the Resource Management Act 1991;

"**Seawall**" means the seawall along the western boundary of the Premises;

"**Site 18**" means the land currently described as Lots 2, 3 and 4 DP 135460, comprised in CFRs NA79D/769, NA79D/770 and NA79D/771;

"**Stage 1**" has the meaning given to it in the Development Agreement;

"**Super Profit Share**" has the meaning given to it in the Development Agreement;

"**Term**" means the term of this Lease specified in Schedule A;

"**UTA**" means the Unit Titles Act 2010;

"**Working Day**" means any day of the week other than:

- (a) Saturday, Sunday, Auckland's Anniversary day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and any other statutory holiday observed in Auckland; 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;

"**Wynyard Quarter**" means that part of the City of Auckland of which the Premises forms part which as at the Commencement Date is owned by Panuku Development Auckland Limited excluding for the avoidance of doubt land held by Viaduct Harbour Holdings Limited.

### Interpretation

1.2 In this Lease, unless the context otherwise requires:

- (a) any term which corresponds to a heading in Schedule A means and includes the details inserted against that heading in Schedule A;
- (b) clause headings do not form part of this Lease and do not affect the interpretation or construction of this Lease;

*Insert instrument type*

Lease

- (c) words referring to one gender include every other gender;
- (d) words referring to the singular include the plural and vice versa;
- (e) words denoting persons include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or statutory body, in each case whether or not having separate legal identity;
- (f) any provision of this Lease to be performed by two or more persons binds those persons jointly and severally;
- (g) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute;
- (h) a reference to a clause is a reference to a clause of this Lease;
- (i) a reference in a clause to a paragraph is a reference to a paragraph of that clause;
- (j) all covenants and powers implied in leases by law apply to this Lease except to the extent that they are inconsistent with the express provisions of this Lease;
- (k) in respect of the Default Interest Rate specified in Schedule A, the applicable 90 day bank bill buy rate is that rate advised by the Lessor's bank and, if more than one such rate, then the highest rate during the relevant period;
- (l) any obligation not to do anything includes an obligation not to allow or cause that thing to be done; and
- (m) the words "include" or "including" are to be construed as meaning include or including without limitation and in interpreting this lease the *ejusdem generis* rule will not apply.

## 2. TERM

- 2.1 The Term will commence on the Commencement Date and will expire at midnight on the last day of the Term.
- 2.2 At any time after the ninetieth anniversary of the Commencement Date, the Lessee may request that the Lessor enters into negotiations in respect of a possible renewal of this Lease. Following the Lessor's receipt of such request, the parties will negotiate a possible renewal in good faith, provided that nothing in this clause shall require the Lessor to grant, or the Lessee to accept, a renewal of this Lease on any terms other than as may be acceptable to both parties in their sole and absolute discretion.

## 3. RENT PREPAYMENT

- 3.1 The parties acknowledge that the Lessee has pre-paid the Rental under this Lease for the full duration of the Term pursuant to the Development Agreement

*Insert instrument type*

Lease

and the Lessee will not be required to pay any further rental (except for the Super Profit Share) during the Term.

3.2 The Lessee acknowledges that the pre-paid Rental is non-refundable in all circumstances, including the valid termination of this Lease by the Lessor in accordance with clause 21.

#### 4. SUPER PROFIT SHARE

4.1 The Lessee shall ensure that the Super Profit Share is paid in accordance with the terms of the Development Agreement.

#### 5. OUTGOINGS

5.1 The Lessee must during the Term punctually pay:

(a) all rates assessed, levied or payable to any Authority on or in respect of the Premises;

(b) all taxes, charges, assessments, levies, duties, impositions and fees at any time or from time to time payable to any Authority in respect of the Premises irrespective of the ownership of the Land or paid or payable by the Lessor in respect of the receipt of money or the provision of services pursuant to this Lease (but excluding Lessor's income tax or any other tax duty or levy assessed in respect of the Lessor's profits, income, or capital gains and any other tax payable by the Lessor as a result of any disposition of or dealing with the reversions of this Lease).

5.2 If the Lessor is assessed for current land tax or any tax in the nature of a land tax during the Term, the Lessee must pay to the Lessor on demand such portion of that tax as the value of the Land bears to the total value of all land included in the Lessor's assessment for the tax.

5.3 For the purposes of clause 5.2:

(a) "**value**" means the land value of the Land as shown in the district valuation roll maintained under the Rating Valuations Act 1998. However, if the Land is not separately valued, "value" will mean the same proportion of the total land value of the separately valued land of which the Land forms part as the area of the Land bears to the total area of the land included in such valuation; and

(b) the tax will be deemed to be due in the same manner as rates and to be a liability throughout the financial year during which it is first due and will be apportioned between the Lessor and the Lessee in respect of periods current at the Commencement Date and at the end of the Term.

5.4 In accordance with section 11(1)(b) of the Local Government (Rating) Act 2002, the name of the Lessee must be entered, as the ratepayer in respect of the Premises, in the rating information database and the district valuation roll of each Authority having power to assess and levy rates in respect of the Premises.

*Insert instrument type*

Lease

- 5.5 The outgoings referred to in clause 5.1 will be apportioned between the Lessor and the Lessee in respect of periods current at the Commencement Date and at the expiry of the Term (or earlier termination).
- 5.6 The Lessee's liability to pay outgoings during the Term (up to the date of expiry or earlier termination of the Term) continues despite the expiry or earlier termination of the Term.
- 5.7 The Lessee must punctually pay all charges in respect of all services, utilities and amenities supplied to, or used by, the Lessee on the Premises. Subject to clause 29, the Lessee will indemnify the Lessor against any liability in respect of such charges. Without limiting the effect of the preceding sentence, the Lessee's obligations under this clause extend to the following services, utilities and amenities:
- (a) electricity;
  - (b) water and wastewater;
  - (c) gas;
  - (d) telecommunications rents and charges;
  - (e) line or system charges associated with the foregoing utilities;
  - (f) rubbish collection charges; and
  - (g) New Zealand Fire Service charges.
- 6. GST**
- 6.1 Subject to the Lessor providing the Lessee a valid tax invoice pursuant to the Goods and Services Tax Act 1985 in respect of any GST payable pursuant to this clause, the Lessee must pay to the Lessor all GST (if any) payable by the Lessor in respect of payments payable under this Lease by the Lessee. The GST in respect of the Rental will be payable on the due date for payment and in respect of any other payment will be payable upon demand.
- 6.2 If the Lessee defaults in the payment of money payable under this Lease, and the Lessor becomes liable to pay additional GST, then the Lessee must pay any resulting additional tax to the Lessor upon demand.
- 7. INITIAL DEVELOPMENT, REDEVELOPMENT AND ALTERATIONS**
- 7.1 The Lessee must carry out and complete (or procure the carrying out and completion of) the Initial Development in accordance with the Development Agreement.
- 7.2 If, after having completed the Initial Development, the Lessee desires to carry out a Redevelopment on the Land, the Lessee must:
- (a) subject to clause 7.10, prior to carrying out any work, submit to the Lessor for approval the preliminary design and outline specification for the proposed Redevelopment (**Redevelopment Design**) such approval

## Annexure Schedule

Page 9

*Insert instrument type*

Lease

not to be unreasonably withheld or delayed where the Redevelopment Design is:

- (i) consistent with and does not detract from the overall nature and quality of other buildings in Wynyard Quarter;
  - (ii) is of a similar or better standard than the design of the Initial Development (in terms of quality, performance and durability);
  - (iii) consistent with the district plan in place at that time for that part of Wynyard Quarter in which the Premises are located and the Lessee will not, without prior written approval of the Lessor, promote a private plan change.
- (b) obtain all necessary consents and approvals for the intended Redevelopment from all relevant Authorities;
- (c) subject to the Lessor's prior approval being obtained under clause 7.2(a), at the Lessee's expense and to the reasonable satisfaction of the Lessor, carry out the Redevelopment in accordance with:
- (i) the approved plans, elevations, sections and specifications (save for any necessary changes to those plans and specifications as a result of the approval process referred to in clause 7.2(b) which are approved by the Lessor (acting reasonably));
  - (ii) the BA and the building code;
  - (iii) any applicable regulations of all relevant Authorities; and
  - (iv) the general law for the time being in force;
- (d) undertake the Redevelopment in a good and workmanlike manner and procure the issue of a code compliance certificate (where applicable) in accordance with the BA in respect of the building or alteration works; and
- (e) ensure that any contractors for any Redevelopment have appropriate contractor's all risk insurance in place as well as public liability cover to a level that is appropriate (in the reasonable opinion of the Lessee) for the Redevelopment.
- 7.3 Within 20 Working Days of receipt of the Redevelopment Design under clause 7.2(a), the Lessor must provide to the Lessee a notice stating that the Lessor either:
- (a) accepts the Redevelopment Design; or
  - (b) objects to the Redevelopment Design. Any such objection notice must specify details as to why the Lessor objects to the Redevelopment Design and must include constructive suggestions for revising the Redevelopment Design.

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- 7.4 If the Lessor gives a notice in accordance with clause 7.3(b), the parties will within 20 Working Days of the Lessee's receipt of such notice endeavour to agree revisions to the Redevelopment Design. Failing agreement, either party may serve notice requiring the dispute or difference to be determined by an expert pursuant to clause 28.
- 7.5 If the Lessee does not receive a Lessor's notice of objection of the Redevelopment Design within the timeframe specified in clause 7.3, then the Lessee may serve a warning notice (**Warning Notice**) on the Lessor advising the Lessor that a failure by the Lessor to object to the Redevelopment Design within a further 2 Working Days following the Lessor's receipt of the Warning Notice will constitute a deemed approval of the Redevelopment Design by the Lessor. The Lessor shall be deemed to have waived its right to object to (and accordingly shall be deemed to have approved) the Redevelopment Notice if (and only if) the Lessor has not issued a notice of objection within 2 Working Days of the date of receipt of the Warning Notice by the Lessor.
- 7.6 The Lessor will provide all such assistance and support to the Lessee in obtaining all necessary consents for a Redevelopment including presenting submissions in support of a resource consent application for the Redevelopment and (if requested) being present at any meetings or discussions with any relevant Authorities and interested parties and the Lessor will not object to any such resource consent application. The Lessor will not be obliged to provide assistance or support if that involves the spending of money by the Lessor, unless the Lessee has agreed to meet such costs. The Lessor will not be responsible nor have any liability to the Lessee for any outcomes in relation to the consenting process.
- 7.7 No Building Work may be undertaken by the Lessee other than:
- (a) in compliance with all relevant statutory and regulatory requirements; and
  - (b) subject to clause 7.10, with the prior written approval of the Lessor (such approval not to be unreasonably withheld).
- 7.8 Prior to commencing any Building Work or any Redevelopment, the Lessee must provide to the Lessor information and details on the following in respect of the proposed Building Work:
- (a) hours of work;
  - (b) measures to be taken to minimise nuisance;
  - (c) control and monitoring of noise levels;
  - (d) hoarding, scaffolding and temporary works;
  - (e) material damage insurance;
  - (f) public liability insurance; and
  - (g) contractors.

