

JOINT MEMORANDUM

Dated:

BETWEEN

1. **HOROWHENUA DISTRICT COUNCIL** (the "**Council**")
2. (the "**Applicant**")

BACKGROUND TO THIS MEMORANDUM

- A. Certain relocations of buildings will be a permitted activity under the Horowhenua District Plan ("**District Plan**") provided the relocation complies with all relevant permitted activity conditions and requirements in the District Plan, including (among others) payment of a monitoring fee of \$1,500 to Council (the "**Fee**").
- B. The Applicant wishes to undertake the Relocation set out in the Schedule ("**the Relocation**").
- C. The parties agree to the procedures set out in this memorandum, which specify and clarify how the Fee will be retained and refunded by the Council.
- D. The purpose of this memorandum is solely to assist the Applicant to comply with its obligations under the District Plan. It should not be interpreted as a separate consent or permission for any activity of any nature whatsoever.
- E. This memorandum provides a broad framework for enabling the Applicant to meet its requirements as to payment and holding of the Fee. The Applicant agrees that any matters not provided for in this memorandum shall be determined by the Council by reference to the District Plan, if appropriate, and through consultation with the Applicant.

THE PARTIES CONFIRM AS FOLLOWS

The Fee will be held by Council as a refundable deposit

- 1.1 The Applicant must pay the Fee to the Council on submission of a building pre-inspection report in the form set out in Schedule 15 to the District Plan.
- 1.2 Once paid, the Fee will be held by the Council pending its satisfaction that the Applicant is observing all relevant permitted activity conditions and requirements in the District Plan for the relocation of buildings.
- 1.3 If at any time the Council determines that the Applicant has not complied with all relevant permitted activity conditions and requirements set out in the District Plan for the Relocation then the default provisions under clause 2.1 will apply.

- 1.4 Once the Relocation has been completed:
- (a) the Applicant will inform the Council so that it may inspect the building to determine whether the Relocation (including the necessary reinstatement work) has been completed in accordance with all relevant permitted activity conditions and requirements in the District Plan; and
 - (b) if the Council determines that the Relocation does comply with the District Plan, it will refund the Fee to the Applicant less its charges for carrying out the inspection and any associated administration charges (together, the “inspection and administrative charges”).¹
- 1.5 If the Applicant does not inform the Council that the Relocation has been completed within 9 months of the building pre-inspection report having being filed with Council, the Council may initiate its own inspection of the building to determine whether the Relocation (including the necessary reinstatement work) has been completed in accordance with all relevant permitted activity conditions and requirements in the District Plan and:
- (a) if so, the Council will refund the Fee to the Applicant less the inspection and administration charges; and
 - (b) if not, the default provisions of clause 2.1 will apply.

What happens if the Applicant defaults?

- 2.1 Where the Applicant has defaulted on its obligations under clause 1, the Relocation will not be a permitted activity under the District Plan. In such case, Council will be entitled to apply the Fee, or any part of it, to:
- (a) any administrative, legal or other costs or expenses it may incur in relation to taking any enforcement action against the Applicant; and
 - (b) any fine or penalty payable by the Applicant as a result of the default or the fact that the Relocation is not a permitted activity, and/or any enforcement action taken against the Applicant.

How the parties will resolve disputes

- 3.1 If the Applicant disputes any decision or action undertaken by the Council in connection with this memorandum, it will give written notice of such dispute to the Planning Services Manager, who will in turn discuss the matter with the Applicant in good faith.
- 3.2 If the dispute is not resolved within 7 days of notice having been given to the Planning Services Manager then the following dispute resolution procedure will apply:

¹ The current inspection fee is \$150 (including GST) and administration charges are currently \$107 per hour (including GST).

- (a) The dispute will be referred to mediation by either party giving written notice of such referral to mediation to the other.
- (b) The mediation will be conducted by a LEADR panel mediator chosen by the parties or if they fail to agree on such appointment within 14 days of the notice referring the dispute to mediation being given, the mediator will be appointed on request by either party, by the President of the New Zealand Law Society or the President's nominee.
- (c) If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator by giving written notice to the other party.
- (d) The single arbitrator will be appointed by the parties or, if the parties fail to agree on such appointment within 14 days of the notice referring the dispute to arbitration being given, the arbitrator will be appointed on request by either party by the President of the New Zealand Law Society or the President's nominee.
- (e) The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

3.3 This dispute resolution clause will not apply to any application by either party for urgent interlocutory relief.

Memorandum subject to the District Plan

4.1 This memorandum is subordinate and subject to the provisions of the District Plan. In the event that any term of this memorandum conflicts with that document, it will be deemed to be amended to the extent necessary to eliminate the inconsistency and the parties will enter into such documentation as may be required to give effect to this.

SIGNED BY THE PARTIES

Signed for the Council by a duly authorised officer:

Name:

Signed for the Applicant (and if a Company then by a duly authorised officer):

Name:

SCHEDULE

Current site of building:

Destination site of building:

Owner of building: