

# TERMS AND CONDITIONS OF TENDER OF LEASE – 82 ONGAONGA ROAD

## TENDER DETAILS

The Land described below is offered for lease for tender on the terms set out in these Tender Details.

<b>Tender Documents:</b>	The Tender Documents comprise:  Tender Details  Conduct of Tender  Schedule 1 – Lease Details  Schedule 2 – Form of Lease
<b>Closing Date and Time for Tenders:</b>	4pm, 16 September 2024
<b>Tender Acceptance Date:</b>	27 September 2024
<b>Delivery Address for Tenders:</b>	<b>Hard copy / paper form tenders:</b> Reception of the Council's Waipawa Offices at 28-32 Ruataniwha Street, Waipawa.  <b>Electronic / PDF tenders:</b> <a href="mailto:Nikki.whelpton@chbdc.govt.nz">Nikki.whelpton@chbdc.govt.nz</a>
<b>Lessor:</b>	Central Hawke's Bay District Council ( <b>Council</b> )
<b>Land:</b>	Section 74 Block XI Waipukurau Survey District (Record of Title HBL1/1184); and Part Section 6 Block XI Waipukurau Survey District (Record of Title HBL4/177).
<b>Lease Details:</b>	As inserted by the tenderer in <b>Schedule 1 – Lease Details</b>
<b>Lease Terms and Conditions:</b>	On the form of lease attached as <b>Schedule 2 – Form of Lease</b>

## OFFER OF LEASE BY TENDER

The person or company, whose details appear below and by whom or on whose behalf this document and the schedules, is signed, hereby acknowledges having inspected the Tender Documents, and agrees to execute the Lease as provided for in the Conduct of Tender:

**Dated:** \_\_\_\_\_

Executed for and on behalf of \_\_\_\_\_

by its Director(s) / Authorised Signatory(ies) / Attorney(s)

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

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

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Position

## **CONDUCT OF TENDER**

### **SUBMISSION OF TENDERS**

1. A tenderer wishing to submit a tender must complete the form attached as Schedule 1 (**Lease Details**) to these terms and conditions by inserting:
  - (a) the tenderer's full and correct name and address for notices;
  - (b) if the tenderer is a company, completing the full names of the proposed guarantor(s) who will also sign the Lease;
  - (c) the proposed annual rent (plus GST);
  - (d) the amount of the deposit (being equivalent to two months of the proposed annual rent);
  - (e) the tenderers proposed commencement, term, and renewal terms; and
  - (f) and attaching the schedule to these terms and conditions.
2. The tender must be submitted in this form, have "Tender Ongaonga Road" in the subject line, and must be received at the Delivery Address for Tenders by the Closing Date and Time for Tenders (time being of the essence).
3. A tender may be submitted either in hard copy or by email. A tender submitted by email will be deemed received when the person submitting it receives an email acknowledging receipt of that tender from the Council.
4. A tender offer must state the annual rent as an exact dollar amount without reference to any calculation, variation, or to the rent contained in any other tender.

### **DEPOSIT**

5. A deposit, equivalent to 2 months of annual rent, must be paid to the Council immediately upon acceptance of this tender.

### **ADDITIONAL INFORMATION**

6. Tenderers are welcome to supply whatever information they consider relevant but, as a minimum, the following details must be attached to the tender:
  - (a) details of the tenderer's experience, financial resources (including a statement of assets and liability (prepared by an Accountant), operational ability and expertise;
  - (b) details of the tenderer's proposed use of the land under the Lease;
  - (c) two (or more) written references from referees as to character and business experience who can also be contacted by the Council; and
  - (d) details of any proposed amendments to the Lease.