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- 7.9 The Lessee must draw the Precinct Rules and Regulations to the attention of the contractor or contractors carrying out the Building Work or any Redevelopment and must procure that they comply with the relevant requirements contained in the Precinct Rules and Regulations.
- 7.10 Notwithstanding any other provision of this Lease, the Lessor's approval pursuant to clause 7.2(a) (in respect of any Redevelopment) and/or 7.7(b) (in respect of any Building Work) shall not be required where such works:
- (a) are required as a result of damage or destruction and will be limited to reinstatement of the Building(s) (or relevant part(s) thereof) situated on the Land immediately prior to such damage or destruction in accordance with its previously approved design; and
  - (b) are required as a result of the operation of clause 9 and will be limited to repair and/or replacement of an existing Building in accordance with its previously approved design.
- 7.11 The Lessee may, without requiring the consent of the Lessor, undertake any alterations or other works which do not comprise either Building Work or a Redevelopment provided that the Lessee undertakes such works in a good and workmanlike manner and in compliance with all relevant statutory and regulatory requirements.
- 8. DEVELOPMENT CONTRIBUTIONS**
- 8.1 The Lessee will pay the development and financial contributions set by the Council as they apply to all and any works undertaken by the Lessee under clause 7.
- 9. MAINTENANCE**
- 9.1 The Lessee must keep all Buildings in good clean order repair and condition and as close as reasonably practicable to the condition they were in on the date they were first completed. The obligations in this clause will not apply during:
- (a) the construction period of the Initial Development; or
  - (b) the construction period of any Redevelopment (save that this exception will not apply to any existing Buildings which are not subject to the Redevelopment).
- 9.2 The Lessee will replace or renew all Buildings on an as needed basis in order to keep the Buildings (or any part or parts thereof) as close as reasonably practicable to the level of functionality applicable to them on the date they were first completed.
- 9.3 The Lessee must carry out any works necessary to ensure the stability of the Land and to prevent any subsidence.
- 9.4 The Lessee must keep any landscaped area (including planter boxes and pots) forming part of the Premises in a neat, clean and tidy condition with all weeds regularly removed and plant maintenance (pruning, trimming etc.) undertaken on a regular basis.

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- 9.5 The Lessor may by the Lessor's employees or agents at all reasonable times during the Term enter upon the Premises to view their condition and state of repair provided that:
- (a) the Lessor must first give reasonable prior written notice to the Lessee and must be accompanied by a representative of the Lessee and must comply with the Lessee's security and safety requirements;
  - (b) the Lessor shall only exercise this right if it has justifiable reasons to believe that the Lessee's obligations in clauses 9.1, 9.2, 9.3 and/or 9.4 are not being met;
  - (c) the right under this clause will be subject to the rights of any occupational tenants of the Premises (provided that the arrangement with such occupational tenants will preserve the Lessor's rights under this clause) and the Lessor shall cause as little interference, inconvenience or damage to the Premises and its occupiers; and
  - (d) the Lessor will, without delay, make good any damage caused to the Premises or any property of any occupier as result of exercising this right; and in relation to the inspection of the interior of any residential apartment, the Lessor must consider (acting reasonably) that it is necessary to enter into the residential apartment in order to properly assess the Lessee's compliance with its obligations in clauses 9.1, 9.2, 9.3 and/or 9.4 (but in doing so, the Lessor shall cause as little interference, inconvenience or damage as reasonably practicable).
- 9.6 If the Lessor, following an inspection under clause 9.5, serves the Lessee with notice alleging a breach of the Lessee's obligations under clauses 9.1, 9.2 9.3 and/or 9.4 and specifying any works required by the Lessor, and if the Lessee has not within a reasonable time (having regard to the extent and nature of the work required) remedied the breach set out in the Lessor's notice, then without prejudice to the Lessor's other rights and remedies, the Lessor may by the Lessor's employees or agents with all necessary equipment enter the Premises to carry out the works specified in the Lessor's notice subject to the same proviso as set out in clause 9.5. All money reasonably incurred by the Lessor in carrying out the works will be payable by the Lessee to the Lessor upon demand together with interest on that money at the Default Interest Rate from the date of expenditure to the date of payment.
- 9.7 The Lessee shall throughout the Term, put, keep and maintain in good order, condition and repair the Seawall and this obligation shall in necessary, extend to replacing the whole or any part of the Seawall.
- 10. YIELD UP OBLIGATION**
- 10.1 Subject to the provisions of clause 10.3, the Lessee will on the expiration of the Term or sooner determination of this Lease surrender and yield up to the Lessor the Land and Premises in a clean and tidy condition consistent with performance of the Lessee's obligations under clause 9 and free from any rubbish and debris. The Lessor will not be required to compensate the Lessee for any part of the Premises yielded up under this clause.

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- 10.2 Following the expiry of the Term (by the effluxion of time), the Lessee will not be obliged to remove any of the Buildings then existing on the Land.
- 10.3 Despite anything contained in this Lease, if this Lease is cancelled or determined prior to the Expiry of the Term, the Lessor may serve written notice on the Lessee within 20 Working Days following cancellation and/or determination of the Lease (as applicable) requiring the Lessee to remove one or more (but not part) of the Buildings then existing on the Land.

If the Lessor serves a notice under this clause, the Lessee must, at the Lessee's expense, remove the relevant Buildings from the Land identified in the Lessor's notice and yield up the Land to the Lessor clear of all rubbish and debris. The Lessor may not require the Lessee to remove selected parts of a Building but may require the Lessee to remove selected whole Buildings on the Land. After any demolition and removal the materials comprised in the Building(s) removed from the Land will remain the sole and exclusive property of the Lessee. The demolition, removal and reinstatement works must be completed within a reasonable period of time following the expiry or earlier termination of the Lease (having regard to the extent and nature of the work required) and no rent and/or outgoings will be payable by the Lessee in respect of the Premises during that period. In the event that the Lessor does not serve written notice on the Lessee requiring the Lessee to remove a particular Building from the Land (in accordance with this clause), then the Lessee shall leave that Building remaining on the Land and ownership of that Building shall vest in the Lessor absolutely without any compensation being paid to the Lessee.

## 11. INSURANCE

- 11.1 Subject to clause 11.2, the Lessee will, following Practical Completion of the Initial Development, effect and keep current a policy of insurance insuring all Buildings and other insurable improvements on the Land to their full replacement value against destruction or damage from such risks as are commonly insurable in the New Zealand market at that time. The insurance must note the interest of the Lessor and must be effected with a responsible insurer.
- 11.2 If insurance cover of the kind referred to in clause 11.1 is or becomes generally unavailable in the insurance market during the Term other than because of the Lessee's act or omission, the Lessee will not be in breach of this Lease while such insurance cover remains unavailable, provided the Lessee uses all reasonable endeavours on an ongoing basis to obtain insurance cover. The Lessee will advise the Lessor in writing whenever insurance cover becomes unavailable and provide reasons as to the unavailability.
- 11.3 Subject to clause 11.3 and 11.4, if any Buildings or other improvements on the Land are destroyed or damaged, the Lessee must as soon as is reasonably practicable reinstate or repair the Buildings or other improvements so destroyed or damaged and all money received under the insurance must be applied in such reinstatement or repair. If the insurance money is insufficient to meet the cost of the reinstatement or repair then the Lessee shall not be obliged to make up the balance.
- 11.4 If:

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- (a) for any reason, the obligation of the Lessee to reinstate referred to in clause 11.3 is frustrated or becomes impossible to perform (including where a permit or consent is not obtainable on reasonably acceptable terms despite the Lessee having used all reasonable endeavours to obtain that permit or consent); or .
- (b) the damage or destruction of any Buildings is substantial and either:
  - (i) the insurance proceeds are insufficient to cover the cost of reinstatement (less any deductible) (despite the Lessee having complied with its obligations under clause 11.1 and having used all reasonable endeavours to pursue any claim); or
  - (ii) such damage or destruction occurs during the last 20 years of the Term,

then the Lessee may terminate this Lease on serving written notice on the Lessor (in which case the Lessee will be entitled to retain the proceeds of insurance). Upon termination of the Lease under this clause 11.4, the Lessee's yield obligations will be limited to removing all relevant Buildings from the Land and yielding up the Land clear of all rubbish and debris. If the Lessee does not exercise its right to terminate under this clause 11.4 within 6 months following:

- (c) in respect of clause 11.4(a), the date on which the Lessee becomes aware that the obligation of the Lessee to reinstate referred to in clause 11.3 is frustrated or becomes impossible to perform; or
- (d) in respect of clause 11.4(b), the date on which the outcome of its insurance claim is confirmed,

then it will lose the right to terminate under this clause 11.4 and must either reinstate under clause 11.3 or carry out a Redevelopment as soon as is reasonably practicable in accordance with clause 7.

- 11.5 The provisions of clause 7 will apply to any reinstatement under clause 11.2 (as if the reinstatement was a Redevelopment) but the Lessee is not required to obtain the Lessor's approval under clause 7 if and to the extent that the Lessee is simply reinstating the damaged or destroyed Building.
- 11.6 The Lessee shall keep current at all times during the continuance of this Lease a policy of public risk insurance appropriate to the Land and the use of the Land.
- 11.7 For the purposes of section 271 of the Property Law Act 2007, the Lessee acknowledges and agrees that:
  - (a) the Lessor has not insured the Premises against destruction or damage arising from fire, flood, explosion, lightning, storm, earthquake or volcanic activity; and
  - (b) the Lessee, subject to the provisions of section 271(2)(a) – (c) of the Property Law Act 2007 and clauses 11.3 and 11.4 of this Lease, will meet the cost of making good any destruction or damage to the Premises.

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11.8 The Lessee will provide written evidence of all insurances (in the form of certificates of currency from the insurance company and not the broker) to the Lessor when reasonably requested by the Lessor.

## 12. FENCING

12.1 Any fencing erected by the Lessee must comply with the requirements of the Fencing Act 1978. The Lessee must not claim any contribution from the Lessor to such fencing.

12.2 The Lessor will not be liable to contribute to the cost of erecting or maintaining any fence between the Land and any adjoining land owned by the Lessor.

12.3 The covenant in clause 11.2 does not operate for the benefit of any subsequent purchaser or lessee of the adjoining land.

## 13. LAND STATUS

13.1 The Lessee acknowledges that:

- (a) the Land has been reclaimed from the sea and is contaminated;
- (b) the Lessor has made no representation, express or implied, that:
  - (i) the Land is stable or suitable for building;
  - (ii) the Land is, or will remain, suitable or adequate for use by the Lessee;
  - (iii) any use of the Land by the Lessee will comply with the by-laws or rules of the Council's district plan or other requirements of the Council or of any other Authority.

13.2 The Lessee covenants with the Lessor that the Lessee will not make any claim against the Lessor for any loss, resulting directly or indirectly from subsidence or instability or contamination of the Land and (subject to clause 29) will indemnify the Lessor against all claims, suits, damages, costs and expenses which may be brought against or suffered by the Lessor, by persons suffering any loss or damage resulting directly or indirectly from any subsidence or instability or contamination of the Land provided that the Lessor shall take all reasonable steps to mitigate any loss, liability or damage it may suffer and will not admit liability, settle or compromise any claim without the Lessee's consent (such consent not to be unreasonably withheld or delayed).

13.3 Subject to clause 11.4, the Lessee acknowledges that it has no right to cancel this Lease (or suspend, withhold or reduce any payments due under the Lease) on any ground (including but not limited to frustration) even if:

- (a) the whole or any part or parts of the Land are no longer suitable or adequate for use by the Lessee (for any reason whatsoever);
- (b) the whole or any part or parts of the Building(s) erected on the Land have been damaged or destroyed and it is not possible to reinstate (for

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any reason) or the Lessee's insurance proceeds are insufficient to enable the Lessee to reinstate; and/or

- (c) it otherwise becomes impossible or impractical to access or otherwise occupy the Land.

#### **14. USE**

14.1 The Lessee must use the Premises only for the Permitted Use.

14.2 The Lessor does not in any way warrant that the Land is or will remain suitable or adequate for any of the purposes of the Lessee and to the fullest extent permitted by law all warranties as to suitability and to adequacy implied by law are expressly negated. If any purpose of the Lessee is permissible only with the consent of an Authority under any statute, ordinance, regulation, by-law, or other enactment, or order of Court, the Lessee must obtain such consent at the sole cost of the Lessee including, but not limited to, the cost of complying with any conditions of any such consent.

14.3 In using the Premises the Lessee must fulfil all obligations that might otherwise fall on the Lessor, as the owner of the Land, under the RMA, the HSWA, the BA or any other statute or regulatory requirement save for those obligations which the Lessor has expressly assumed under the Development Agreement or the Lease.

