
Building Code

Clause F4—Safety From Falling

Provisions

Limits on application

OBJECTIVE

F4.1 The objective of this provision is to safeguard people from injury caused by falling.

FUNCTIONAL REQUIREMENT

F4.2 Buildings shall be constructed to reduce the likelihood of accidental fall.

PERFORMANCE

F4.3.1 Where people could fall 1 metre or more from an opening in the external envelope or floor of a building, or from a sudden change of level within or associated with a building, a barrier shall be provided.

Performance F4.3.1 shall not apply where such a barrier would be incompatible with the intended use of an area, or to temporary barriers on construction sites where the possible fall is less than 3 metres [or to buildings providing pedestrian access in remote locations where the route served presents similar natural hazards]

F4.3.2 Roofs with permanent access shall have barriers provided.

F4.3.3 Swimming pools having a depth of water exceeding 400 mm, shall [have barriers provided].

Performance F4.3.3 shall not apply to any pool exempted under section 5 of the Fencing of Swimming Pools Act 1987.

F4.3.4 Barriers shall:

- (a) Be continuous and extend for the full extent of the hazard,
- (b) Be of appropriate height,
- (c) Be constructed with adequate rigidity,
- (d) Be of adequate strength to withstand the foreseeable impact of people and, where appropriate, the static pressure of people pressing against them,
- (e) Be constructed to prevent people from falling through them, and
- [(f) In the case of a swimming pool, restrict the access of children under 6 years of age to the pool or the immediate pool area.]

[Performance F4.3.4 (f) shall not apply to any pool exempted under section 5 of the Fencing of Swimming Pools Act 1987.]

SWIMMING POOL EXEMPTION COMMITTEE

(A Sub-Committee of the Hearings Committee)

The Swimming Pool Exemption Committee shall report to the Hearings Committee.

FIELD OF ACTIVITY

The Fields of Activities for the Swimming Pool Exemption Committee are:

- Consideration of applications for exemption under s.6 and clause 11 of the Schedule to the Fencing of Swimming Pools Act 1987;

MEMBERSHIP

The Swimming Pool Exemption Committee shall comprise:

The Chairperson of the Hearings Committee who shall be Chair of this Committee;
Any 2 other members of the Hearings Committee as available from time to time

Quorum: 3 Members

DELEGATED POWERS

The power to hear and determine all applications for exemption under s.6 or clause 11 of the Schedule to the Fencing of Swimming Pools Act 1987 and to resolve to grant an exemption, with or without conditions, or to decline the application. The sub-committee will report to the Hearings Committee as to the exercise of the delegations conferred upon it in any event no later than 2 months after the date upon which it resolves to grant or decline an exemption application.

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COMMUNITY PARTNERSHIP AGREEMENT WAITAKERE ETHNIC BOARD

1. PARTIES

(A) Waitakere Ethnic Board Incorporated ("WEB")

The WEB contact person is the President

This is currently Praveen Chandra (pranal@infogen.net.nz)

WEB's registered office is at: Waitakere Community Resource Centre
c/o West Auckland District Council of Social Services
8 Ratanui Street, Henderson, Waitakere City

(B) Waitakere City Council ("Council")

Council's contact person is the Partnerships & Advocacy Leader: New Migrants

This is currently Monica Sharma in the Strategy & Development Directorate

Ph: 836-8000 x8417 (Monica.Sharma@waitakere.govt.nz) 6 Waipara Ave, Henderson

2. PURPOSE OF THIS AGREEMENT

The purpose of this document is to formally agree on how the parties will work together to achieve the common goals set out in Clause 6.

3. BACKGROUND INFORMATION

The WEB was established on 20 September 2003 as an outcome of the New Out West Democracy Project, with the mandate of ethnic community leaders present at the launch of New Out West in May 2003. New Out West is the migrant and refugee Call to Action under the Wellbeing Collaboration Strategy.

The major driver for the formation of the WEB was for ethnic communities to take a more pro-active, strategic and integrated approach to progressing the needs of Waitakere City's ethnic communities through a representative advisory body that would enable ethnic communities to have a "voice" in decision making at the local and central government level (WEB's constitution is attached at Appendix 1).

The WEB has emerged as an ethnic community initiative driven by the desire to participate more actively in New Zealand society and democratic processes, promoting settlement and providing a platform for advocacy on behalf of a growing part of the Waitakere community.

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Council has made a commitment in its Long Term Council Community Plan (LTCCP) to have a process of engagement with ethnic communities in place by 2004/05. The Waitakere Ethnic Board has been recognised in principle by Council as the body representing the city's ethnic communities and Council has agreed that a Memorandum of Understanding between the WEB and Council be drafted for consideration. Council officers have been authorised to work with the Ethnic Board and Councillor Annette Fenton has been appointed as Council's representative on the Board's Executive Committee to assist the Board and act as a conduit between the Board and Councillors.

Council currently funds a full-time Partnerships & Advocacy Leader: New Migrants to work with the many organisations including the WEB, that are active in the migrant and refugee sector.