## **TENDER EVALUATION**

7. The Council reserves the right to:
  - (a) reject all or any tenders;
  - (b) accept a tender which does not strictly comply with the provisions of the Tender Documents;
  - (c) waive any irregularities or informalities in the tender process;
  - (d) re-advertise the tender;
  - (e) amend the Tender Closing Date, the Tender Acceptance Date or any other date in the Tender Documents;
  - (f) amend the Tender Documents and any associated documents, by issue of a written amendment notice up to five days before the Tender Closing Date;
  - (g) seek clarification of any tender at any time prior to the Tender Acceptance Date;
  - (h) consider or reject any non-conforming tender, at the Council's sole discretion;
  - (i) suspend or cancel, in whole or in part, this tender process; and
  - (j) negotiate with any one, or more, tenderer to the exclusion of any other tenderer or tenderer, at any time prior to the Tender Acceptance Date, upon any terms and conditions.
8. The Council is under no obligation to check any tender for errors or omissions. Acceptance by the Council of a tender that contains errors or omissions will not invalidate the lease formed by that acceptance.
9. The failure and/or omission by the Council at any time to enforce or require strict or timely compliance with any provision of the Tender Documents will not affect or impair that provision in any way or the Council's right to avail itself of the remedies it may have in respect of a breach of any such provision.
10. In no circumstances will the Council be obliged to provide any reasons for decisions taken during evaluation of tenders or in respect of any recommendations made as a consequence of the evaluation process.
11. No legal or other obligations shall arise between the tenderer and the Council unless and until the tenderer has received written notification that its tender has been successful.
12. In particular, no legal or other obligations shall arise between any tenderer and the Council in relation to the conduct or outcome of the tender process, including any claim for wasted expenditure, loss of profits or other damages.

## **ACCEPTANCE OF TENDER**

13. Acceptance of any tender will be effected by the Council giving written notice of acceptance to the address provided in the tender. Acceptance will be complete upon such notification and will create a binding lease between the Council and the tenderer.
14. Execution of the Lease will not be a pre-condition to the terms of the Lease being enforceable by either party.

## **EXECUTION OF THE LEASE**

15. As soon as reasonably possible after the Tender Acceptance Date, the Council will forward to the tenderer an electronic copy of the Lease, completed in accordance with the details taken from the tender and in accordance with any additions or variations agreed between the parties as part of the tender process.

16. The Lease must be executed by the tenderer and (if applicable) the guarantor(s) and returned to the Council within ten (10) working days of receipt of the Lease by the successful tenderer.
17. If the tenderer fails to return the Lease duly executed within the period stated the Council may at any time and without the necessity for any preliminary notice or otherwise, and without prejudice to the Council's other remedies at law, cancel the Lease.

#### **LEASE COMMENCEMENT DATE**

18. The term of the Lease will commence on the Commencement Date.
19. Nothing in clause 18 will be construed as precluding the parties, by agreement, electing an earlier or later Commencement Date.

#### **TENDERERS ACKNOWLEDGEMENTS AND WARRANTIES**

20. The tenderer acknowledges that:
  - (a) **Information:** While every effort has been made to ensure that any information relating to the Conditions of Tender supplied by the Council or its agents, employees or consultants is correct, such information has been supplied on an indicative basis only. Tenderers will have no claim for compensation or damages upon the grounds that any information so supplied is incorrect, incomplete, inaccurate or misleading.
  - (b) **Inspection and Investigation:** Prior to putting forward a tender, a full opportunity for inspection and investigation of the Land and Lease was accorded by the Council.
  - (c) **Own Judgment:** Tenderers rely solely upon their own judgment, after such inspection and investigation as they think fit, and not upon any representations, warranties or statements made by the Council or any agent, employee or consultant of the Council .
  - (d) **No Liability:** The Council shall not be liable for any information it provides or for any cost or loss to any tenderer (or any other person) if their tender is not considered beyond the tendering stage or if this tender process is delayed or cancelled for any reason whatsoever.
  - (e) **No Obligation to Advise:** Subject to any Act or regulations, the Council will not be bound to give any reason for any rejection of a tender, or for any suspension or cancellation of this tender process.

#### **MISCELLANEOUS**

21. **Entire Agreement:** The Tender Documents constitute the entire agreement between the parties and supersede and extinguish all prior agreements, discussions and arrangements (if any) between the parties with respect to the leasing of the Land.
22. **Non-Waiver:** Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of the Tender Documents will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of any such provision.
23. **Non-Merger:** The agreements obligations and warranties of the parties contained in the Tender Documents in so far as the same have not been fulfilled at the time of possession shall not merge with the giving and taking of possession of the Land under the Lease.