14.4 The Lessee must not:

- (a) do anything or suffer or allow anything to be done on the Premises that may be or grow to be a nuisance, disturbance or annoyance to the Lessor or any other person and the Lessee will generally conduct the Lessee's activities on the Premises in a clean, quiet and orderly manner free from damage, nuisance, disturbance or annoyance to the Lessor or any other person;
- (b) use the Premises or suffer or allow them to be used for any noisome, noxious, illegal or offensive activity;
- (c) use the Premises or suffer or allow them to be used as a brothel, sex shop, strip club, or pawn shop;
- (d) bring, or permit to be brought, on to the Premises any material of a dangerous, flammable, or explosive nature without first complying with all laws then in force relating to the handling and storage of such materials,

except that nothing in this clause 14.4 shall prevent (or be deemed to prevent) the operation of the Lessee's business and the conducting of the Permitted Use if:

- (e) the Lessee's activities are consistent with the activities it is entitled to undertake pursuant to this Lease;

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- (f) any permitted development activity or permitted activity post-development is consistent with then current industry standards and practice;
  - (g) the relevant activity does not amount to a default of any condition of any consent or any other statutory or regulatory requirements, is not an actionable nuisance or other tort or legal offence, and is not inconsistent with any of the other contractual obligations owed to the Lessor.
- 14.5 The Lessee will at all times comply with all statutes ordinances regulations by-laws or other enactments affecting or relating to the use of the Premises, with all requirements which may be given by any Authority and the requirement of any applicable resource consents and the Lessee will (subject to clause 29) keep the Lessor indemnified in respect of any non-compliance by the Lessee (except where such obligation or requirement has been expressly assumed by the Lessor under the Development Agreement or this Lease).
- 14.6 Without limiting any additional obligations set out in this Lease, the Lessee must at all times:
- (a) comply with all health and safety legislation, regulations, applicable codes of practice and standards, the Lessor's reasonable health and safety policies and procedures, and any standard operating procedures;
  - (b) ensure that it, takes all practicable steps to ensure the health and safety of all personnel of the Lessee, and any other persons on the Premises, including service providers, the public, and visitors;
  - (c) have, and keep current, all relevant health and safety qualifications;
  - (d) keep full records and documentation in relation to its use and occupation of the Premises and immediately provide the Lessor with information about any health and safety matters relating to the Premises and its use and occupation of the same, if requested;
  - (e) comply with all reasonable directions required by law and given by the Lessor in relation to health and safety in connection with the Premises and the Lessee's occupation of the same;
  - (f) so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities (as regards health and safety) at the Premises with the Lessor;
  - (g) facilitate engagement between the parties (and/or its designees) in relation to work health and safety matters;
  - (h) ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately;
  - (i) notify the Lessor of any:
    - (i) "notifiable event" (as defined in the HSWA);

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- (ii) near miss, or exposure the Lessee becomes aware of in the course of its occupation and use of the Premises; or
  - (iii) WorkSafe inspection, investigation or information request in connection with the Premises,  
and provide the Lessor with such assistance and information as the Lessor deems necessary to conduct an investigation into any such incident; and
  - (j) if requested by the Lessor, undertake a site specific risk assessment and prepare and submit to the Lessor a site specific safety plan for its use and occupation of the Premises.
- 14.7 The Lessor (or its representatives) may carry out an audit of the Lessee to ensure compliance with all obligations set out under clause 14.6. The Lessee must:
- (a) actively cooperate and participate in any health and safety audits carried out by the Lessor;
  - (b) provide all necessary access and information required by the Lessor in relation to the audit and any other health and safety monitoring; and
  - (c) take all reasonable steps to immediately rectify any issues raised by the Lessor.
- 15. PRECINCT RULES AND REGULATIONS**
- 15.1 The Lessee must comply with and observe the Precinct Rules and Regulations. The Lessee must ensure that its sublessees, licensees and invitees are also required to comply with the Precinct Rules and Regulations.
- 15.2 The Lessor will not make any changes to the Precinct Rules and Regulations without consulting with the Lessee. The Lessor must not make any changes which materially affect the Lessee's (or any sublessee's or occupier's) use and enjoyment of the Premises or impose obligations and/or restrictions on the Lessee (or any other sublessee or occupier of the Premises) which are materially more onerous than the initial Precinct Rules and Regulations. The Lessor must not vary the Precinct Rules and Regulations to derogate from grant.
- 15.3 The Lessor will use all reasonable endeavours to ensure (but only to the extent that the Lessor is able to do so) that the other lessees and occupiers of the Lessor's properties in Wynyard Quarter comply with the Precinct Rules and Regulations.
- 16. NAMING RIGHTS AND SIGNAGE RIGHTS**
- 16.1 The Lessor grants to the Lessee (on a rent free basis) the exclusive right to name the Land and the Premises and install any signage on any part of the Land and the Premises from the Commencement Date for the Term of the Lease. The name selected by the Lessee and any signage installed by the Lessee will be subject to the Lessor's prior written approval (such approval not to be unreasonably withheld or delayed provided that the name and/or the signage is not offensive or inflammatory and is not in breach of any statutory or regulatory

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requirement). The Lessee will be entitled to assign or transfer the naming and signage rights in respect of the Land and the Premises to any lawful sub lessee of the Land.

- 16.2 Where the Land and/or Premises have been named in accordance with this clause 16, the Lessor will refer to the name of the Land and/or Premises on all of the Lessor's information relating to the Land and/or Premises. The Lessor shall (if required by the Lessee use the logo of the Lessee and/or the sub lessee with the benefit of the naming rights (including colour scheme, design, and branding associated with that party and its corporate image) in all signage and references to the Land and/or Premises (including, without limitation, references in any publications, advertisements or other media).

#### **17. ASSIGNMENT OR SUBLETTING**

- 17.1 The Lessee must not assign the whole or any part or parts of the Premises prior to Practical Completion of the Initial Development save as permitted by and in accordance with the requirements of the Development Agreement.

- 17.2 Subject to clause 17.1, the Lessee may assign, sublet, mortgage, charge or part with possession of the Premises or any part of the Premises provided that:

- (a) the Lessee must not assign part only of the Premises;
- (b) in the case of any assignment of the whole of the Premises following Practical Completion of the Initial Development the Lessee must:
  - (i) first obtain the prior written approval of the Lessor which approval must not be unreasonably withheld or delayed; and
  - (ii) deliver to the Lessor, a deed of covenant executed by the assignee in favour of the Lessor under which the assignee agrees at all times during the remainder of the Term to comply with all the Lessee's obligations under this Lease and the delivery of the deed of covenant will release the Lessee from the Lessee's liability and obligations to observe and perform the Lessee's covenants and conditions under this Lease (save as to any antecedent breach);
- (c) the Lessee must not sublease the whole or any part or parts of the Premises for a term (including any rights of renewal or extension) in excess of 35 years less one day;
- (d) the Lessee must not sublease the whole or any part or parts of the Premises unless that sublease is a bona fide occupational sublease;
- (e) in the case of a sublease of the Premises of over 2000m<sup>2</sup>, or any mortgage or charge, the Lessee must notify the Lessor of the identity of the sublessee, mortgagee or charge holder.

- 17.3 Where the Lessee enters into a sublease, licence or other occupation arrangement in respect of all or part of the Land, the Lessor acknowledges and agrees that the Lessee shall be entitled to place restrictions on or permit any

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subsequent transfer, assignment or other dealing with such sublease, licence or other occupation arrangement without the consent of the Lessor.

- 17.4 Any change in the shareholding of the Lessee altering the effective control of the Lessee (or in the shareholding of any entity, other than a company or trust listed on any recognised stock exchange), so that ultimate control is not exercised by any one of those entities exercising control at the Commencement Date, shall be deemed to be an assignment and the provisions of sub-clauses 16.1 and 16.2 will apply.

## **18. SUBDIVISION**

- 18.1 Subject to the provisions in this clause 18, the Lessee must not subdivide the Lessee's leasehold interest in the Land in accordance with the RMA or UTA or otherwise and will not be entitled to call on the Lessor to subdivide its fee simple interest in the Land in accordance with the RMA or UTA or otherwise.

- 18.2 Notwithstanding the prohibition in clause 18.1, following Practical Completion of the Initial Development the Lessee may subdivide the Lessee's interest in the Land in accordance with the UTA. Upon such subdivision of the Lessee's interest in this Lease in accordance with the UTA, the Lessor agrees to release the body corporate (but not the original Lessee or any prior Lessee) from liability to meet any obligation under the Development Agreement not then fulfilled or properly fulfilled subject to satisfaction of the following conditions:

- (a) Practical Completion must have been achieved in accordance with the requirements of the Development Agreement; and
- (b) the rent prepayment amounts contemplated by clauses 10.1 and 10.2 of the Development Agreement and the Super Profit Share must have been paid in full to the Lessor in accordance with the terms of the Development Agreement.

- 18.3 If the Lessee subdivides its interest in the Land in accordance with the UTA:

- (a) The Lessee will ensure that the initial body corporate manager and any replacement during the Term is reputable and suitably qualified and shall keep the Lessor informed as to the identity of the body corporate manager;
- (b) The Lessee will on request provide the Lessor with copies of any notices, minutes or plans issued or prepared in relation to the body corporate; and
- (c) The Lessee will ensure that the body corporate maintains and implements a long term maintenance plan at all times during the Term which is consistent with good building management and compliance with the repairing and maintenance obligations contained in this Lease and shall provide a copy to the Lessor from time to time on request.

- 18.4 Following Practical Completion of the Initial Development and Stage 1, the Lessee may require on one occasion only, a fee simple boundary adjustment or fee simple subdivision between Stage 1 and the Land such that any part of the Land that is used for the Marine Use may be incorporated within Stage 1 (it being

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acknowledged that such boundary adjustment or subdivision may result in lots having a reduced level(s) so as to enable ground level Marine Uses to be included within Stage 1) provided always that the Lessee obtains the Lessor's approval (which approval will not be unreasonably withheld or delayed). The Lessor acknowledges that until such time as the fee simple boundary adjustment or fee simple subdivision contemplated by this clause 18.4 has been completed, the Permitted Use shall include Marine Uses.

- 18.5 Following any approval of a subdivision pursuant to clause 18.5, the Lessee and not the Lessor will be responsible for carrying out the subdivision (entirely at the Lessee's cost) with the Lessor's involvement being limited to approving certain matters pursuant to clause 18.8 and providing additional assistance pursuant to clause 18.9. The Lessee will indemnify the Lessor for any costs incurred by the Lessor in connection with the proposed subdivision.
- 18.6 Following completion of a subdivision in accordance with clause 18.5 that clause will be deemed to be deleted from this Lease. In carrying out any subdivision under clause 18.5, the Lessee must obtain all relevant Authority consents as required by the RMA and must comply with the terms and conditions of such consents, and any other relevant laws.
- 18.7 In preparing and completing any such subdivision pursuant to this clause 18, the Lessee must obtain the Lessor's written consent (not to be unreasonably withheld) to the following:
- (a) the grant, reservation or receipt of the benefit of any easements, building line restrictions, covenants, encumbrances, rights or other obligations in respect of the fee simple interest in the Land and;
  - (b) the terms and conditions on which any such instruments or interests may be granted,
- the Lessor acknowledging that in particular the Lessee intends to register a no complaints covenant so as to expressly permit the Marine Uses undertaken on Stage 1.
- 18.8 Subject to clause 18.8, the Lessor will provide all consents, sign all documentation (including without limitation, plans, consent applications, title documentation and instruments) and otherwise do all acts matters and things necessary to facilitate and effect any subdivision in accordance with this clause 18).
- 18.9 If at any time the Lessee exercises its rights to require a boundary adjustment in terms of clause 18.5 then immediately following completion of that boundary adjustment:
- (a) the Lessor will surrender and the Lessor will accept the surrender of that part of the Land subject to this Lease that is to be included in the Stage 1 Lease (*Surrendered Premises*); and
  - (b) the Lessor and the Lessee will enter into a variation of this Lease to remove the Surrendered Premises from the Premises demised by this Lease.

