

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER
IN THE KAIPARA DISTRICT**

UNDER the Resource Management Act 1991

IN THE MATTER of a Notice of Requirement to designate land for educational purposes at 9 Tawa Avenue, Kaiwaka by the Minister of Education

LEGAL SUBMISSIONS ON BEHALF OF THE MINISTER OF EDUCATION

17 November 2023

**ELLIS GOULD
LAWYERS
AUCKLAND**

**Level 31 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172
PO Box 1509, DX CP22003
AUCKLAND**

REF: D J Sadlier

dsadlier@ellisgould.co.nz

MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. These submissions and the evidence to be presented are in support of the Notice of Requirement (“**NoR**”) by the Minister of Education (“**Minister**”). The NoR seeks, pursuant to section 168 of the Resource Management Act 1991 (“**RMA**”), a designation for ‘educational purposes’ at 9 Tawa Avenue, Kaiwaka (“**Site**”) to enable the relocation of an existing Kura Kaupapa Māori, Te Kura Kaupapa Māori o Ngāringaomatariki (“**Kura**”) to the Site.
2. As discussed in the Assessment of Environmental Effects (“**AEE**”), supporting reports and the evidence exchanged by the Minister, the purpose of the NoR is to enable the relocation of the Kura from Ōruawharo to the Site. This will allow the Kura to continue operations in a purpose-built facility better suited to its needs, allowing it to expand its roll, and reinforce and enhance its education outcomes achieved to date. The designation will provide for the full continuum of Māori Medium education (i.e. the current year 1-8 cohort, secondary school age students and a Puna Reo).
3. The section 42A report by the Council’s reporting planner (“**Hearing Report**”) discusses the content of the NoR, the statutory framework and the submissions lodged. The Hearing Report recommends that the NoR be upheld and designation confirmed subject to amended conditions. The Minister and the Council are generally aligned on conditions, with the exception of conditions regarding the provision of: a design statement; an ecological management plan; and a Safe System Assessment. These matters are addressed below.
4. The Minister asks that Council make a recommendation upholding the NoR subject to the schedule of conditions in Appendix 2 to Mr Ensor’s evidence.

BACKGROUND

5. The Site is approximately 1.5km east of the Kaiwaka Township. It is approximately 4.6 ha in area and located within the Rural Zone of the Kaipara District Plan (“**KDP**”). It is an L-shaped block consisting of gently sloping

grassed paddocks with a large mature section of bush located in the southeast portion of the site that is subject to a QEII covenant, protecting that area from development in perpetuity. The Site is surrounded by mixed rural and rural residential land uses, with rural residential primarily to the east and west of the site, and farming activities to the north.

6. The Site fronts onto Tawa Avenue which is a two-lane, two-way, sealed, no exit road. Access to the Kura will remain on Tawa Avenue. Tawa Avenue is accessed from Settlement Road, a two-lane collector road. Settlement Road intersects with State Highway 1 approximately 1.5 km to the west of the site.
7. The designation will enable the relocation of the Kura to the site, and will support the development and improvement of Māori learning pathways to accommodate projected population growth and greater demand for Māori based education. Strengthening Māori medium pathways is a key focus area for the Ministry of Education (“**MoE**”), and at 24.6% of the population¹, Māori are strongly represented within the Kaipara District.
8. The Kura was opened in 2007 and is currently located in Ōruawharo (to the west of Wellsford). It currently provides education for years 1-8 and has approximately 50 students, and 5 staff plus teacher aid and support. It is the only Māori Medium Kura in the area.
9. As outlined in the planning and corporate evidence for the Minister, there is a need to relocate the Kura because:
 - (a) The Kura occupies temporary prefabricated buildings on a temporary site that has little room for growth or outdoor play. Currently, students have to travel to Kaiwaka School to use the pool, gym, fields and hall.
 - (b) The Kura has aspirations to provide the full continuum of Māori Medium education, but is limited in its ability to do so given the restrictions on expansion of the site.

¹ Based on 2018 Census data.

- (c) The current site is held through a leasehold arrangement, which presents MoE with challenges regarding the justification of long-term capital investment.
 - (d) Students come from a wide area including Paparoa, Waipu, Mangawahi and Maungatūroto. However, the geographical location of the current site presents challenges in attracting more students and staff. It also presents challenges in terms of the viability of development onsite.
10. Designation of the Site offers the community a higher degree of continued certainty as to what the Site is to be used for in the future, as well as providing the planning certainty required by the Minister to invest in the development and maintenance of facilities.

EVIDENCE ON BEHALF OF THE MINISTER

11. The application and evidence confirms that the Site can appropriately be developed for a Kura, albeit that the NoR and witnesses here today have not assessed a particular development proposal. That said, the witnesses have made some assumptions regarding the likely scale and type of development in order to identify and assess the level and nature of effects that might eventuate.
12. Evidence is to be presented in support of the NoR by:
- (a) Clive Huggins – Director, Land Investment and Planning team within MoE. Mr Huggins’s evidence addresses the Minister’s educational responsibilities, the Minister’s objective for the proposal, the educational needs of the Kura and the site selection and acquisition process, as well as the process involved to open school facilities on designated sites.
 - (b) Lindsay Leitch, acoustic consultant, addresses acoustic matters related to the NoR. She identifies the potential acoustic effects, and how these potential effects are appropriately mitigated through the conditions of designation proposed by the Minister. In doing so, Ms Leitch responds to matters raised in submissions received.