## SCHEDULE 1 – LEASE DETAILS

<b>LEASE DETAILS</b>		
<b>Tenderer Name:</b>		
<b>Guarantor(s):</b>		
<b>Annual Rent:</b>		
<b>Deposit (2 months' rent):</b>		
<b>Lease Commencement Date:</b>		
<b>Initial Lease term:</b>	[to be between 3 to 5 years]	
<b>Rights of renewal:</b>	[to be one right of renewal, for a term between 3 to 5 years]	
<b>Final Expiry Date:</b>		
<b>Permitted Use:</b>		
<b>Tenderer Address for Notices:</b>	<b>Email:</b>	
	<b>Physical:</b>	

## SCHEDULE 2 – FORM OF LEASE

Dated

2024

## DEED OF LEASE

CENTRAL HAWKES BAY DISTRICT COUNCIL

And

**[INSERT]**

---

82 Ongaonga Road, Waipawa

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**DEED OF LEASE** dated:

2024

**PARTIES:**

**CENTRAL HAWKE'S BAY DISTRICT COUNCIL** (the **Council**).

**[INSERT]** (the **Lessee**).

**[INSERT]** (the **Guarantor**)

**OPERATIVE PART**

In consideration of the rent and covenants and conditions contained and implied in this Lease on the part of the Lessee, the Council leases the Land to the Lessee in accordance with the terms and conditions set out in this Lease. The Lessee accepts the Lease of the Land to be held by it as tenant, subject to the terms and conditions set out in this Lease.

**GUARANTEE**

The Guarantor (if any) covenants with the Council as set out in the Fifth Schedule.

## EXECUTION

**EXECUTED** as a **DEED** for and on behalf )  
of **CENTRAL HAWKES BAY DISTRICT** )  
**COUNCIL** )  
by its Authorised Signatory )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

**EXECUTED** as a **DEED** for and on behalf )  
of [**LESSEE**] by its Director(s) / )  
Authorised Signatory(ies) / Attorney(ies) )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Occupation of Witness

**EXECUTED** as a **DEED** by )  
[**GUARANTOR**] )  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness



## FIRST SCHEDULE LEASE DETAILS

1.	<b>Land</b>	<p>All the land described as:</p> <p>(a) Section 74 Block XI Waipukurau Survey District (record of title HBL1/1184);</p> <p>(b) Part Section 6 Block XI Waipukurau Survey District (record of title HBL4/177,</p> <p>shown coloured on the plans attached as the Third Schedule.</p>	
2.	<b>Term</b>	[insert term] years	
3.	<b>Commencement Date</b>	[insert date/month/year]	
4.	<b>Further Terms</b>	[1] right[s] to renew the Lease for [insert renewal term] year[s]	
5.	<b>Renewal Dates</b>	[insert based on commencement date and renewal terms]	
6.	<b>Final Expiry Date</b>	[insert based on commencement date and renewal terms]	
7.	<b>Annual Rent</b>	\$[insert from tender documents] (plus GST)	
8.	<b>Monthly Payments</b>	\$[insert from tender documents] (plus GST)	
9.	<b>Rent Payment Dates</b>	The first day of each month commencing on the [insert day] day of [insert month and year – being the first of the month closest to the commencement date].	
10.	<b>Rent Review Dates</b>	Annually on the anniversary of the commencement date	
11.	<b>Default Interest Rate</b>	14%	
12.	<b>Permitted Use</b>	[insert]	
13.	<b>Lessee Insurance</b>	\$[insert] public liability insurance	
14.	<b>Addresses for service of notices</b>	<b>Council:</b>	[insert attn for, and email address] 28-32 Ruataniwha Street, Waipawa
		<b>Lessee:</b>	[insert email and physical address]
15.	<b>Outgoings</b>	<p>(a) All rates, taxes, assessments, charges, impositions and outgoings whatsoever that now are or may in the future be assessed or imposed on the Land or any part of parts of it which are payable by the owner or the occupier of the Land.</p> <p>(b) All charges for water, gas, electricity, and any other utilities or consumables levied upon or payable in respect of the Land.</p> <p>(c) Any charges payable to the Hawke's Bay Regional Council or any other person or body for metal taken from the Land.</p>	

## **SECOND SCHEDULE TERMS AND CONDITIONS**

### **1. LESSEE'S PAYMENTS**

#### ***Rent payments***

- 1.1 The Lessee will pay the annual rent to the Council by equal monthly payments in advance on the rent payment dates. All annual rent shall be without any deductions or set-off by direct payment to the Council, or as the Council may direct.