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18.10 Each of the new leases will preserve the liability of the Lessee under the surrendered Lease that accrued prior to the date of surrender insofar as such liability relates to the premises demised by that new lease.

**19. INTEREST ON UNPAID MONEY**

19.1 If the Lessee defaults in payment of any money payable under this lease for 10 Working Days, then the Lessee shall pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment down to the date of payment.

**20. COSTS**

20.1 The Lessee will pay the Lessor's proper legal costs (as between solicitor and client) of and incidental to the lawful enforcement or attempted enforcement of the Lessor's rights, powers and remedies under this Lease in respect of a breach by the Lessee of its obligations under this Lease.

**21. DEFAULT**

21.1 The Lessor may cancel this lease by re-entering the Premises at any time if:

- (a) the payment of the Super Profit Share is in arrears for 60 Working Days after the due date for payment and the Lessee has failed to remedy that breach within 60 Working Days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007; and
- (b) the Lessor has first served 60 Working Days' notice on any subtenant or mortgagee of the Land (the details of whom have been provided in writing by the Lessee to the Lessor) so as to allow them an opportunity to take steps to remedy the breach,

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

21.2 If at any time prior to Practical Completion in respect of the Initial Development, the Lessor becomes entitled to terminate and does terminate the Development Agreement (either in whole or in relation to the Premises only) in accordance with its terms, the Lessor may cancel this Lease by re-entering the Premises, and any notice provided by the Lessor in accordance with the Development Agreement shall be deemed to constitute notice in accordance with section 245 of the Property Law Act 2007.

21.3 In addition to clauses 21.1 and 21.2, the Lessor may cancel this Lease where:

- (a) the Lessee is in material breach of the Lessee's obligations under this Lease and, the Lessee has failed to remedy that breach within a reasonable period of time having regard to the nature of the breach (but in any event not less than 40 Working Days (subject to clause 20.4)) of receiving written notice served on the Lessee by Lessor; and
- (b) the Lessor has first:

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- (i) served not less than 20 Working Days' notice on any subtenant, or mortgagee of the Land (the details of whom have been provided in writing by the Lessee to the Lessor) so as to allow them an opportunity to take steps to remedy the breach; and
- (ii) obtained an order of the court for possession of the Land in accordance with section 244 of the PLA,

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

21.4 The period of 40 Working Days referred to in clause 21.3(a) will be reduced to 15 Working Days where the Lessee:

- (a) being a natural person:
  - (i) is declared bankrupt or insolvent according to law; or
  - (ii) assigns his or her estate or enters into a deed of arrangement for the benefit of creditors; or
- (b) being a company:
  - (i) is or is deemed to be unable to pay the Lessee's debts under section 287 of the Companies Act 1993;
  - (ii) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Lessor);
  - (iii) is wound up or dissolved;
  - (iv) enters into any assignment or other compromise or scheme of arrangement with the Lessee's creditors or any class of the Lessee's creditors;
  - (v) has a receiver, manager or receiver and manager appointed relating to any of the Lessee's assets; or
  - (vi) has an application made to a court for, or a resolution proposed for, or any other step is taken in anticipation of, the appointment of an administrator or has an administrator appointed.

21.5 The parties acknowledge that the provisions of this clause 21 will be in addition to any rights granted to the Lessee, mortgagee or charge holder under the PLA.

## 22. REPUDIATION

22.1 Subject to clause 29, the Lessee will compensate the Lessor and the Lessor will be entitled to recover damages for any loss or damage suffered by reason of any

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acts or omissions of the Lessee constituting a repudiation of the Lease or the Lessee's obligations under the Lease. The Lessor's entitlement to recover damages will subsist despite any determination of the Lease and shall be in addition to any other right or remedy which the Lessor may have.

**23. QUIET ENJOYMENT**

23.1 Until the expiry or earlier termination of the Lease, the Lessee (if complying with the Lessee's obligations under this Lease) will quietly hold and enjoy the Premises without any improper interruption by the Lessor or any person claiming under the Lessor.

**24. LESSEE TO OCCUPY AT OWN RISK**

24.1 The Lessee will occupy and use the Premises at the Lessee's sole risk and releases the Lessor (to the full extent permitted by law) from all claims and demands of any kind and from all liability which in each case arise in respect of any accident, damage, or injury occurring to any person or any property in or about the Premises.

**25. GENERAL INDEMNITY**

25.1 Subject to clause 29, the Lessee will indemnify and hold harmless the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor shall or may be or become liable in respect of and arising from:

- (a) any failure by the Lessee to comply with any obligation imposed on the Lessee under this Lease or by law;
- (b) loss damage, or injury from any cause to property or persons caused or contributed to by the use of the Premises by the Lessee; or
- (c) loss, damage or injury from any cause to property or persons within or without the Premises occasioned or contributed to by any act, omission, neglect, breach, or default on the part of the Lessee,

except to the extent where the same has arisen from the act, omission, neglect, breach or default of the Lessor and provided that the Lessor will take all necessary steps to mitigate any loss, liability or damage it may suffer and will not admit liability, settle or compromise any claim without the Lessee's consent.

**26. ENVIRONMENTAL INDEMNITY**

26.1 In this clause, unless the context otherwise requires:

"**Environment**" has the meaning given to it in section 2 of the RMA and includes the environment and surroundings of the Premises including, without limitation, air (whether within buildings or natural or man-made structures either above or below ground), water (whether coastal or inland water), drains and sewers, and land (whether seabed, surface land or sub-surface land).

26.2 Subject to clause 26.5, the Lessee must, at the Lessee's own expense:

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- (a) carry out the Additional Works (as defined in the Development Agreement) in accordance with the terms of the Development Agreement;
  - (b) carry out any work required to rectify any Contamination of the Land caused by the Lessee and to remediate the Land; and
  - (c) in respect of any Contamination referred to in clauses 26.2(b), comply with any requirement of any environmental, health and safety legislation affecting the Land or the Premises.
- 26.3 Subject to clause 26.5, the Lessee must not:
- (a) release or discharge any Contaminant or suffer or allow any Contaminant to be released or discharged from the Premises (regardless whether the Lessee caused the Contamination or caused the release or discharge of the Contaminant) ; or
  - (b) Contaminate the Land or the Premises or any adjoining or neighbouring properties in any way.
- 26.4 Without limiting the general indemnity in clause 25.1, subject to clause 29 the Lessee will indemnify the Lessor and keep the Lessor indemnified from and against all actions claims, demands, losses, damages, costs and expenses for which the Lessor shall or may be or become liable in respect of and arising directly from any decision of any Authority, court or tribunal (including any order, injunction or award) made in respect of any cause of action relating to:
- (a) the Land or the Premises under any environmental or health and safety legislation;
  - (b) the Environment affecting the Land or the Premises under any environmental, health or safety legislation;
  - (c) any Contaminant on, under or above the Land or the Premises under any environmental, health or safety legislation;
  - (d) any abatement notice or enforcement order under the RMA or notice to rectify under the BA in respect of the Land or the Premises,
- where such cause of action has arisen from a breach by the Lessee of the terms of this Lease or negligence on the part of the Lessee.
- 26.5 The Lessee will not be in default of its obligations under this clause 26 relating to any discharge of any Contaminant if and to the extent that the discharge does not amount to a breach of any condition of any consent or permission held by the Lessee or any other statutory or regulatory requirements, is not an actionable nuisance or other tort or legal offence, and is not the result of negligence on the part of the Lessee.
- 26.6 The Lessor acknowledges and agrees that:
- (a) the Initial Development will not result in the removal of any contamination from the Land but rather will result in containment within

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the Land, with any potential contamination discharge continuing as permitted by the permissions which the Lessee intends to maintain (whether via resource consent, discharge permit, or other equivalent permission);

- (b) it shall not require total remediation of the Land and/or a higher standard of remediation and/or removal of contamination so as to eliminate any risk of discharge from the Land in the future;
- (c) it shall not object to (or otherwise participate or encourage any other party to object to) any application by the Lessee for the permissions contemplated in clause 26.6(a) above;
- (d) it shall provide all support reasonably requested by the Lessee in connection with the Lessee's application for the permissions contemplated in clause 26.6(a) above;
- (e) it shall do all things reasonably required by the Lessee (at the Lessee's cost) in order to assist the Lessor to maintain or retain the permissions contemplated in clause 26.6(a) above,

provided always that all statutory and regulatory requirements are met by the Lessee in relation to the Initial Development and all contaminants that remain within the Land post Practical Completion of the Initial Development.

## 27. ARBITRATION

- 27.1 Unless any dispute or difference is resolved by agreement, the dispute or difference must be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996.
- 27.2 If the parties are unable to agree on the arbitrator, an arbitrator will be appointed, upon request of any party, by the president or vice-president for the time being of the New Zealand Law Society. That appointment will be binding on all parties to the arbitration and will be subject to no appeal. The provisions of article 11 of the First Schedule to the Arbitration Act 1996 are to be read subject to this clause and are varied accordingly.
- 27.3 The procedures prescribed in this clause will not prevent the Lessor from taking proceedings for the recovery of any money payable under this Lease that remain unpaid or from exercising the rights and remedies in the event of a default prescribed in clause 21.2.
- 27.4 The arbitrator may award interest at the default interest rate on any sum which is awarded to any party.

## 28. EXPERT DETERMINATION

- 28.1 **Dispute as to Decision:** This clause 28 shall apply to a dispute or difference between the parties under clause 7.4.
- 28.2 **Appointment of Expert:** The expert (who shall have been qualified in the general subject matter of building design for not less than 10 years and who shall be a

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design specialist) shall be appointed by agreement between the parties. If within 10 Working Days of the process under this clause 28 being initiated the parties have been unable to agree on the expert, then either party may request that the President of the Auckland District Law Society appoints the expert.

28.3 **Provision of Information:** Within five (5) Working Days of the appointment of the expert the parties must each provide the expert with a written submission and with any relevant supporting material in respect of the dispute. As soon as the expert has received all of the submissions the parties must exchange submissions and will have five (5) further Working Days within which to make a further written submission. The expert must then begin the determination promptly.

28.4 **Expert to act as expert:** The expert shall act as an expert and not as an arbitrator for the purposes of resolving the dispute promptly so as to avoid any delays by either party in performing their obligations under this Lease and the parties shall use reasonable endeavours to procure that the expert gives his decision, which shall be final and binding on the parties, as soon as practicable and in any event within ten (10) Working Days of receiving all submissions from the parties, and in determining the dispute the expert:

- (a) shall consider the written submissions of the parties but shall not be bound by them;
- (b) shall take into account the context of and circumstances surrounding the matters in dispute and Lease in its entirety;
- (c) shall act impartially and fairly between the parties;
- (d) may rely on his own knowledge, skill and experience in relation to the matter in dispute; and
- (e) may make his own enquiries without reference to the parties.

28.5 **Replacement Expert:** Upon any expert becoming unwilling or unable to continue in that capacity, the parties will within 10 Working Days of the parties being aware that the expert is unwilling or unable to continue in good faith agree upon a suitable replacement expert, or failing agreement, an expert to be nominated by the President of the Auckland Law Society.

28.6 **Costs:** The costs of appointing the expert and the expert's costs and disbursements in connection with their duties shall be shared between the parties to the dispute in such proportion as the expert shall determine or in the absence of such determination then equally between them.

## 29. LIABILITY

29.1 Subject to clause 29.2, notwithstanding any other provision of this Lease, neither party shall be liable to the other under or in connection with this Lease for any indirect, consequential loss or damage or any loss of business, profits or goodwill and each party shall take all necessary steps to mitigate any loss, liability or damage it may suffer as a result of a breach or non-performance by the other party of the terms of this Lease.