- (c) Colin Shields, transportation planner, addresses the traffic and transportation matters related to the NoR. He describes the transport elements of the application including its potential transportation effects, and how these effects are appropriately mitigated through the conditions of designation proposed by the Minister. In doing so, Mr Shields responds to matters raised by the Council reporting team, and in submissions received.
 - (d) Nicholas Scarles, landscape architect, addresses landscape matters related to the NoR. He summarises his Landscape Values Assessment (“**LVA**”) which identified potential effects on rural landscape character and amenity, and then sets out how these effects are appropriately mitigated through the conditions of designation proposed by the Minister. In doing so, Mr Scarles responds to matters raised by the Council reporting team, and in submissions received.
 - (e) Tim Ensor, consultant planner, provides an assessment of the NoR against the statutory framework including the effects on the environment of allowing the requirement with reference to the relevant statutory planning instruments. Mr Ensor also addresses the rationale for the conditions proposed by the Minister and comments on the reasons why he considers the conditions in Appendix 2 to his evidence to be appropriate in terms of the RMA.
13. In the interests of efficiency, the witnesses have been asked not to repeat in full the content of their reports in their evidence. Instead, they have been asked to summarise their conclusions and to concentrate on issues that are most likely to be of concern to you, or that are raised by submitters. If need be, the witnesses will be able to refer you to relevant parts of their reports and to expand on their evidence.

LEGAL FRAMEWORK

14. The AEE contains a comprehensive assessment of the NoR against the relevant legal framework including the relevant provisions and Part 2 of the RMA, the higher order planning instruments and the relevant objectives and policies of

the KDP. This assessment is accepted and adopted in the Hearing Report.² Mr Ensor's evidence summarises the s 171 assessment, and updates it to the extent necessary to reflect the Minister's evidence and updated conditions.

15. The Minister supports analysis set out in the Hearing Report, in particular its conclusions that the NoR should be confirmed subject to site specific conditions and with modifications, for the following reasons:
16. Your consideration of the NoR under s 171(1) is subject to Part 2 of the RMA.³ In this case, the NoR is entirely consistent with the purpose of the RMA, being the sustainable management of natural and physical resources, in that:
 - (a) It involves the use and development of a physical resource (land) in a way which will provide for the social and cultural wellbeing and for the health and safety of the wider Kaipara community by providing a fit for purpose education facility in a location of need.
 - (b) The Māori language is a taonga. Providing for a Kura at the Site therefore recognises and provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, and other taonga in that it will enable all uri (descendants) of Ngāti Whātua to access full immersion Māori Medium education at a site which is located within the rohe of Te Uri o Hau (being a Māori hapu, or sub tribe, of Ngāti Whātua). Māori language in education is an important way of giving effect to Te Tiriti o Waitangi, and to that extent, the NoR is also consistent with the principles of the Te Tiriti o Waitangi.
 - (c) Any potential adverse effects of the activity on the environment can be avoided, remedied or mitigated through the imposition of conditions proposed by the Minister and through good design

² Hearing Report at para 6.2.

³ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 which held that *King Salmon* did not change the import of Part 2 for consideration of effects on the environment of an NoR. The Supreme Court has recently considered the application of *King Salmon* to designations in the context of appeals on the notices of requirements for the East West Link, but a decision has yet to be issued. In any event, the Minister considers that the proposal warrants approval both in terms of Part 2 and in terms of the effects when particular regard is had to the matters listed at s171(1)(a) to (d).

undertaken and provided for in the later outline plan and the Minister's internal design review processes.

(d) Education, and in particular delivery of Māori curriculum that protects te reo Māori, tikanga Māori, Māori pedagogy, and the transmission of Māori knowledge, skills, and attitudes, is an essential component to the social and cultural wellbeing of Māori and the Kura will be a key piece of community infrastructure in that regard.

17. Section 171(1) is concerned primarily with the effects of the designation. It is in that context that you are required by s 171(1) to have regard to the matters listed in sub sections (a) to (d). The potential effects of the proposal (including positive social and cultural effects) are addressed in the evidence to be presented on behalf of the Minister and in the Hearing Report, and it is submitted that no significant adverse effects will arise. While there remains some minor disagreement regarding proposed conditions recommended by the Council, restrictions, by way of conditions, imposed on the designation can avoid, remedy or mitigate any potential adverse environmental effects.
18. With regard to s 171(1)(a) concerning the provisions of relevant planning instruments, a designation is by definition an exception from the relevant district plan, and a NoR is a mechanism that enables the implementation of infrastructure that might otherwise be prevented from being established. That mechanism is available only to Ministers of the Crown and specified requiring authorities. Accordingly, while planning provisions can inform the terms and conditions of a designation, a NoR will not necessarily be declined because it fails to comply with such provisions.⁴ Indeed, it is not uncommon for a designation to be at odds with relevant district plan provisions. Having said that, as outlined in the planning evidence,⁵ the NoR is generally consistent

⁴ The requirement is not to "give effect" to the planning provisions, but to have "particular regard to" them. To have particular regard to something simply requires the relevant matter to be considered separately and specifically from other relevant considerations (refer: *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [67]). This can be contrasted with "give effect to" which means "to implement", and is intended to constrain decision makers (*Environmental Defence Soc Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38; [2014] 1 NZLR 595 at [77] and [91]).

⁵ At section 4.

with the relevant provisions of the KDP, Northland Regional Policy Statement and relevant national planning documents.

19. There is no obligation in terms of s 171(1)(b) to establish that a designated site is the best site for an activity. Rather, the Council needs to consider whether adequate consideration has been given by the requiring authority to alternative sites, routes or methods of undertaking the work if the requiring authority does not have an interest in the land sufficient for undertaking the work or it is likely that the work will have a net⁶ significant adverse effect on the environment. In this case:
- (a) The Site is owned by the Crown, and the Minister therefore has a sufficient interest in the land to undertake the work.
 - (b) The evidence demonstrates that the proposed work will not have any significant adverse effects on the environment.