#### ***Outgoings***

- 1.2 The Lessee will pay all outgoings listed in the First Schedule.
- 1.3 The outgoings shall be payable on demand or if required by the Council by monthly instalments on each rent payment date, as the Council shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments, it shall be payable on demand.

#### ***Rent review***

- 1.4 The annual rent payable from each rent review date shall be determined in accordance with clauses 1.5 to 1.8.
- 1.5 The Council shall adjust the annual rent on the basis of increases (and not decreases) in the CPI by giving notice to the Lessee of the increase (if any) using the formula:

$$A = B \times (C \div D)$$

Where:

- A = the CPI reviewed rent from the relevant rent review date
- B = the annual rent payable immediately before the relevant rent review date
- C = CPI for the quarter year ending immediately before the relevant rent review date
- D = CPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the Lease (and in the case where A is the CPI reviewed rent for a renewal date then the last rent review date of the immediately preceding term or if there is no rent review date the commencement date of the preceding term),

and where  $(C \div D)$  shall not be less than 1.

- 1.6 If the relevant CPI is not published at the relevant rent review date, as soon as the CPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant rent review date.
- 1.7 Notwithstanding any other provision of clauses 1.5 to 1.8, the annual rent payable as from the relevant rent review date shall not be less than the annual rent payable immediately preceding the rent review date (and in the case where the relevant CPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).

- 1.8 The new rent determined pursuant to clause 1.5 shall be payable from the relevant rent review date once it is determined by the Council giving notice under that clause. Pending determination of the new annual rent, the Lessee will pay the annual rent that applies prior to the relevant rent review date. On determination of the new annual rent, the Lessee will immediately pay any shortfall to the Council.

***GST***

- 1.9 The Lessee shall pay to the Council or as the Council directs, GST payable to the Council in respect of the rental (on each occasion when a rent payment falls due) and other payments (on demand) payable by the Lessee under this Lease. If the Lessee defaults in payment of the annual rent, outgoings or other moneys payable under this Lease and the Council becomes liable for pay default GST then the Lessee shall on demand pay to the Council the default GST in addition to the interest payable on the unpaid GST.

***Interest on unpaid money***

- 1.10 If the Lessee defaults in payment of the annual rent, outgoings, or other money payable under this Lease for 10 working days then the Lessee shall pay on demand interest at the default interest rate on the money unpaid, from the due date until the date for payment.

***Costs***

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

**2. USE OF THE LAND**

***Permitted use***

- 2.1 The Lessee must not without the Council's prior written consent use or permit the whole or any part of the Land to be used for any use other than the permitted use. The Council shall not unreasonably withhold or delay consent in respect of any proposed use which is:
- (a) reasonably suitable for the Land; and
  - (b) compliant with the requirements of the Resource Management Act 1991 and any other statutory provisions relating to resource management.

***General obligations***

- 2.2 The Lessee must not interfere with or remove any survey peg or pegs in or upon the Land or any neighbouring or adjoining land.
- 2.3 The Lessee will not do, or cause, or suffer or permit to be done, on the Land anything which may prejudice the Council in its tenure or control of the Land, or render the Council liable to any action, claim, demand or proceedings whatsoever, and the Lessee will indemnify the Council from any loss or damage arising out of any such action, claim, demand or proceedings, maintaining adequate insurance for the purpose.

- 2.4 The Lessee shall use its best endeavours and the most modern methods to suppress, eradicate and keep the Land free of noxious plants (including blackberry, gorse and thistles) and vermin (including rabbits).