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- 29.2 The limitation of liability in clause 29.1 will not apply in relation to any liability on the part of the Lessee to the Lessor in respect of third party claims for which the Lessee is responsible by virtue of clauses 25.1 or 26.4, or as a result of an actionable nuisance or other tort or legal offence, provided that the Lessor takes all reasonable steps to mitigate any such liability.
- 30. NON-MERGER**
- 30.1 The obligations and warranties of the parties in the Development Agreement will not merge with the grant of this Lease.
- 31. HOLDING OVER**
- 31.1 If the Lessor permits the Lessee to remain in occupation of the Premises after the expiry or sooner determination of the Term, that occupation will be a periodic tenancy only terminable by 20 Working Days' notice and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as are expressed or implied in this Lease.
- 32. WAIVER**
- 32.1 No waiver or failure to act by either party in respect of any breach by the other operates as a waiver of any other breach.
- 33. NOTICES**
- 33.1 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 PLA in the manner prescribed by section 353 of the PLA; and
  - (b) in all other cases, unless otherwise required by sections 354 to 361 of the PLA:
    - (i) in the manner authorised by sections 352 to 361 of the PLA; or
    - (ii) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- 33.2 In respect of service under clause 30.1(b)(ii), 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; or
  - (d) in the case of email, when acknowledged by return email or otherwise in writing.

Annexure Schedule

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- 33.3 In the case of a notice to be served on the Lessee, if the Lessor is unaware of the Lessee's last known address in New Zealand or the Lessee's facsimile number, any notice placed conspicuously on any part of the Premises shall be deemed to have been served on the Lessee on the day on which it is placed.
- 33.4 A notice will be valid if given by any director, general manager, solicitor, or other authorised representative of the party giving the notice.

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**EXECUTED AS A DEED**

Executed by **AUCKLAND COUNCIL**

\_\_\_\_\_  
Director / Authorised Signatory

\_\_\_\_\_  
Director / Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Executed by **ORAMS GROUP LIMITED**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director / Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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**SCHEDULE C**  
**PRECINCT RULES AND REGULATIONS**



# **THE WYNYARD PRECINCT**

## **RULES AND REGULATIONS**

**To be attached as an annexure to each Lease/Licence**

**To be provided to all Users**



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## 1. INTRODUCTION

### 1.1 Background and purpose

- (a) The Auckland Waterfront Development Agency (known as '*Waterfront Auckland*') is responsible for the management of certain waterfront property in Auckland, including the Wynyard Precinct, on behalf of Auckland Council and the ratepayers and public of Auckland.
- (b) In order to achieve Waterfront Auckland's Vision and Objectives for Auckland's waterfront (as set out below), Waterfront Auckland has adopted these Precinct Rules, to be binding on all Users of the Wynyard Precinct.

### 1.2 Vision

Waterfront Auckland's Vision for the Wynyard Precinct is as follows:

*A world-class destination that excites the senses and celebrates our sea-loving Pacific culture and maritime history. It supports commercially successful and innovative businesses and is a place for all people, an area rich in character and activities that link people to the city and the sea.*

### 1.3 Objectives

Waterfront Auckland's Objectives for the Wynyard Precinct are as follows:

- (a) **a blue-green waterfront:** a resilient place where integrated systems and innovative approaches are taken to enhance the marine and natural ecosystems, conserve natural resources, minimise environmental impacts, reduce waste, build sustainably and respond to climate change.
- (b) **a public waterfront:** a place for all Aucklanders and visitors to Auckland, a destination that is recognised for its outstanding design and architecture, natural environmental quality, public spaces, recreational spaces, facilities and events; a place where we can express our cultural heritage and history, and celebrate our great achievements as a city and nation.
- (c) **a smart working waterfront:** attracts high-value, innovative, creative and green business and investment to achieve a significant lift in productivity, a place for authentic and gritty waterfront activities: the marine and fishing industries, water transport and port activities.
- (d) **a liveable waterfront:** a location of leading sustainable urban transformation and renewal in Auckland; the most liveable New Zealand central city urban community; a vibrant mix of residents, workers, visitors and activities. A welcoming and resilient neighbourhood that is safe, diverse and attractive, with plentiful open space and access to local services and facilities.
- (e) **a connected waterfront:** a place that is highly accessible, easy to get to and move around in, where people feel connected to the wider city and beyond by improved pedestrian and cycling linkages, fast, frequent and low-impact passenger transport, state-of-the-art telecommunications and through supportive community and business networks.

**1.4 Application of the Precinct Rules**

The Precinct Rules apply to the Users of the Wynyard Precinct.

**1.5 Interpretation**

Terms and expressions used in the Precinct Rules are defined, and guidelines for interpretation, are set out at the end (Part 18) of the Precinct Rules.

**2. COMPLIANCE WITH THE PRECINCT RULES**

**2.1 User to comply with Precinct Rules**

Every User must comply with and observe the Precinct Rules.

**2.2 Obligation to enforce**

Every User must:

- (a) in every instrument or contract recording a sub-lease, licence or other disposition of its Premises or Property Interest which results in a new or additional User, impose obligations on the relevant User that the User must comply with and observe the Precinct Rules;
- (b) use all reasonable endeavours and take all reasonable steps to ensure compliance with and observance of the Precinct Rules by all Users who enjoy any rights conferred or demised by that User;
- (c) require as a condition of its consent and approval to any assignment, transfer or other disposition, sub-leasing, licensing or sub-licensing which results in a new or additional User that the assignee, transferee, acquirer, sub-lessee, licensee or sub-licensee concerned expressly, by way of deed, covenants and contracts to be bound by and to observe and comply with the Precinct Rules; and
- (d) extend all reasonable co-operation and assistance necessary for Waterfront Auckland to enforce the Precinct Rules against the Users deriving an interest in the Wynyard Precinct from that User.

**2.3 Responsibility for others**

- (a) A User must use reasonable endeavours to procure that all agents, employees, contractors and other invitees and visitors of the User of the Premises comply with the Precinct Rules and procure that such persons leave the User's Premises if they do not comply with the Precinct Rules.
- (b) A User must not permit any agents, employees, contractors and other invitees and visitors of the User to do anything that the User is prohibited from doing under the Precinct Rules.

**2.4 Contracts (Privity) Act 1981**

The benefit of all obligations and covenants that a User obtains from any party contracting with it in relation to compliance and observance with the Precinct Rules are intended (and the User must expressly stipulate with the contracting party that they are intended) to be obligations and covenants inserted for and also enforceable by Waterfront Auckland for the purposes of the Contracts (Privity) Act 1982.

**3. COMPLIANCE WITH LAWS**

**3.1 General obligation**

Every User must at all times comply with and observe all laws and the requirements of all Authorities relevant to the User's use, occupation or enjoyment of its Premises and applying to the use of the Wynyard Precinct generally.

**3.2 Conflicts**

- (a) To the extent there is any conflict as between the Precinct Rules and any Relevant Laws (such as, for example, the by-laws of Auckland Council), then, the Relevant Laws shall prevail.
- (b) Subject to clause 3.2(c), each User acknowledges that although the subject matter of the Precinct Rules may cross-over with the subject matter of its Property Interest, the User must comply with the obligations under both its Property Interest and the Precinct Rules. However, in circumstances where it is not possible to comply with the obligations under the Precinct Rules without being in breach of the obligations under the relevant Property Interest (or vice versa), then in that situation the relevant provisions of the User's Property Interest will take priority.
- (c) If and to the extent that there is any conflict between the provisions contained in rules 5.1-5.3 (inclusive) and the terms of a User's Property Interest then the terms of that User's Property Interest will prevail.

**4. RULES RELATING TO BUILDING WORK**

**4.1 No Building Work without consent**

No Building Work may be undertaken by a User on or within the Wynyard Precinct other than:

- (a) in compliance with the terms of the relevant User's Property Interest and all applicable Relevant Laws; and
- (b) with the prior written approval of Waterfront Auckland (such approval not to be unreasonably withheld).

**4.2 Details of Building Work**

Prior to commencing any Building Work, a User must provide to Waterfront Auckland information and details on the following in respect of the proposed Building Work:

- (a) hours of work;
- (b) measures to be taken to minimise nuisance;
- (c) control and monitoring of noise levels;
- (d) hoarding, scaffolding and temporary works;
- (e) material damage insurance;
- (f) public liability insurance; and

(g) contractors.

**4.3 Contractors**

A User undertaking Building Work must draw the Precinct Rules to the attention of the contractor or contractors concerned.

**5. RULES RELATING TO MAINTENANCE AND APPEARANCE**

**5.1 General condition**

A User must keep and maintain its Premises (including any Building at the Premises) clean and tidy and in good repair and condition commensurate with the overall quality and standard of the Wynyard Precinct and otherwise in accordance with the terms of its Property Interest.

**5.2 Landscaping**

A User must keep any landscaped area (including planter boxes and pots) forming part of the User's Premises in a neat, clean and tidy condition with all weeds and regularly removed and plant maintenance (pruning, trimming etc) undertaken on a regular basis.

**5.3 External appearance**

A User must:

- (a) not keep anything in the Premises that is visible from outside the Premises that is not in keeping with the appearance of the Wynyard Precinct as a whole or which is likely to bring the reputation of Wynyard Precinct into disrepute;
- (b) not, except with the approval of Waterfront Auckland, who shall have regard to the reasonable security requirements of the User (or unless expressly permitted by the terms of the Property Interest), install bars, screens, grilles, or other safety devices on the exterior of windows or doors of the Premises (excluding standard locks on doors);
- (c) not make any material alterations to the external appearance of its building or Premises which would detract from the overall nature and quality of the Wynyard Precinct; and
- (d) (where relevant) ensure a high standard of fit out in retail premises commensurate with the quality and standard of the Wynyard Precinct.

If Waterfront Auckland and a User do not agree in any instance of Waterfront Auckland seeking to enforce rule 5.3(c) or rule 5.3(d), either Waterfront Auckland or the User may refer the dispute to an architect who is on Waterfront Auckland's external panel of advisors from time to time (acting independently as an expert and not an arbitrator) of not less than ten years' experience relevant to the matters in dispute.

**5.4 Additional liability for Lessees**

In addition to the liability contained in rules 5.1-5.3, a Lessee must:

- (a) keep all Buildings located within its Premises in good clean order repair and condition and as close as reasonably practicable to the condition they were in on the date they were first completed;

- (b) replace or renew all Buildings located within its Premises on an as needed basis in order to keep the Buildings (or any part or parts thereof) as close as reasonably practicable to the level of functionality applicable to them on the date they were first completed;
- (c) carry out any works necessary to ensure the stability of the land within its Premises and to prevent any subsidence.

**6. RULES RELATING TO USE**

**6.1 District plan**

A User must:

- (a) comply with the requirements of the District Plan and where necessary obtain and maintain any resource consent required for the User's business or activities within the Wynyard Precinct; and
- (b) not do anything within the Wynyard Precinct which is or may become a breach of any duty imposed on any person by the Resource Management Act 1991.

**6.2 Nuisance**

- (a) A User must not (subject to rule 6.2(b)) carry on any hazardous, noxious, noisy or offensive business or other activity in or about its Premises or on or from the Wynyard Precinct or do anything which is or may become a nuisance or annoyance to any other User.
- (b) The carrying on of a use, permitted by the District Plan (or under a resource consent) and under the terms of the relevant Property Interest, in a reasonable manner having regard to nature of the use will not be a breach of rule 6.2(a).

**6.3 Health and safety**

Every User:

- (a) acknowledges to Waterfront Auckland that the User has responsibility for the health and safety of all persons in and about its Premises and/or any other part of the Wynyard Precinct which the User may exclusively occupy for any period from time to time; and
- (b) must comply with and ensure that its employees, contractors and agents comply with their obligations under the Health and Safety in Employment Act 1992 and all approved codes of practice under that Act that are applicable to the User's use of its Premises.

**6.4 Disabled Access**

Every User shall ensure the means of access to the User's Premises and buildings for disabled employees and visitors is in accordance with building code requirements.