No assessment of alternatives is therefore required. Despite this, a number of sites were identified and evaluated using MoE's evaluation methodology for the Kura network. The Site is appropriate in terms of: its shape and topography; its placement within the Kura catchment; and its location which presents an opportunity to attract more students and staff.

20. In terms of s 171(c), the NoR and associated works are reasonably necessary for achieving the objectives of the requiring authority.
21. The balance of these submissions will serve to highlight a few key issues, primarily relating to the recommended conditions of designation and, where necessary, issues raised by submitters.

OUTSTANDING ISSUES

22. There is a large degree of alignment between the Minister's experts and the Council's reporting planner. As such, this section focuses on the areas where

⁶ Positive effects which offset or compensate any adverse effects and any mitigation measures should be taken into account before assessing the extent to which an effect may be significant (refer: *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [80]-[82]; and *Van Camp v Auckland Council* A073/07 at [205]).

there remains some (even if minor) disagreement with the conditions put forward in the Hearing Report.

23. Submitters have raised a wide range of issues, which, where relevant, have been addressed in the Minister's evidence and in the Hearing Report. As such, any comments in relation to these are addressed generally below, in the context of responding to the Council's Hearing Report.
24. A number of issues raised in submissions fall outside the scope of an effect to be considered under the RMA, or are unsupported by evidence. These include submissions raising matters such as the potential devaluation of properties, increased crime, liability for infrastructure costs, the fact the proposal was not identified on a spatial plan and lack of consultation. The Minister agrees with the Reporting Planner's assessment at para 4.5 of the Hearing Report that these are matters which: are not an impediment to a designation; cannot specifically be addressed in the context of the current NoR; and/or lack evidence to support the issue raised.

Visual Amenity Effects

25. The evidence for the Minister is that potential effects on landscape character and visual amenity can and will be mitigated to a level where amenity is maintained. The primary way in which potential effects are managed is through Condition 8.1, which requires the Minister to prepare a landscape plan with the purpose of mitigating the landscape and visual amenity effects of the proposal on the identified properties.
26. While the Council has recommended a condition requiring the provision of a design statement as part of the outline plan process, this is considered unnecessary as the outline plan will already incorporate the outcomes of MoE's comprehensive internal design review process and it is inefficient to have two parallel processes which are likely to result in the same or similar outcomes.
27. The evidence of Mr Huggins and Mr Ensor provides more detail regarding this existing process, but, in summary, MoE has a design assurance process whereby a panel of expert architects review the architectural design and

layout of new schools. Matters such as landscape context, and form and appearance of the building are considered at three separate stages (at master planning, during preliminary design, and during the developed design stage). That is, design responses specific to the Site will be identified through the Minister's existing process, and will be reflected in the outline plan to be lodged with Council.

28. The Hearing Report invited the Minister to clarify the visual amenity mitigation, given five properties were identified in the LVA as being subject to potential adverse visual amenity effects but only three properties were specifically identified in Condition 8.1. The condition has been amended to specifically require consideration of all properties identified within the LVA as being subject to potential adverse effects. Additionally, in response to the submission of Dean Gray and Vicki Boddington, 148 Settlement Road is also proposed to be included within Condition 8.1.
29. Mr Scarles concludes that potential effects on landscape character and visual amenity can and will be mitigated to a level where amenity is maintained via the amended landscape plan condition, the existing vegetation (i.e.: QEII covenanted bush), topography and design conditions. On this basis, it is considered that any potential visual amenity effects do not pose a barrier to designating the site for education purposes.

Traffic and Transportation Effects

30. Submitters have raised concerns regarding the extent of traffic that will be generated by the Kura.
31. The concerns raised by submitters have been addressed in the Traffic Report and evidence of Mr Shields. In summary, the Integrated Traffic Assessment ("**ITA**") undertaken as part of the application confirms that traffic generated by the Kura can be accommodated on the existing transport network without upgrade both from a network capacity and network safety perspective.
32. In coming to his conclusion that visibility distances at the Settlement Road / Tawa Ave intersection were sufficient (and therefore no improvements were needed), Mr Shields' evidence assumed that the speed limits on these roads

would be reduced (from 100km to 40 km/h on Tawa Ave and 90km/h to 60 km/h on Settlement Road). Since filing the evidence, the Northland Transportation Alliance has confirmed that there is in fact an error in the physical signage and that the speed limits are currently 40 km/h along Tawa Ave and 50 km/h along Settlement Road. It is understood that maintenance contractors have been instructed to correct the physical signage. As such, Mr Shields's conclusion that no improvements are needed is not reliant on any future decision from Council regarding speed limits.

33. While the Hearing Report does not raise any fundamental concerns regarding the Minister's assessment of traffic and transportation effects, relying on advice from the Northland Transportation Alliance, Council's Reporting Engineer recommends requiring a Safe System Assessment ("**SSA**") of the intersection of Tawa Avenue / Settlement Road. This would determine if any final changes to the existing layout are required. While the Hearing Report proposes a condition requiring an SSA as part of the outline plan, Mr Shields is of the view that an SSA is not required in this case as the ITA did not identify any network capacity or safety issues. Accordingly, no SSA condition is proposed by the Minister.

Noise effects

34. Several submissions raise concerns about additional noise. This has been canvassed in the evidence of Ms Leitch, and there are no outstanding areas of disagreement between the Council and the Minister on this matter.
35. Ms Leitch's evidence recommends the identification of a buffer area within which play activities are discouraged, to reduce the likelihood of noise from play being greater than that which would be anticipated under the KDP rules. The Minister has not proposed a specific condition requiring this buffer area, because, with the exception of a small area adjoining the western boundary with 178 Settlement Road, the buffer area is entirely within the QEII covenanted bush area. That area is protected in perpetuity - thus reducing or removing the likelihood of children congregating within that area to the point at which noise effects might be experienced at neighbouring sites.