***Compliance with Statutes and regulations***

- 2.5 The Lessee will:
- (a) comply with the provisions of all statutes, ordinances, regulations, consents, and by-laws relating to the use of the Land by the Lessee or other occupant;
  - (b) comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the Land or their use by the Lessee or other occupant; and
  - (c) promptly provide the Council with a copy of all requisitions and notices received from a competent authority.

***No noxious use***

- 2.6 The Lessee shall not:
- (a) bring (or allow to be brought) upon or store on the Land any machinery, goods or things of an offensive, noxious, illegal, or dangerous nature; or
  - (b) contaminate the Land and shall undertake all works necessary to remove any contamination of the Land other than contamination not caused by the Lessee or which took place prior to the Commencement Date of the Lease term (and **Contamination** for the purposes of this clause means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991); or
  - (c) use the Land or allow it to be used for any noisome, noxious, illegal, or offensive trade or business; or
  - (d) allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Council, or any other person,

and generally, the Lessee shall conduct the Lessee's business upon the Land in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Lessee in a reasonable manner of the permitted use or any use to which the Council has consented shall be deemed not to be a breach of this clause.

**3. INSURANCE**

***Lessee Insurance***

- 3.1 The Lessee must keep current at all times a policy of public liability insurance for the amount specified in the First Schedule.

***Council Insurance***

- 3.2 The Lessee acknowledges and accepts that the Council may not have insured the Land (or any improvements or buildings on the Land).

#### **4. QUIET ENJOYMENT**

- 4.1 The Lessee, paying the rent and performing and observing all of the covenants and agreements expressed and implied in this Lease, shall have quiet enjoyment of the Land during the term without any interruption by the Council or anyone lawfully claiming under the Council.

#### **5. LESSEE'S MAINTENANCE, MAKE GOOD AND REINSTATEMENT OBLIGATIONS**

##### ***Ongoing maintenance, and care of Land***

- 5.1 The Lessee will:
- (a) keep its own improvements in a clean and tidy condition, and so as not to cause a nuisance;
  - (b) keep all grounds, yards, and any surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition;
  - (c) maintain any fences and gates on or on the boundary of the Land;
  - (d) keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed;
  - (e) regularly cause all of the Lessee's rubbish and recycling to be removed from the Land and will keep the Lessee's rubbish bins or containers in a tidy condition;
  - (f) ensure the Land is kept secure when the Lessee (or its employees or agents) are not present on the Land; and
  - (g) cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.
- 5.2 If the Council gives the Lessee written notice of any failure on the part of the Lessee to comply with any of the requirements of clause 5.2, the Lessee shall with all reasonable speed so comply.

##### ***Lessee's Improvements***

- 5.3 The Lessee will not make any additions or alterations to, or install any new buildings or other improvements on the land, without first providing the Council on every occasion plans and specifications, and obtaining the consent of the Council (not to be unreasonably withheld) for that purpose. The Lessee, when undertaking any "building work" to the Land (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Council.
- 5.4 The Lessee may, prior to the expiration or sooner termination of this Lease, remove all or any of the improvements made by it to the Land, provided that the Lessee must make good any damage to the Land caused by such removal and shall leave the Land in a clean and tidy condition.
- 5.5 On the expiration or sooner termination of this Lease:
- (a) the Council may require the Lessee to remove the whole or any of its improvements from the Land, making good any damage to the Land occasioned by such removal, and leaving the Land clean and tidy;



- (b) if the Lessee fails to do so, the Council may carry out the removal and make good referred to in (a) above, and recover all costs of doing so from the Lessee; and
- (c) all improvements remaining on the Land with the Council's permission shall revert to the Council without compensation payable to the Lessee or otherwise.

## 6. COUNCIL'S EXISTING STRUCTURES

6.1 The Lessee acknowledges and agrees:

- (a) that the Lessee may use the existing storage bins as shown on the plans in the Fourth Schedule (the **Storage Bins** for the purposes of this clause 6);
- (b) that the annual rent does not include any added value due to any existing structures or improvements on the Land owned by the Council;
- (c) not to use any structures or improvements (other than the Storage Bins) that may exist on the Land as at the Commencement Date; and
- (d) notwithstanding (b) above, the Council provides no representation or warranty, either expressed or implied, as to the condition, suitability, or fitness for use of any structures or improvements existing on the Land as at the Commencement Date (including the Storage Bins), or their compliance with any requirements, consents, or legislation; and
- (e) the Council will not be required to repair or maintain any existing structures or improvements on the Land (including the Storage Bins).

6.2 The Lessee agrees to indemnify the Council from any and all claims, liabilities, damages, and expenses (including reasonable legal fees) arising out of or related to any existing structure or improvement on the Land (including the Storage Bins).

6.3 The Lessee acknowledges that there are some Council-owned buildings on the Land identified in the plan attached as the Fourth Schedule. The Council has fenced the buildings off from the balance of the Land. The Lessee agrees not to access or use such buildings and not to enter the area bound by the fences.

***[Drafting note for lease preparation: the Council will advise during tender process if buildings remain on the Land. If, at the time of signing the Lease, the buildings have been removed, clause 6.3 will be deleted from this Lease.]***

## 7. ASSIGNMENT / SUBLETTING

7.1 The Lessee will not assign, transfer, mortgage, sublet or part with the possession of all or part of the Land or its interest in this Lease.

## 8. TERMINATION

### ***Cancellation***

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

- (a) if the annual rent shall be in arrears 10 working days after any rent payment date and the Lessee has failed to remedy that breach within 10 working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007; or
- (b) in case of breach by the Lessee of any covenant or agreement on the Lessee's part expressed or implied in this Lease (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with section 246 of the Property Law Act 2007; or
- (c) if the Lessee makes or enters into or endeavours to make or enter into any composition assignment or other arrangement with or for the benefit of the Lessee's creditors; or
- (d) in the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Lessee; or
- (e) if the Lessee suffers execution to issue against the Lessee's property, goods or effects under any judgment against the Lessee in any Court for a sum in excess of five thousand dollars (\$5,000).

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

#### ***Essentiality of Payments***

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

8.4 The acceptance by the Council of arrears of annual rent, outgoings or other moneys shall not constitute a waiver of the essentiality of the Lessee's continuing obligation to pay annual rent, outgoings, and other moneys.

#### ***Repudiation***

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

### **9. RENEWAL**

9.1 If the Council is satisfied that the terms and conditions of the Lease have been complied with, and if the Lessee has given the Council written notice to renew the Lease at least three calendar months before the end of the term, then the Council will at the cost of the Lessee grant a new lease for a further term from the relevant renewal date in the First Schedule, as follows:

- (a) the annual rent shall be agreed upon or failing agreement shall be determined in accordance with clause 1.4 but such rental shall not be less than the rent payable immediately preceding the renewal date; and
- (b) the renewed lease shall otherwise be upon and subject to the covenants and agreements herein expressed and implied except that the term of this Lease plus all further terms shall expire on or before the final expiry date;
- (c) the Council as a condition of granting a new lease shall be entitled to have the new lease guaranteed by anyone who has guaranteed this lease on behalf of the Lessee; and
- (d) the parties will not be released by the renewal of the Lease from any liability for any breach under this Lease.

## **10. DISPUTES**

- 10.1 Any dispute or question arising hereunder between the parties shall be referred first to mediation in accordance with the New Zealand Law Society Dispute Resolution Committee Mediation guidelines. Any such dispute or question not settled pursuant to such mediation shall then be referred to arbitration pursuant to the provisions of the Arbitration Act 1996.
- 10.2 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 10.3 The procedures prescribed in this clause shall not prevent the Council from taking proceedings for the recovery of any annual rent or other moneys payable under this Lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in clause 8.

## **11. GENERAL**

### ***Council in non-regulatory capacity***

- 11.1 The Council has entered into this Lease in its non-regulatory capacity. This Lease does not bind Council in its capacity as a regulatory authority in any way, and any consent or agreement Council gives under this Lease is not an agreement or consent in its regulatory capacity, and vice versa. When acting in its regulatory capacity, Council is entitled to consider all applications to it without regard to this Lease. Council will not be liable to any other party if, in its regulatory capacity, Council declines or imposes conditions on any consent or permission any party seeks for any purpose associated with this Lease.