**6.5 Noise control**

A User must:

- (a) comply with the noise control limits and requirements of the relevant Authorities;

- (b) not use or permit the use of loud speakers, horns, whistles or public address systems so as to be audible outside its Premises, save in the case of emergency, or for the reasonable security of the Premises or where such use is reasonable and appropriate having regard to the User's current and permitted use of its Premises; and
- (c) not permit any noise from the Premises that is offensive or detrimental to any other User or the public.

**6.6 Odours**

A User must:

- (a) not allow offensive odours to be discharged from the User's Premises or to otherwise be created except in accordance with all necessary consents and approvals from the Authorities and from Waterfront Auckland; and
- (b) comply with all odour control and management requirements of the Authorities or otherwise imposed under consents or approvals.

**6.7 Food**

A User must (where the preparation, serving and/or sale of food is undertaken at its Premises as part of a service to the public):

- (a) store, prepare and serve food only in purpose designed areas or spaces;
- (b) keep and maintain all refuse facilities, gully traps, and extraction systems in good working order and condition at all times; and
- (c) strictly comply with all Relevant Laws relating to preparation, serving and/or sale of food.

**6.8 Liquor**

A User must not serve, sell, store, manufacture or consume liquor except where strictly in accordance with:

- (a) consents and approvals to those uses given under its Property Interest; and
- (b) the relevant laws and requirements of the Authorities.

**6.9 Signage and advertising**

- (a) A User must not hang signs, billboards, posters, or banners, including any real estate "For Sale", or "For Lease" or similar signs or promotional material from any balcony, window or other exterior feature or system that is visible from outside of the User's Premises unless permitted under the User's Property Interest or otherwise as expressly approved in advance by Waterfront Auckland (such approval not to be unreasonably withheld or delayed).
- (b) A User must comply with the requirements of the Authorities and the terms of the User's Property Interest (whichever is the most onerous to the User) in relation to any signage placed by the User in or about the User's Premises or on or about a Building.
- (c) Waterfront Auckland may prohibit any advertising by a User (whether in the form of signage or in print, radio, television or website or any form of social

media) which may materially adversely affect the reputation or desirability of the Wynyard Precinct.

**6.10 Eviction**

Every User acknowledges that Waterfront Auckland has the right to exclude or evict from the Public Areas and Amenities any person who, in the opinion of Waterfront Auckland (acting reasonably), is intoxicated or under the influence of drugs, or who in any manner acts in violation of these Precinct Rules.

**6.11 Storage of outdoor furniture**

All outdoor furniture shall be stored after hours in accordance with any applicable resource consents.

**7. PUBLIC AREAS AND AMENITIES**

**7.1 Public Areas and Amenities**

Waterfront Auckland as owner and manager of the Public Areas and Amenities has all rights and powers of a landowner to grant licences and do things in respect of the Public Areas and Amenities.

**7.2 No objection**

- (a) Subject to rule 7.2(b), no User may object to any activity or event undertaken on any of the Public Areas and Amenities that is:
  - (i) authorised by the Relevant Authorities; and
  - (ii) is consistent with the Vision and Objectives;
- (b) The obligation contained in rule 7.2(a) will not :
  - (i) apply to any Lessee reasonably affected by such activity or event unless Waterfront Auckland first consults with that Lessee regarding the activity or event;
  - (ii) prevent any Lessee which is reasonably affected by such activity or event making submissions to the Authorities as part of any resource consent process associated with that activity or event.

**7.3 Use and responsibility for damage**

A User must (unless the User has obtained Waterfront Auckland's prior written consent or agreement (as applicable)):

- (a) use structures, plant, equipment and features on or forming part of the Public Areas and Amenities only for their customary and intended purpose;
- (b) not use the Public Areas and Amenities (nor permit any person to use the Public Areas and Amenities) for skateboarding or inline skating (other than where designated), busking or soliciting donations;
- (c) not obstruct or permit the obstruction of any part of the Public Areas and Amenities;

- (d) comply with Waterfront Auckland's health and safety policy (as notified by Waterfront Auckland from time to time) when using the Public Areas and Amenities;
- (e) notify Waterfront Auckland immediately upon a User damaging any part of the Public Areas and Amenities, or upon the User becoming aware of damage caused by others; and
- (f) compensate Waterfront Auckland for any damage caused by the User to the Public Area and Amenities.

**7.4 Consent required**

A User must, in addition to any other consent or authority required from the Authorities or under a Property Interest, obtain the consent of Waterfront Auckland prior to:

- (a) interfering with or damaging any part of the Public Areas and Amenities;
- (b) removing anything from the Public Areas and Amenities that does not belong to the User; or
- (c) interfering with the operation of any Public Areas and Amenities.

**7.5 Closure or changes to layout**

Every User shall co-operate with Waterfront Auckland as reasonably required by Waterfront Auckland in order to facilitate any changes to the layout, or the temporary closure of, the Public Areas and Amenities. Any changes made by Waterfront Auckland to the layout, or the temporary closure of, the Public Areas and Amenities will be at Waterfront Auckland's cost.

**8. RUBBISH AND DEBRIS**

**8.1 General obligation**

A User may only place and store waste within its Premises in those areas specifically designated for such purposes and in suitably designed enclosed containers. Every User must ensure that no odours shall arise from waste on its Premises so as to render any portion of the Wynyard Precinct unsanitary, unsightly or offensive.

**8.2 No waste on Public Areas and Amenities**

No User may place waste, or waste receptacles, for collection or otherwise for any purpose on or about the Public Areas and Amenities except in those areas specifically designated for such purposes.

**8.3 Waste collection**

Each User must comply with the reasonable requirements of Waterfront Auckland from time to time in relation to such things concerning waste collection as Waterfront Auckland (acting reasonably) sees fit to maintain the clean and attractive presentation of the Wynyard Precinct to the extent such requirements relate to the User's Premises.

## 9. ENVIRONMENTAL SUSTAINABLE PRACTICE

- 9.1 Users acknowledge Waterfront Auckland's vision and commitment to achieving best practice levels of environmental sustainability at Wynyard Precinct consistent with global market best practice and agree to work with Waterfront Auckland to adopt and implement practices which secure the success of that vision including using all reasonable endeavours to:
- (a) reduce resource use of energy (electricity, gas and fuel), including:
    - (i) minimising reliance on mechanical heating, cooling and lighting systems and maximising use of insulation, natural ventilation and sunlight;
    - (ii) using energy efficient lighting and equipment;
    - (iii) actively monitoring energy use to ensure that all building systems perform as designed;
    - (iv) undertaking a high level of tuning and maintenance of building systems to improve sustainable performance;
  - (b) reduce water use and wastewater, including:
    - (i) using water saving devices, equipment and appliances; and
    - (ii) adopting or using water sensitive design features;
  - (c) reduce greenhouse gas emissions;
  - (d) reduce use of chemicals and hazardous materials;
  - (e) use materials from sustainable sources for tenant fit-out, alteration or repair;
  - (f) minimise waste, including:
    - (i) ensuring that paper, cardboard, plastic, glass, metals, electrical equipment, furniture, batteries, ink cartridges, light bulbs, organics and mobile phones are recycled, as far as practicable;
    - (ii) providing recycling facilities for employees and contractors;
    - (iii) using recyclable materials, products and consumables where possible;
    - (iv) reducing consumption of non-recyclable materials, products and consumables;
    - (v) avoiding discharges of liquid and solid waste to stormwater drains;
  - (g) promote sustainable transport initiatives including:
    - (i) encouraging employees and contractors to travel to the Wynyard Precinct by passenger transport, walking or cycling and discourage private single occupancy car trips;
    - (ii) supporting and participating (without any obligation to incur costs) in the Wynyard Quarter Transport Management Association;

(h) provide training and education to employees and residents regarding sustainable behaviour.

9.2 Users will, on request from Waterfront Auckland, actively engage and collaborate with Waterfront Auckland in good faith to discuss and explore ways in which that User's current sustainability practices could be improved to better achieve Waterfront Auckland's vision for Wynyard Precinct as outlined in rule 9.1 (and having regard to global best market practice).

9.3 Users will undertake such monitoring and reporting as may be reasonably required by Waterfront Auckland to determine the level of compliance with the objectives contained in Rule 9.1 and also to better identify areas for improvement. Users must provide the results of any such monitoring and reporting to Waterfront Auckland together with any additional information reasonably required by Waterfront Auckland for the purpose of monitoring compliance with its obligations contained in this rule 9.

9.4 Lessees will comply with the additional obligations contained in the Schedule to these Rules.

## **10. TRAFFIC, VEHICLES AND PARKING**

### **10.1 Private driveways, access ways**

Every User must comply with all lane markings, 'no stopping' signage, vehicle size and weight controls, speed controls and any other directions or requirements that Waterfront Auckland may impose in respect of access ways from time to time not owned or controlled by a User provided that such directions or requirements shall not derogate from the rights granted to a User under its Property Interest.

### **10.2 Drop off and pick up areas**

Every User must comply with the reasonable requirements of Waterfront Auckland in respect of:

- (a) locations for the drop off and pick up of people;
- (b) courier deliveries; and
- (c) restrictions on the hours of use and timing for use of main entrances for couriers and other deliveries.

### **10.3 No obstruction**

No User may obstruct the Public Areas and Amenities whether by parking a vehicle or otherwise, other than in areas specified by Waterfront Auckland from time to time as suitable for the particular purpose or as is otherwise permitted by any licence or consent granted by Waterfront Auckland and (if required) Auckland Council.

## **11. TRADING IN THE PUBLIC AREAS AND AMENITIES OR THE STREET**

### **11.1 Entitlement**

No User may trade or conduct business at any time from any of the Public Areas and Amenities within the Wynyard Precinct without on each occasion the written consent of:

- (a) in the first instance, Waterfront Auckland; and

- (b) in the second instance, having obtained Waterfront Auckland's consent, Auckland Council (where required by any Relevant Laws).

#### 11.2 **Application**

A User must not make an application to Auckland Council for any consent or licence to trade on or for any other use or activity from the Public Areas and Amenities, unless it has first made written application to Waterfront Auckland for consent. The application must contain at least the following:

- (a) payment of any reasonable application fee prescribed or required by Waterfront Auckland;
- (b) details of the part of the Public Areas and Amenities concerned;
- (c) details of the intended duration of the use or activity;
- (d) the User's plan for any required, marking off and securing of the area concerned, including details of any structures, plant, equipment, fittings and fixtures that the User intends to place on the area concerned whether temporarily or otherwise; and
- (e) the business reason and justification for the application.

#### 11.3 **Waterfront Auckland's discretion**

Waterfront Auckland may decline or approve (at its absolute discretion) an application from a User for consent or licence to trade on or for any other use or activity from the Public Areas and Amenities within the Wynyard Precinct. In making its decision, Waterfront Auckland must have regard to, but without limitation:

- (a) the proximity of the area proposed to the User's Premises;
- (b) other events, activities, commitments or plans in respect of or affecting the area or areas concerned; and
- (c) the likelihood of the activity, if approved, assisting in or contributing to the achievement of the Vision and Objectives.

#### 11.4 **Conditions**

Any approval given by Waterfront Auckland may be given subject to any reasonable conditions which may include:

- (a) a requirement that a formal agreement be entered into setting out the terms and requirements of the User's licence or rights;
- (b) payment of a reasonable fee; and
- (c) any other condition or requirement that Waterfront Auckland considers appropriate.