Ecological Effects

36. The Hearing Report refers to the fact that the following suggestions included in documents filed with the application have not been implemented:
- (a) the recommendation in the Ecological Opportunities and Constraints Assessment (“**Ecology Report**”) that an Ecological Management Plan *may* be required depending on the development footprint proposed; and
 - (b) the reference in the application to offering a condition to avoid the QEII covenant area.

As a result, the Hearing Report recommends a condition which requires an Ecological Management Plan to be prepared as part of the first outline plan. This would identify areas of ecological value on site, assess the potential effects of the proposal on those values and propose a management plan to avoid / mitigate effects and ecological values and identify suitable enhancement where possible.

37. As outlined in Mr Ensor’s evidence, the Ecology Report identified the QEII covenanted bush in the eastern portion of the site, the natural wetlands to the south and the stream that flows adjacent the bush and along the eastern boundary as having ecological value. No particular ecological constraints were identified in the northern portion of the Site.
38. MoE is proposing to avoid development activities in the QEII covenanted bush, the wetland and the stream. However, it is not considered necessary to propose a condition requiring avoidance of these areas because:
- (a) The QEII covenanted bush must be protected in perpetuity. Amongst other things, the covenant specifically precludes the construction of buildings, land disturbance, removal of native vegetation, introduction of any substance injurious to plant life or planting of non-local native flora and anything that materially alters the condition of the land. A copy of the covenant is attached as **Annexure A**.

(b) The wetlands and streams identified as having ecological value are subject to the National Environmental Standards for Freshwater 2022 (“**NESF**”), and the works of concern identified within the Ecology Report would require consent under the NESF.⁷ As the NESF deal with the functions of Regional Councils, even designated works would require consent and ecological effects could be addressed through that process.

39. In light of the above restrictions, the requirement for a broad scope Ecological Management Plan is considered unnecessary.

CONCLUDING COMMENTS

40. The Minister asks that you recommend that the NoR be upheld subject to the conditions appended to the planning evidence of Mr Ensor.

DATED this 17th day of November 2023

Daniel Sadlier / Alex Devine – Counsel for the Minister of Education

⁷ NoR AEE, Appendix H, Ecology Report, at section 6.1.

ANNEXURE A – QEII COVENANT



OPEN SPACE COVENANT

(Under Section 22 of the Queen Elizabeth the Second National Trust Act 1977)

WHEREAS the **QUEEN ELIZABETH THE SECOND NATIONAL TRUST** (hereinafter called "**the Trust**") established by the Queen Elizabeth the Second National Trust Act 1977 (hereinafter called "**the Act**") is authorised by that Act to obtain open space covenants over any private land.

AND WHEREAS TOTARA VALLEY DEVELOPMENTS LIMITED (hereinafter called "**the Covenantor**") are registered as proprietors of an estate as set out in the Schedule of Land hereto (hereinafter called "**the Land**") and have agreed to enter into an open space covenant with the Trust for the purpose and objectives set forth in Schedule 1 hereto.

NOW THEREFORE THIS DEED WITNESSES that the Covenantor and the Board have mutually agreed to enter into this Deed in respect of the said Land having regard to the particular objectives set out in Schedule 1 and subject to the terms and conditions set out in Schedule 2 and Schedule 3 of this Deed.

THIS DEED FURTHER WITNESSES THE COVENANTOR AND THE TRUST HAVE MUTUALLY AGREED:

- (a) To comply respectively with the terms and conditions set out in the Schedules hereto and with every applicable provision of the Act;
- (b) The covenants and conditions contained in this Deed shall bind the Land in perpetuity;
- (c) That if any question arises in the management of the Land that is not clearly covered in the purpose and objectives or terms and conditions of this Deed, then that question shall be resolved by the parties hereto in a manner that does not diminish the purpose and objectives or terms and conditions.

SCHEDULE 1

AGREED PURPOSE AND OBJECTIVES

The Covenantor and the Trust have mutually agreed the purpose of this Deed is to protect, maintain and enhance the open space values of the Land and to achieve the following particular objectives:

- (a) Protection and enhancement of the natural character of the Land with particular regard to the indigenous flora and fauna;
- (b) Maintenance and enhancement of the landscape value of the Land; and
- (c) Encouraging restoration of indigenous vegetation cover on the Land thereby enhancing the contribution the Land makes to the protection of indigenous biodiversity.

SCHEDULE 2

AGREED TERMS AND CONDITIONS

1. Interpretation and Declaration

1.1 In this Deed unless the context requires otherwise:

“**the Board**” means the board of directors of the Trust in terms of Section 4 of the Act.
the “**Covenantor**” is the owner of the Land who enters into the agreement with the Trust by executing this Deed.

“**Chief Executive**” means the person appointed under Section 18(1)(a) of the Act.

“**Owner**” means the person or persons who from time to time are registered as the proprietor(s) of “**the Land**”.

“**the Land**” means the land as described in Schedule 4 and more particularly as shown on the plan annexed to this Deed.

1.2 In the event of any inconsistency between this Schedule and Schedule 3, Schedule 3 prevails.

1.3 The reference to any Act in this Deed extends to and includes any amendment to, or substitution for, that Act.

2. Appearance and Condition of the Land

2.1 No act or thing shall be done or placed or permitted to be done or remain upon the Land which in the opinion of the Board materially alters the actual appearance or condition of the Land or is prejudicial to the Land as an area of open space as defined in the Act.