### ***Holding Over***

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

***Access for Re-Letting or Sale***

- 11.3 The Lessee will during the term permit the Council, the Council's representatives and prospective Lessees or purchasers to have access to inspect the Land provided that:
- (a) any such inspection is at a time which is reasonably convenient to the Lessee and after reasonable written notice;
  - (b) the inspection is conducted in a manner which does not cause disruption to the Lessee; and
  - (c) if the Council or the Council's representatives are not present the persons inspecting have written authority from the Council to do so.

***Suitability***

- 11.4 No warranty or representation expressed or implied has been or is made by the Council that the Land (or any structures or improvements in or on the Land) is now suitable or will remain suitable or adequate for use by the Lessee or that any use of the Land (or any structures or improvements in or on the Land) by the Lessee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

***Waiver***

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

***Land Transfer Title or Mortgagee's consent***

- 11.6 The Council shall not be required to do any act or thing to enable this Lease to be registered or be required to obtain the consent of any mortgagee of the Land, and the Lessee will not register a caveat in respect of the Lessee's interest under this Lease.

***Notices***

- 11.7 Any notice required or authorised by this Lease may be served on the parties at the address for service for each party listed in the First Schedule, or to any updated address as notified by one party to the other in writing from time to time.
- 11.8 All notices must be in writing and must be served by one of the following means:
- (a) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
  - (b) in other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
    - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
    - (ii) by personal delivery, or by posting by registered or ordinary mail, or by email.
- 11.9 In respect of the means of service specified in clause 11.8(b)(ii) a notice is deemed to have been served:
- (a) in the case of personal delivery, when received by the addressee; or

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

11.10 In the case of a notice to be served on the Lessee, if the Council is unaware of the Lessee's last known address in New Zealand, any notice placed conspicuously on any part of the Land shall be deemed to have been served on the Lessee on the day on which it is affixed.

11.11 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice. Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