### 12. **EVENTS ON PUBLIC AREAS AND AMENITIES**

#### 12.1 **Rights of Waterfront Auckland**

- (a) Waterfront Auckland may stage or licence others to stage and run a wide range of cultural and art festivals and events and to accommodate temporary activities within the Wynyard Precinct. Events may be run in conjunction with Users and will all be staged for the purpose of establishing and after establishment maintaining the Wynyard Precinct as a lively and vibrant area which attracts the widest range of visitors.
- (b) Users acknowledge and accept that Waterfront Auckland's vision for the Wynyard Precinct includes a diverse calendar of social, cultural and business events and activation offerings through the year, which will result in reasonable noise and crowds from time to time.
- (c) A User will not be responsible for removing rubbish or making good any damage to the Public Areas and Amenities caused as a result of any festivals, events or activities undertaken within the Wynyard Precinct unless such event is being held by a User

#### 12.2 **Rights of a User**

A User may, with the prior written approval of Waterfront Auckland, use the Public Areas and Amenities (or part) for events.

#### 12.3 **Procedure for obtaining consent**

A User's application for approval from Waterfront Auckland to use the Public Areas and Amenities (or part) for events must contain at least the following:

- (a) payment of any reasonable application fee prescribed or required by Waterfront Auckland;
- (b) details of the part of the Public Areas and Amenities within the Wynyard Precinct concerned;
- (c) details of the intended duration of the use or activity;
- (d) the User's plan for any required marking off and securing of the area concerned, including details of any structures, plant, equipment, fittings and fixtures that the User intends to place on the area concerned whether temporarily or otherwise; and
- (e) the reason for the application.

#### 12.4 **Conditions**

Waterfront Auckland may decline or approve (at its absolute discretion) an application from a User for use by that User of the Public Areas and Amenities (or any part thereof) for an event and in giving approval may impose reasonable conditions. The conditions may include:

- (a) payment of a reasonable licence fee to Waterfront Auckland;
- (b) specified hours during which the event may take place;
- (c) requirements for additional insurance;
- (d) compliance with Waterfront Auckland's health and safety policy (as notified by Waterfront Auckland from time to time);

- (e) obtaining of any necessary consents and approvals from the relevant Authorities, including Auckland Council;
- (f) requirements for additional security;
- (g) actions which the User must take to monitor and reduce noise, odours and interference with other Users and the public during the event; and
- (h) any other condition which is reasonable in the circumstances having regard to the nature and duration of the special event and the impact on other Users of Wynyard Precinct.

**13. WYNYARD PRECINCT FUND**

**13.1 Precinct Fund**

- (a) All Lessees, and Waterfront Auckland until such time as all of the Wynyard Precinct is Leased, are required to make an annual contribution to the Precinct Fund.
- (b) Subject to rule 13.1(c), the Precinct Fund will be applied by Waterfront Auckland towards costs and expenses reasonably, properly and prudently incurred by Waterfront Auckland in respect of or incidental to:
  - (i) the establishment and operation of the "Precinct Association" referred to in rule 18;
  - (ii) the administration of the Precinct Rules;
  - (iii) the enforcement of the Precinct Rules (to the extent that any such enforcement action is taken by Waterfront Auckland directly against the relevant User via the provisions of rule 2.4) (*Enforcement Action*);
  - (iv) security arrangements in relation to the Public Areas and Amenities (other than the public road network and other than for events or activities staged by either Waterfront Auckland or any other licensee or User); and
  - (v) the cleaning, maintenance and upkeep of the Public Areas and Amenities in a manner consistent with the vision and objectives in section 1.2 and 1.3 (but excluding cleaning and repair costs associated with activities and events staged by Waterfront Auckland).
- (c) The Precinct Fund shall not be applied toward:
  - (i) any expenditure of a capital nature;
  - (ii) cost and expenses that a Lessee is individually responsible under the terms of its Property Interest;
  - (iii) any cost associated with the leasing or disposing of Wynyard Precinct;
  - (iv) any cleaning, maintenance and upkeep of the Public Areas and Amenities if and to the extent that such cleaning, maintenance and upkeep is performed either by:

- (aa) the Council (in so far as such responsibility relates to the public road network); or
  - (bb) a User carrying out any trading activity or conducting any business pursuant to rule 11 or a third party holding an event pursuant to rule 12 (with Waterfront Auckland agreeing to use reasonable endeavours to impose and enforce any such liability); or
  - (cc) a Lessee in relation to any laneway which is located within premises subject to a Lease if and to the extent that the Lessee (and not Waterfront Auckland) is liable to carry out such cleaning, maintenance and upkeep;
- (v) costs and expenses relating to any other areas leased by a Lessee not covered by clause 13.1(c)(iv)(cc);
  - (vi) the cost of cleaning, maintenance and upkeep of Headland Park, Silo Park and Central Park;
  - (vii) the costs incurred by Waterfront Auckland in connection with any enforcement action taken under a Lease;
  - (viii) the costs incurred by Waterfront Auckland in connection with any Enforcement Action within a particular Financial Year in excess of the amount allocated for Enforcement Action in the Annual Budget approved for that Financial Year pursuant to rule 13.2 (or any greater amount approved by the Precinct Association pursuant to rule 13.2(g)).

**13.2 Approval of Annual Budget**

- (a) The Annual Budget will be subject to approval by the Precinct Association pursuant to this rule 13.2.
- (b) Prior to each Financial Year Waterfront Auckland will prepare the Annual Budget and will call a meeting of the Precinct Association to discuss and approve the Annual Budget.
- (c) All Lessees (but not any other Users) will be entitled to vote at that meeting in relation to approval of the Annual Budget. Each Lessee's relative voting rights will be equivalent to the Relevant Percentage attributable to that Lessee's Premises.
- (d) Waterfront Auckland will also be entitled to vote at that meeting in relation to approval of the Annual Budget. Waterfront Auckland's relative voting rights will be equivalent to the Relevant Percentage attributable to any Other Sites.
- (e) The Annual Budget will be approved by a simple majority (determined with reference to the relative voting rights of Waterfront Auckland and those Lessee's in attendance and voting at the meeting).
- (f) If the Annual Budget is not approved on the first occasion on which it is put to the vote pursuant to this rule 13.2 then Waterfront Auckland may continue to make such revisions to the Annual Budget and continue to re-submit revised versions of the Annual Budget for approval until such time as the Annual Budget is approved by the Precinct Association pursuant to this rule 13.2.

- (g) Notwithstanding approval of the Annual Budget for a particular Financial Year, Waterfront Auckland may propose an increase in the amount allocated for Enforcement Action for that Financial Year by calling a further meeting of the Precinct Association. Any such increase in the allocation for Enforcement Action will be determined by a simple majority vote (in the same manner as approval of the Annual Budget).

**13.3 Contributions**

- (a) Each Lessee's Fund Contribution shall be calculated by applying the Relevant Percentage attributable to that Lessee's Premises to the total costs and expenses contained in the Annual Budget approved pursuant to rule 13.2.
- (b) The Relevant Percentage for each Lessee (and for Waterfront Auckland in relation to the Other Sites) will be calculated by Waterfront Auckland on an annual basis with reference to the maximum permitted gross floor area under the District Plan at the time of calculation with such percentages being included in the Annual Budget. A working example of the calculation (as at 1 June 2014 is annexed to these Precinct Rules).
- (c) Payment of the Fund Contribution by each Lessee shall be a debt due and shall be recoverable by Waterfront Auckland as if the same was rent in arrears under the terms of that Lessee's Property Interest.
- (d) The Lessee shall not have any beneficial or legal interest in the Precinct Fund.

**13.4 Obligation to pay**

The Lessee shall pay its Fund Contribution for each Financial Year to the Lessor quarterly in advance during each Financial Year provided that if the Annual Budget is not approved by the commencement of a relevant Financial Year, the first such payment shall be made within 20 working days of the date of approval of that budget .

**13.5 Funding by Waterfront Auckland**

For the avoidance of doubt, Waterfront Auckland will be liable to fund that proportion of the costs and expenses referred to in clause 13.1 equivalent to the Relevant Percentage (from time to time) attributable to the Other Sites.

**13.6 Separate Designated Bank Account**

Waterfront Auckland will open a separate designated bank account into which all Fund Contributions will be paid and out of which all costs will be paid out. Waterfront Auckland will also maintain accounting records for all such receipts and payments.

**13.7 Statement of expenses**

Within one month of the end of the Financial Year to which it relates, Waterfront Auckland shall provide each Lessee a written statement summarising Waterfront Auckland's expenditure of the Precinct Fund in the preceding Financial Year. If the expenses incurred by Waterfront Auckland for that Financial Year were less than the expenses contained in the approved Annual Budget for that Financial Year then the excess shall be retained by Waterfront Auckland and set off against the expenses itemised in the Annual Budget for the next Financial Year. If the expenses incurred by Waterfront Auckland for that Financial Year were greater than the expenses contained in the approved Annual Budget for that Financial Year then the shortfall shall be treated as an additional expense and added to the Annual Budget for the following Financial Year.

A Lessee may require Waterfront Auckland's expenditure of the Precinct Fund to be audited and waterfront will provide all reasonable information to facilitate that audit. The relevant Lessee will bear the costs of the audit unless the audit discloses discrepancies amounting to not less than 5% of the Annual Budget in which case such costs shall be payable by Waterfront Auckland.

**14. PRESS RELATIONS AND ANNOUNCEMENTS**

**14.1 Press Relations**

All matters of announcements to the press, or responding to journalist inquiry, in relation to the operation and management of the Wynyard Precinct must be referred to Waterfront Auckland, provided that a User may refer to Wynyard Precinct in any advertising material for the purpose of advertising the location of its business at Wynyard Precinct.

**14.2 Announcements**

No User may make any announcement, written or otherwise, about Wynyard Precinct's operation and management without the prior written approval of Waterfront Auckland.

**14.3 Biannual Meetings**

- (a) Waterfront Auckland shall hold biannual meetings in respect of the management and operation of the Wynyard Precinct.
- (b) A representative from each Lessee within the Wynyard Precinct shall attend the meetings with representatives of Waterfront Auckland at such times as notified in writing by Waterfront Auckland. Waterfront Auckland shall give at least 14 days' prior written notice of the next biannual meeting. These biannual meetings may be held by the use of teleconference or video conference facilities.

**15. SECURITY ISSUES AND EMERGENCIES**

**15.1 Security threat**

A User must notify Waterfront Auckland immediately if the User receives a threat of, or information relating to, terrorist or criminal activity relating to or emanating from all or any part of the Wynyard Precinct.

**15.2 Emergency procedures**

A User must comply with the emergency procedures and requirements relevant to its Premises, from time to time, and (if applicable) any emergency or security procedures and requirements which Waterfront Auckland adopts to comply with the requirements of the Authorities or otherwise for the general health and safety of the Users and the public in and around the Wynyard Precinct.

**16. VARIATION OF PRECINCT RULES**

**16.1 Entitlement**

- (a) The Users acknowledge that the Precinct Rules may need to change over time to address changing trends and issues that arise during the ongoing

development of Wynyard Precinct. For this purpose Waterfront Auckland may revoke, amend, vary and/or replace all or any of the Precinct Rules provided that such action is in accordance with the terms of all Property Interests.

- (b) In revoking, amending, varying and/or replacing all or any of the Precinct Rules, Waterfront Auckland is bound to:
  - (i) act in good faith; and
  - (ii) consider the requirement for or effect of any change in the context of enhancement of the good management and operation of the Wynyard Precinct in accordance with the Vision and Objectives.

**16.2 Notice**

Waterfront Auckland must give written notice of any revocation, amendment, variation and or replacement of all or any of the Precinct Rules to each Lessee, which change shall take effect from that date.

**17. NON PERFORMANCE AND ENFORCEMENT**

**17.1 Ability of Enforcing Party to remedy breach**

Upon a User committing a breach and not rectifying, or procuring rectification of, that breach within a reasonable period of time (as is specified in any notice given by the Enforcing Party to that User), the User authorises the Enforcing Party at the cost of the User to take such steps and do such things as may be necessary to rectify the breach where it is a breach capable of remedy.

**17.2 Consequence of breach**

The Enforcing Party is entitled to exercise all or any of the remedies available to it at law and under the terms of the relevant Property Interest in relation to any breach or non-compliance by the User with the Precinct Rules.

**17.3 User may request action**

Where a User reasonably considers another User to be in breach of the Precinct Rules the User may request Waterfront Auckland take, and Waterfront Auckland shall take, such action under the Precinct Rules as available to Waterfront Auckland to seek rectification of the breach or other relevant remedy provided that:

- (a) the User has first used its best endeavours to procure the non-complying User rectify or remedy the breach;
- (b) the alleged breach materially impacts on other Users use and enjoyment of their Premises and the Wynyard Precinct; and
- (c) Waterfront Auckland is only obliged to take such action against the relevant Lessee under which the Property Interest of the non-comply User is derived from.

**17.4 Waterfront Auckland not liable**

17.5 Waterfront Auckland is not responsible to any User for the non observance of the Precinct Rules by any User.

**18. PRECINCT ASSOCIATION**

- 18.1 Waterfront Auckland will establish a "Precinct Association".
- 18.2 The Precinct Association will provide a forum for Waterfront Auckland, each Lessee and (at Waterfront Auckland's election) each Occupier:
- (a) to discuss any matters relevant to the implementation of these Precinct Rules;
  - (b) to share information which may assist with the co-ordination and smooth and effective operation of all activities and events within the Wynyard Precinct;
  - (c) to identify any opportunities which may be of benefit to two or more parties;
  - (d) to discuss any promotion of the Wynyard Precinct and/or the promotion of any events or activities held within the Wynyard Precinct; and
  - (e) to discuss and ask questions in relation to the Precinct Fund.
- 18.3 The Precinct Association will also provide a forum for each Lessee (but not any other Users) to vote in relation to approval of the Annual Budget pursuant to rule 13.2.
- 18.4 The Precinct Association will meet at such times as may be determined and notified by Waterfront Auckland from time to time. All meetings will be chaired by a representative of Waterfront Auckland. These Precinct Association meetings may be held by the use of teleconference or video conference facilities.
- 18.5 The Precinct Association is not authorised to make any legally binding decisions (other than approval of the Annual Budget for the Precinct Fund pursuant to rule 13.2).
- 18.6 Each Lessee (and, if applicable, each Occupier) must (at their own cost):
- (a) ensure that they attend any meetings of the Precinct Association called by Waterfront Auckland;
  - (b) ensure that any representative attending the meeting acts in good faith with a view to promoting the smooth and effective operation of all activities within the Wynyard Precinct; and
  - (c) provide such information to Waterfront Auckland and the Precinct Association as may be required by Waterfront Auckland from time to time to promote the objectives outlined in section 18.2 provided that:
    - (i) such information is not of a confidential nature and is not legally privileged; and
    - (ii) its disclosure is not likely to commercially prejudice the party providing the information.

**19. DEFINED TERMS AND INTERPRETATION**

**19.1 Definitions**

"**Annual Budget**" means the annual budget for the Precinct Fund to be prepared by Waterfront Auckland and approved by the Precinct Association pursuant to rule 13.2 in respect of each Financial Year;

**"Authorities"** means Auckland Council and all other statutory or regulatory authorities or bodies having any interest or rights applicable to the Wynyard Precinct or in respect of Relevant Laws;

**"Building"** means any building within the Wynyard Precinct and includes any site within the Wynyard Precinct which is undeveloped;

**"Building Work"** means any physical work to:

- (a) the exterior of a Building or Premises;
- (b) the external appearance of a Building or Premises;
- (c) external services or utilities; or
- (d) external landscaped or paved areas,

but excludes:

- (i) any Initial Development carried out by a Lessee;
- (ii) any Redevelopment carried out by a Lessee;
- (iii) any minor works which do not require the consent and approval of a relevant Authority and is in the nature of maintenance or repair of existing improvements, structures or fittings;

**"District Plan"** means any Authorities planning requirements in respect of Wynyard Precinct;

**"Financial Year"** means the period of 12 months nominated by Waterfront Auckland in connection with the annual budget for the Wynyard Precinct Fund;

**"GFA"** means gross floor area;

**"Enforcing Party"** means in respect of each User, the party that that User's Property Interest is derived from;

**"Initial Development"** means the initial development by a Lessee of its Premises which is governed by a separate development agreement between the Lessee and Waterfront Auckland;

**"Lease"** means a lease or licence granted by Waterfront Auckland of any Premises or right to use and enjoy any property within the Wynyard Precinct granted by Waterfront Auckland;

**"Lessee"** means a lessee or licensee (and any applicable Body Corporates under the Unit Titles Act 2010 (if any)) under a lease or licence from Waterfront Auckland of any Premises or right to use and enjoy any property within the Wynyard Precinct granted by Waterfront Auckland;

**"Lessee's Fund Contribution"** or **"Fund Contribution"** means the fund contribution calculated and payable by the Lessee in accordance with clause 12;

**"Objectives"** means the objectives set out in the Introduction to the Precinct Rules (Part 1);

"**Occupier**" means any person or persons from time to time entitled to occupy or use the whole or any part of a Premises pursuant to a lease, licence or other right granted by a Lessee including any lessee, or licensee and in the case of a lessee or licensee which is not a natural person, the directors, owners or others exercising control over that other entity;

"**Other Sites**" means those parts of the Wynyard Precinct which:

- (a) are not subject to a Lease; and
- (b) do not comprise part of the Public Areas and Amenities;

"**Precinct Fund**" means the fund referred to in clause 12;

"**Precinct Rules**" means these rules and regulations as they may be varied from time to time pursuant to rules 16.1 and 16.2;

"**Premises**" means the property within the Wynyard Precinct the subject of a Property Interest;

"**Property Interest**" means any lease, licence or other proprietary right to any estate in property located within the Wynyard Precinct held by a User;

"**Public Areas and Amenities**" means the roads, footpaths, laneways, squares, paved areas or surfaces, terraces, including all, fixtures, fittings, artworks and other facilities within the Wynyard Precinct as Waterfront Auckland from time to time designates for public and/or common use and excludes any and all Premises;

"**Rates**" means those rates specified in clause 12.2(a) as adjusted from time to time in accordance with clause 12.2(b);

"**Redevelopment**" means any "Redevelopment" by a Lessee as defined in the Lessee's Lease;

"**Relevant Laws**" means all laws and the requirements of all Authorities relevant to the User's use, occupation or enjoyment of its Property Interest and applying to the use of the Wynyard Precinct generally;

"**Relevant Percentage**" means the relevant percentage applicable to each Lessee which is calculated as follows:

$$\text{Relevant Percentage} = (A \div B) \times 100$$

Where:

"A" = the maximum permitted gross floor area of that Lessee's Premises from time to time

"B" = the maximum permitted gross floor area of the Wynyard Precinct from time to time;

"**Sanfords Site**" means the site comprising Lot 1 DP 82281, Lot 1 DP 57246, Lot 1 DP 70740 and Lots 27 and 28 Blk VI Deeds 226;

"**Users**" means all Lessees and Occupiers and their respective agents, employees, contractors, sub-tenants, licensees or sub-licensees and other invitees;

"**Vision**" means the vision set out in the Introduction to the Precinct Rules (Part 1);

**"Waterfront Auckland"** means Auckland Waterfront Development Agency Limited and any successor in title; and

**"Wynyard Precinct"** means Waterfront Auckland's area of ownership within Wynyard Quarter (as expanded or reduced from time to time by Waterfront Auckland, but:

- (a) (save for the potential inclusion of the Sanfords Site)not expanded beyond the boundaries of Wynyard Quarter as shown on the plan annexed) without first consulting with the Lessees;
- (b) excluding the Sanfords Site (unless and until Waterfront Auckland confirms that the Sanfords Site is to be included in the Wynyard Precinct).

**SCHEDULE  
SUSTAINABILITY**

**1 APPLICATION**

The provisions of this Schedule will apply separately to each Lessee.

**2 UNDERSTANDING**

- 2.1 Each Lessee agrees to work collaboratively with Waterfront Auckland to improve the environmental performance of the Building(s) erected on its Premises.
- 2.2 Waterfront Auckland and each Lessee (together *the Parties*) agree to implement the measures set out below in this Schedule.
- 2.3 Each Lessee will use all reasonable endeavours to procure that any other Users of its Buildings are bound by the terms of this Schedule (in so far as they are relevant to that User's use or occupation of the Lessee's Buildings) in order to improve the overall environmental performance of its Buildings save that this obligation will not apply to any User to the extent that:
- (a) it occupies less than the equivalent of a single whole floor of a Building; or
  - (b) its Property Interest is for a term of less than 3 years.

**3 DATA SHARING**

- 3.1 The Lessee agrees to share with Waterfront Auckland all data and relevant information it has in relation to its Buildings and its Premises (in as much detail as may be reasonably required by Waterfront Auckland from time to time) in respect of:
- (a) Electricity consumption;
  - (b) Gas consumption;
  - (c) Other fuel consumption;
  - (d) Water consumption;
  - (e) Waste generation, management and recycling;
  - (f) Maintenance of plant and equipment used in connection with the above; and
  - (g) Any other matters relevant to the performance of the Buildings and the Premises which are agreed between the Parties.

Such data and relevant information will be provided with such frequency and in a form or methodology which Waterfront Auckland may reasonably determine as being appropriate for the purpose.

- 3.2 It is acknowledged by each Lessee that:
- (a) the content and detail of any such data and relevant information; and
  - (b) the frequency, form and methodology of its provision,

must be meaningful and fit for the purpose of ensuring that Waterfront Auckland is able to effectively monitor the environmental performance of the Building(s) erected within that Lessee's Premises and identify areas for potential improvement.

- 3.3 Waterfront Auckland will not without the prior permission of the Lessee disclose any such information to any of the other Lessees or Users but will be entitled to disclose such information to its consultants and advisers on a confidential basis.
- 3.4 An industry accepted methodology, agreed by the Parties, will be used to ensure consistency of data.

#### 4 **BUILDING MANAGEMENT COMMITTEE**

- 4.1 The Parties will set up a Building Management Committee which will meet annually.
- 4.2 The Building Management Committee will comprise representatives of Waterfront Auckland and the Lessee and any facilities manager employed by the Lessee or other persons involved from time to time in the operation and management of the facilities and services within its Buildings.
- 4.3 The Building Management Committee will:
  - (a) review:
    - (i) the data and other information shared by the Lessee under paragraph 4;
    - (ii) the environmental performance of the Buildings generally;
    - (iii) any changes to the Buildings, the Premises or their operation which may affect the environmental performance of the Buildings or the Premises in the future;
    - (iv) any forthcoming changes in law or practice which may be relevant to the environmental performance of the Buildings and the Premises;
  - (b) acting in good faith, seek to agree an environmental management plan for the Buildings or review any existing environmental management plan for the Buildings and agree upon annual targets for:
    - (i) the reduction of energy consumption, carbon emissions, water use and waste at the Buildings and the Premises;
    - (ii) the increase, where possible, in the use of plant and equipment based on renewable technologies, renewable energy, recycling of waste, recycled water and captured water for the Buildings and the Premises;
  - (c) produce an annual statement which:
    - (i) contains a summary of the energy and water use and the waste generated by the Buildings;
    - (ii) sets out the targets agreed pursuant to (b) above;

- (iii) sets out progress towards achieving the targets agreed for the previous years and identifies any other achievements (e.g. reductions in fossil fuel consumption);

The Parties will provide each other with the names of the person(s) within their organisations who should be contacted on issues relating to environmental performance of the Buildings and the Premises.

**ANNEXURE**

**WORKING EXAMPLE – RELEVANT PERCENTAGES  
(Rule 13.3(b))**

**Assumptions:**

- Maximum permitted gross floor area under the District Plan at the time of calculation for Wynyard Precinct of 339,473 square metres
- Maximum permitted gross floor area under the District Plan at the time for calculation for Site 7 of 19,233 square metres

**Calculation:**

Relevant Percentage for Site 7 –  $(19,233 \div 339,473) \times 100 = 5.666\%$

***DISCLAIMER***

*This working example is for illustrative purposes only*