2.2 In particular, on and in respect of the Land, except with the prior written consent of the Board, or as outlined in Schedule 3, the Owner agrees not to:

- (a) Fell, remove, burn or take any native trees, shrubs or plants of any kind.
- (b) Plant, sow or scatter any trees, shrubs or plants or the seed of any trees, shrubs or plants other than local native flora.
- (c) Introduce any substance injurious to plant life except in the control of pests.
- (d) Mark, paint, deface, blast, move or remove any rock or stone or disturb the ground.
- (e) Construct, erect or allow to be erected, any buildings or undertake exterior alterations to existing buildings.
- (f) Erect, display or permit to be erected or displayed, any sign, notice, hoarding or advertising matter of any kind except for signs identifying the covenant or to indicate walking tracks that are or may be established on the Land.
- (g) Carry out any prospecting or exploration for, or mining or quarrying of any minerals, petroleum, or other substance or deposit.

- (h) Deposit any rubbish or other materials, except in the course of maintenance or approved construction, provided however that after the completion of any such work all rubbish and materials not wanted for the time being are removed and the Land left in a clean and tidy condition.
- (i) Effect a subdivision as defined in the Resource Management Act 1991 of the Land.
- (j) Allow any livestock on the Land.
- (k) Cause deterioration in the natural flow, supply, quantity or quality of any river, stream, lake, wetland, pond, marsh or any other water resource affecting the Land.

2.3 In considering any request by the Owner for an approval in terms of Clause 2.2 hereof, the Board will not unreasonably withhold its consent if it is satisfied that the proposed work does not conflict with the purpose and objectives of this Deed as contained in Schedule 1.

3. Management of the Land

3.1 The Trust will provide the Owner with technical advice or assistance as appropriate and practical to assist in meeting the purpose and objectives of this Deed.

4. Use of Land by Third Parties

4.1 If notified by any authority, body or person of an intention to erect any structure or carry out any other work on the Land, the Owner agrees:

- (a) to inform the authority, body or person of this Deed;
- (b) to inform the Trust as soon as possible; and
- (c) not to consent to the work being done without consulting the Trust.

5. Fences and Gates

5.1 The Owner shall keep all fences and gates on the boundary of the Land in good order and condition and will accept responsibility for all repairs and replacement except in the case of property boundary fences where the provisions of the Fencing Act 1978 shall apply.

6. Entry and Access

6.1 The Trust may through its officers, agents or servants enter upon the Land for the purpose of viewing the state and condition thereof.

6.2 Members of the public, with the prior permission from the Owner, shall have freedom of entry and access to the Land PROVIDED THAT:

- (a) The Owner shall have regard to the purpose and objectives of this Deed in considering any request for entry and access;

- (b) The Owner shall have the sole right to determine whether or not any request for permission for entry and access should be granted due to specific management issues relating to the Land; and
- (c) In granting consent or permission for entry and access the Owner may determine conditions of such entry and access including any requirement for the Owner or any occupier of the Land to be indemnified from and against any loss, damage or injury suffered by the Owner or any occupier as a consequence of any person entering onto the Land.

7. Pest Plants and Animals

- 7.1 The Owner shall continue to comply with the provisions of the Biosecurity Act 1993 and the Wild Animal Control Act 1977.

8. Fire

- 8.1 In the event of fire threatening the Land the Owner shall as soon as practical notify the appropriate Fire Authority.

9. Action for Benefit of Land

- 9.1 The Owner or the Trust may at any time during the term of this Deed, by mutual agreement:
- (a) carry out any works or improvements, or
 - (b) take any action either jointly or individually, or
 - (c) vary the terms of this Deed to ensure the more appropriate preservation of the Land as an open space in terms of the Act provided however any such variation is not contrary to the purpose and objectives of this Deed or Section 22A of the Act.

10. Notices

- 10.1 Any consent, approval, authorisation or notice to be given by the Trust may be given in writing signed by the Chief Executive and delivered or sent by ordinary post to the last known residential or postal address of the Owner or to the solicitor acting on behalf of the Owner.
- 10.2 The Owner shall notify the Trust of any change in respect of ownership of all or any part of the Land and provide the Trust with the name and address of the new owner.
- 10.3 If before the registration of this Deed by the District Land Registrar, the Owner wishes to sell or otherwise dispose of all or any part of the Land, the sale or disposition shall be made expressly subject to the terms and conditions contained in this Deed.
- 10.4 In the event of transfer of the Land to a company the covenants contained in this Deed shall bind a receiver, liquidator, statutory manager or statutory receiver. In the event of transfer to a natural person this Deed shall bind the Official Assignee. In all cases this Deed binds a mortgagee in possession.

SCHEDULE 3

**CONDITIONS SPECIFICALLY RELATING TO THE LAND
THE SUBJECT OF THIS DEED**

1. Walking Tracks

- 1.1 After consultation with the Trust as to route, the Owner may form and maintain walking tracks no wider than one metre through the bush on the Land.

2. Revegetation

- 2.1 The Owner may plant locally sourced indigenous plants as part of a revegetation program on the Land.

3. Water Use

- 3.1 The Owner may take water from the Land for domestic and stock purposes.

4. Utility Services

- 4.1 The 50 metre wide strip comprised in Certificate of Title 115D/491 over which transmission lines are sited and on which a power pylon is located shall not form part of the Land subject to this Deed.