### ***No implied terms***

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

### ***Counterparts***

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

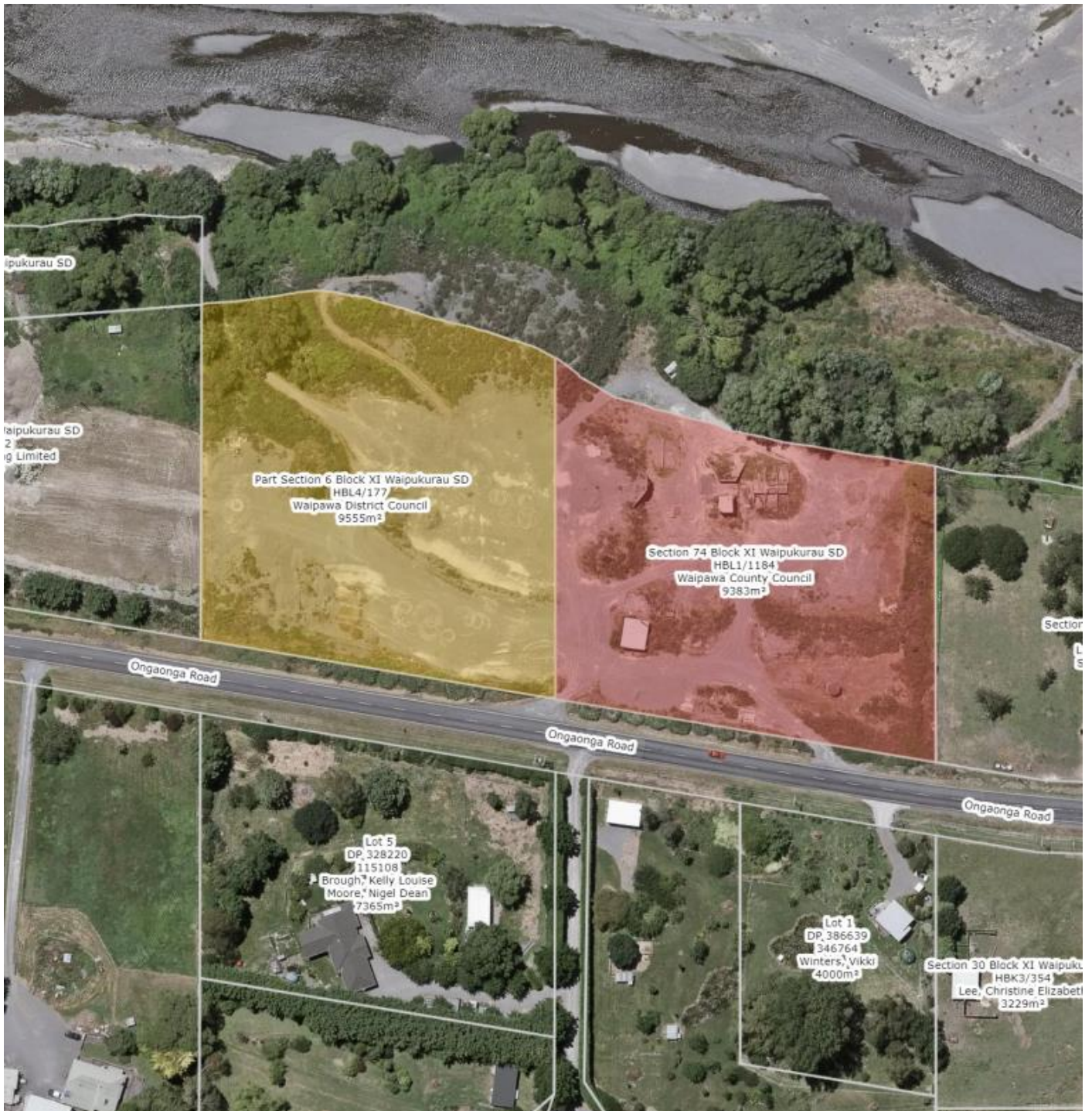
## **12. DEFINITIONS**

12.1 In this Lease:

- (a) **CPI** means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index;
- (b) **Default GST** means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Council (or where the Council is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this Lease but does not include any sum levied against the Council (or where the Council is or was a member of a GST group its representative member) by reason of a default or delay by the Council after payment of the GST to the Council by the Lessee;
- (c) **GST** means the Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985;
- (d) **renewal** means the granting of a new lease as provided for in clause 9;
- (e) **term** includes, where the context requires, a further term if the lease is renewed; and
- (f) **working day** has the meaning given to it in the Property Law Act 2007, and notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.

- 12.2 The **Council** and the **Lessee** means where appropriate the executors, administrators, successors and permitted assigns of the Council and the Lessee.
- 12.3 A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 12.4 A reference to the words "include" or "including" are to be interpreted without limitation.
- 12.5 Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- 12.6 Where the context requires or admits, words importing the singular shall import the plural and vice versa.

# THIRD SCHEDULE PLAN OF THE LAND



**FOURTH SCHEDULE**  
**PLAN OF THE [EXCLUDED BUILDINGS AND] STORAGE BINS**

**[Drafting note for lease preparation – if clause 6.3 is deleted, delete first plan, and all square bracketed reference to excluded buildings]**

**[Excluded Buildings (clause 6.3): ]**



**Storage Bins (clause 6.1(a)):**





## **FIFTH SCHEDULE GUARANTEE**

### **1. GUARANTEE**

1.1 In consideration of the Council entering into the lease at the Guarantor's request, the Guarantor:

- (a) Guarantees payment of the rent and the performance by the Lessee of the covenants in the lease; and
- (b) indemnifies the Council against any loss the Council might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

1.2 The Guarantor covenants with the Council that:

- (a) no release delay or other indulgence given by the Council to the Lessee or to the Lessee's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier;
- (b) as between the Guarantor and the Council the Guarantor may for all purposes be treated as the Lessee and the Council shall be under no obligation to take proceedings against the Lessee before taking proceedings against the Guarantor;
- (c) the guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent;
- (d) an assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability;
- (e) should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several; and
- (f) the Guarantee and indemnity shall extend to any holding over by the Lessee.