SCHEDULE 4

SCHEDULE OF LAND

Land Registry:

NORTH AUCKLAND

Estate:

Fee Simple

Area:

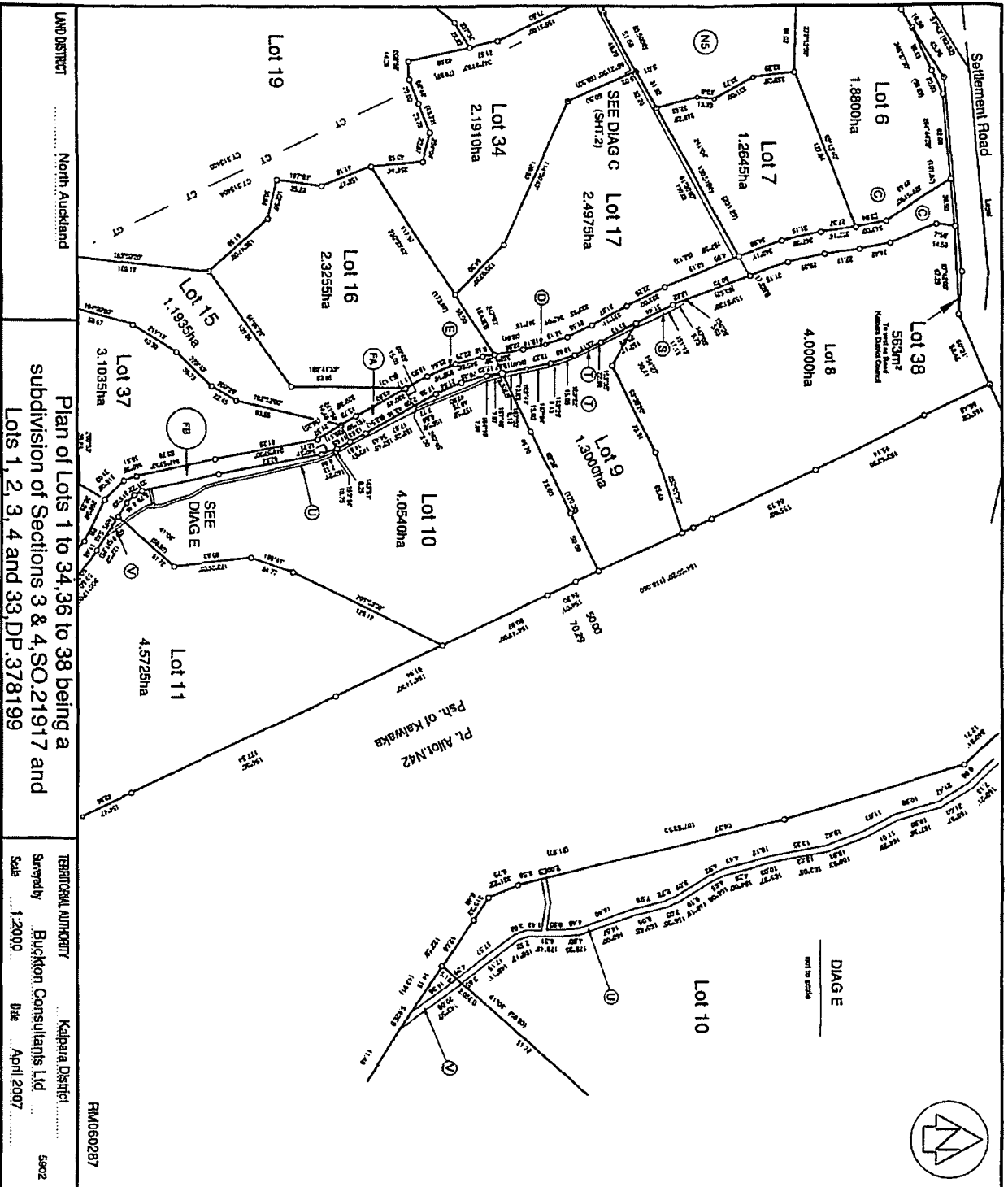
Area N5 = 1.4420 hectares
Area N22 = 0.7440 hectares
Area N24 = 2.1080 hectares
Area N25 = 2.1365 hectares
Area N27 = 1.1955 hectares
Area N28A = 9.2035 hectares
Area N28B = 8.4460 hectares
Area N28C = 1.5165 hectares
Area N28D = 0.1180 hectares
Area N29 = 0.6380 hectares
Area N37 = 0.6310 hectares

Lot & D.P. No.
(other legal description)

Part Lots 5, 22, 24, 25, 27, 28, 29 and 37
DP 388478
Parish of Kaiwaka
Otamatea Survey District

Part Certificates of Title:

353928
353945
353947
353948
353950
353951
353952
353957



LAND DISTRICT North Auckland

Plan of Lots 1 to 34, 36 to 38 being a subdivision of Sections 3 & 4, SO.21917 and Lots 1, 2, 3, 4 and 33 DP.378199

REGIONAL AUTHORITY Kaipara District

Surveyed by Buckton Consultants Ltd

Scale 1:2000

Date April 2007

RM060287

| | |
|---|-----------------------------|
| SHEET 3 of 5 SHEETS | |
| CLASS | |
| Total area | 144,1484 ha |
| Comp. No. | CA731401,131402,13403,13404 |
| ANTHONY RUSSELL HAYMAN | |
| Surveyor | |
| Date | |
| Prepared by | |
| Checked by | |
| Approved as to Survey by Land Information NZ on | |
| Date | |
| Deposited by Land Information NZ on | |
| Date | |
| DP | DP.388478 |

IN WITNESS WHEREOF this Deed has been executed

this 24th day of April ~~2005~~ 2006,

Signed by
TOTARA VALLEY DEVELOPMENTS LIMITED

.....
Director

.....
Director

as Covenantor in the presence of:

Witness:

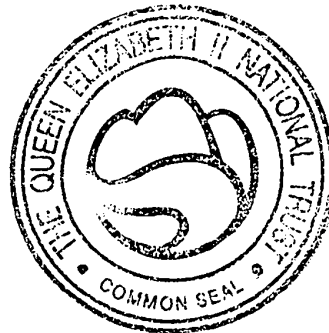
.....
(Signed)

.....
Name (Print)

.....
Occupation

Address:
.....
.....
.....

THE COMMON SEAL of the QUEEN
ELIZABETH THE SECOND NATIONAL
TRUST was hereto affixed in the
presence of:



Chairperson

[Handwritten Signature]

Director

[Handwritten Signature]

Chief Executive

[Handwritten Signature]

OPEN SPACE COVENANT

Pursuant to Section 22 of
the Queen Elizabeth the
Second National Trust
Act 1977.

Correct for the
purposes of the Land
Transfer Act.

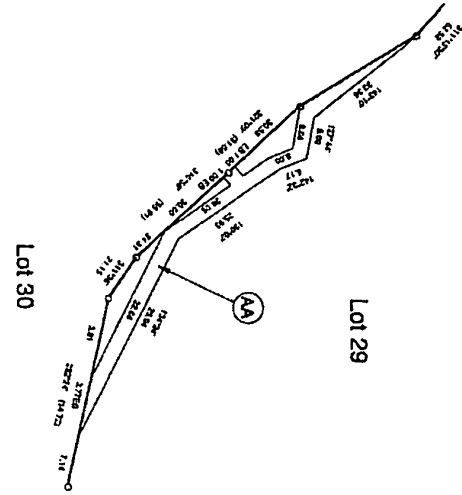
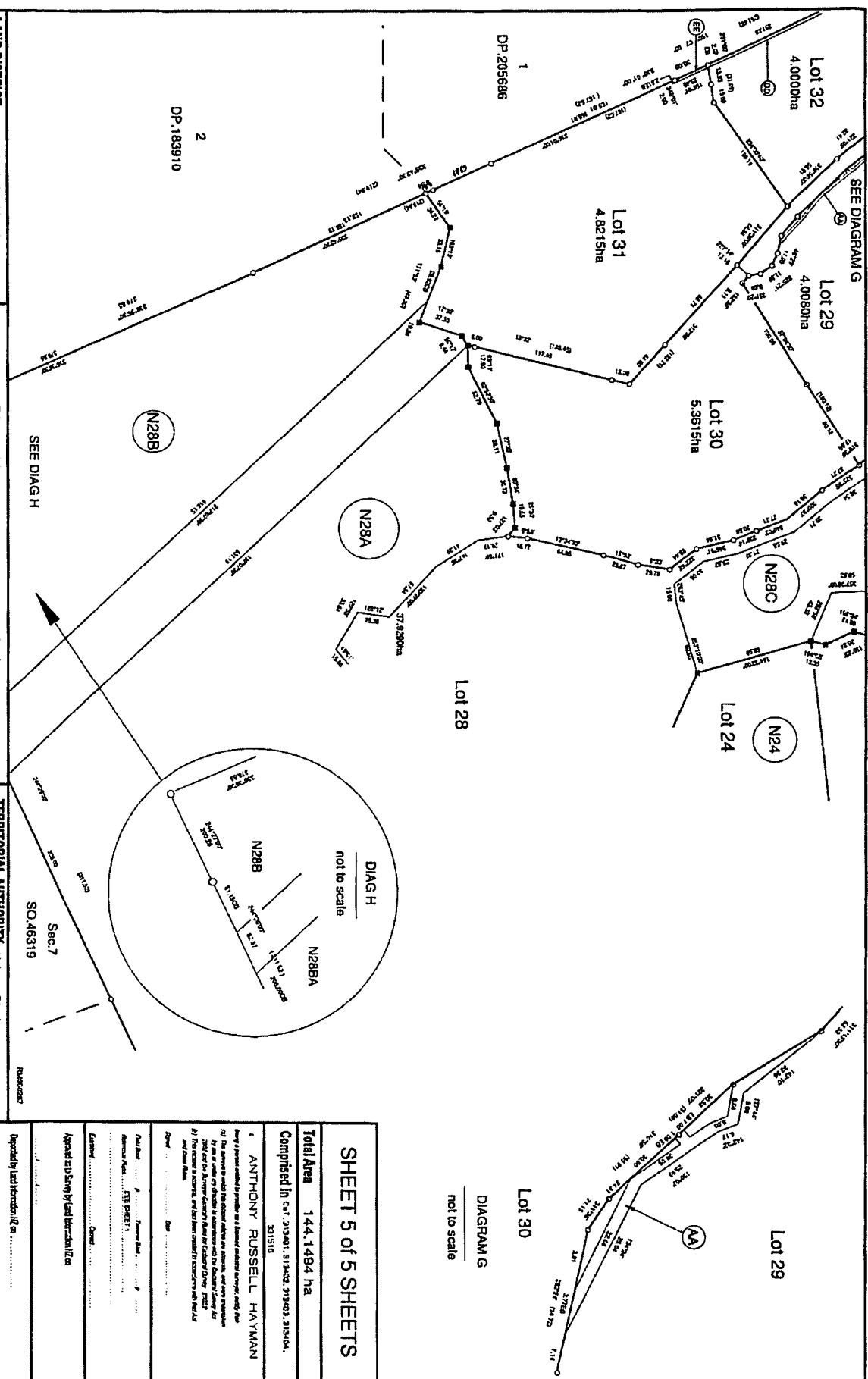


TOTARA VALLEY DEVELOPMENTS LIMITED
Covenantor

Chief Executive
being a person authorised
by the Trust to certify on
its behalf.

AND

**THE QUEEN ELIZABETH THE
SECOND NATIONAL TRUST**



SHEET 5 of 5 SHEETS

Total Area 144,148.4 ha

Comprised in C.T. 313401, 313402, 313403, 313404, 313410

ANTHONY RUSSELL HAYMAN

Survey 1 prepared and filed by the Registrar of Land in accordance with the provisions of the Land Act 1924 and the Survey Act 1954. The survey was conducted by the Survey Department of the Department of Conservation and Forestry. The survey was completed on 11/11/2007.

Scale 1:2000

Date April 2007

Surveyed by Buckton Consultants Ltd

Scale 1:2000 Date April 2007

DP3888478

LAND DISTRICT North Auckland
 Plan of Lots 1 to 34, 36 to 38, being a subdivision of Sections 3 & 4, SO 21917 and Lots 1, 2, 3, 4 and 33, DP 378199
 TERRITORIAL AUTHORITY Kaipara District
 Surveyed by Buckton Consultants Ltd
 Scale 1:2000 Date April 2007
 SO 46319
 Sec 7
 N288, N288A, N288B
 Lot 29, Lot 30, Lot 31, Lot 32

Annexure Schedule - Consent Form

Land Transfer Act 1952 section 238(2)



Insert type of instrument
"Caveat", "Mortgage" etc

Mortgage

Page 1 of 1 pages

Consentor

Surname must be underlined or in CAPITALS

Capacity and Interest of Consentor

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

Bank of New Zealand

Mortgagee under mortgage 6434411.4 and 7243254.1

Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [] if inconsistent with the consent.

State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

[section _____ of the _____ Act _____]

[Without prejudice to the rights and powers existing under the interest of the Consentor]

the Consentor hereby consents to:

the deposit of plan 388478 ("Plan") together with all easements and covenants required to enable the new certificates of title to issue as contemplated in that Plan.

"But without prejudice to the mortgagee's rights powers & remedies under the said mortgages"

ll
-30

Dated this 01st day of August 2007

Attestation

SIGNED for and on behalf of
BANK OF NEW ZEALAND
by its Attorney:
D. Osborne
Desley Osborne

Signed in my presence by the Consentor

Meeta Murdeshwar

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name Meeta Murdeshwar

Occupation Bank Officer

Address Auckland

Signature of Consentor

An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, **Desley Osborne**, Quality Assurance Officer, of Auckland, New Zealand,
Bank Officer, certify that:

1. By deed dated 12 July 2005 (the "Deed"), I was, by virtue of being an Authorised Officer, appointed as an attorney of Bank of New Zealand (the "Bank") on the terms and subject to the conditions set out in the Deed.
2. A copy of the Deed is deposited in the following registration district of Land Information New Zealand:

North Auckland as instrument No. 6508607.1
3. I have executed the instrument(s) to which this certificate relates under the powers conferred by the Deed.
4. At the date of this certificate I have not received any notice or information of the revocation of that appointment by the dissolution of the Bank or otherwise.

SIGNED at Auckland

DATED: 01 August 2007



Desley Osborne

Annexure Schedule - Consent Form
Land Transfer Act 1952 section 238(2)



Insert type of instrument
"Caveat", "Mortgage" etc

Mortgage

Page **1** of **1** pages

Consentor

Surname must be underlined> or in CAPITALS

Capacity and Interest of Consentor

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

**Miles Gray Usher, Branksea Trustees Limited
and Watson Trustee Limited**

**Mortgagee under mortgage number
6819552.1 and 7243254.2**

Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [] if inconsistent with the consent.

State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

[section _____ of the _____ Act _____]

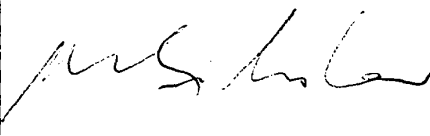
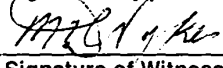
~~[Without prejudice to the rights and powers existing under the interest of the Consentor]~~

the Consentor hereby consents to:

the deposit of plan 388478 ("Plan") together with all easements and covenants as required to enable the new certificates of title to issue as contemplated in that Plan.

Dated this _____ day of _____

Attestation

| | |
|---|---|
|  Signature of Consentor | Signed in my presence by the Consentor  <hr/> Signature of Witness Witness to complete in BLOCK letters (unless legibly printed) Witness name <u>Margaret D. Wykes</u> Occupation <u>Retired</u> Address <u>27 Marefield Ave</u> <u>TAKAPUNA.</u> |
| | Signature of Consentor |

An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

Annexure Schedule



Insert type of instrument
 "Mortgage", "Transfer", "Lease" etc


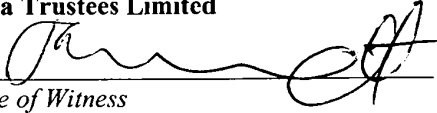
Consent

Dated

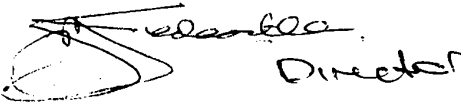
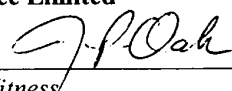
Page 2 of 2 Pages

(Continue in additional Annexure Schedule, if required.)

Continuation of "Attestation"

| | |
|---|--|
|  Director | <p>Signed in my presence by the Consentor Branksea Trustees Limited</p> <p style="text-align: center;"></p> <p><i>Signature of Witness</i></p> <p><i>Witness to complete in BLOCK letters</i></p> <p>Witness name JOSHUA KIRK GARNETT</p> <p>Occupation SOLICITOR AUCKLAND</p> <p>Address</p> |
| | <p>Signature of Consentor</p> |

Continuation of "Attestation"

| | |
|---|--|
|  Director | <p>Signed in my presence by the Consentor Watson Trustee Limited</p> <p style="text-align: center;"></p> <p><i>Signature of Witness</i></p> <p><i>Witness to complete in BLOCK letters</i></p> <p>Witness name JOSEPH PATRICK OAK</p> <p>Occupation PHARMACIST</p> <p>Address TAKAPUNA</p> |
| | <p>Signature of Consentor</p> |

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.