4. OBJECTIVES

The objectives of the relationship are:

1. To commit to working together to achieve social cohesion and strong integrated communities in Waitakere City
2. The inclusion of and increased ethnic perspectives in Council's policy development, service delivery and decision making
3. An increased level of engagement of ethnic communities and reflection of their interests in the Long Term Council Community Plan (LTCCP)
4. To provide a forum for mutual learning about (i) the functions, roles, responsibilities and activities of local and central government and (ii) the issues, concerns, needs and aspirations of the city's ethnic communities
5. To develop and implement a shared work programme together

5. PARTNERSHIP PRINCIPLES

The parties acknowledge a commitment to the concept of partnering and agree to adhere to the following partnership principles:

- (a) Act honestly and in good faith
- (b) Communicate openly and in a timely manner
- (c) Work in a co-operative and constructive manner with respect, goodwill, trust and integrity towards the other party
- (d) Recognise each other's responsibilities to their stakeholders and the autonomy and independence of each party
- (e) Encourage quality and innovation to achieve positive results for the community
- (f) Acknowledge that diversity is a strength and promote an inclusive approach

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6. COMMON GOALS

- (a) Social inclusion – acceptance and tolerance, respect and acknowledgement of diversity
- (b) For Waitakere City to become the city of choice for host communities and new settler communities
- (c) Pro-active and timely communication and sharing of information in relation to current and future needs
- (e) Encouraging and promoting activities that foster greater understanding

7. CONTRIBUTION OF EACH PARTY

(A) Waitakere Ethnic Board

- "In kind" contribution of ethnic community volunteers and community leaders' time to working in a pro-active manner with Councillors, Council staff and other ethnic groups and community organisations to facilitate the settlement and integration of new settler communities
- Work with Council to develop an annual shared work programme
- Support capacity building and community development of ethnic communities and the identification and development of community leaders
- Monthly Executive Committee and Membership meetings and provision of regular feedback and advice to Council on issues and needs

(B) Waitakere City Council

- Work with WEB to develop and implement an annual shared work programme
- Engage with the WEB when developing Council's strategic plans, policies and services
- Assist the WEB to learn about and access Council services, democratic processes and activities
- Commit staff time through the Partnerships & Advocacy Leader: New Migrants portfolio position to promote involvement and consultation with ethnic groups in Council activities and assist WEB to achieve their objectives. Issues relating to the commitment of resources (financial or otherwise) will be set out in an appendix to the Agreement which will be reviewable on a three yearly basis.
- Commit funding through the Annual Budget to ethnic community engagement through the Waitakere Ethnic Board which will be reviewable on an annual basis
- Regular meetings and reports

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DATED THIS

DAY OF

2004

WAITAKERE ETHNIC BOARD

President / Vice-President

Secretary

WAITAKERE CITY COUNCIL

Mayor / Deputy Mayor

Council's WEB representative

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MEMORANDUM OF LEASE dated

11 April 1999

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WAITAKERE PROPERTIES LIMITED (hereinafter called "the Lessor") being registered as proprietor of an estate in fee simple subject however to such encumbrances liens and interests as are notified by memoranda underwritten or endorsed hereon in that parcel of land described in the Schedule hereto (hereinafter called "the said land")

IN CONSIDERATION of the rent hereinafter reserved and of the covenants conditions and agreements by and on the part of the Lessee hereinafter contained and herein implied the Lessor **DOES HEREBY LEASE** to **WESTPARK MARINA LIMITED** at Auckland (hereinafter called "the Lessee") all the said land to be held by the Lessee its successors and permitted assigns as tenant for the term of 7 years and 6 months commencing on the 27th day of March 1999 and expiring on the 26th day of September, 2006, at the yearly rental of **TEN DOLLARS (\$10.00)** such rent to be paid in advance by a payment of **TEN DOLLARS (\$10.00)** for the period from the date of commencement down to the last day of March next following and thereafter by equal annual payments in advance on the 1st day of April in each year, the first of such equal annual payments to be made on the 1st day of April, 1999 **SUBJECT** to the following covenants conditions and restrictions **AND** the Lessee hereby for itself and its successors and permitted assigns covenants with the Lessor its successors and assigns in the manner following, that is to say:

COVENANTS

- 1 The Lessee will duly and regularly pay the rent hereby reserved on the days and in manner hereinbefore provided for payment of the same respectively without any deduction whatsoever and will pay all existing and future rates taxes and assessments whatsoever (except Lessor's Land Tax) now or hereafter during the said term assessed or imposed upon or payable in respect of the said land.
- 2 Any building or structure which the Lessee may desire to erect on the said land will conform with the permitted purposes as contained in the definition of "boat harbour" in the Waitemata City Council (West Harbour) Empowering Act 1979 and before commencing the erection of any building or structure on the said land the Lessee will submit to the Lessor for its approval plans and specifications of such building or structure together with a copy thereof to be retained by the Lessor and the Lessee will not proceed with the erection of any such building or structure until such plans and specifications shall have been first approved in writing by or on behalf of the Lessor but such approval shall not be unreasonably or arbitrarily withheld nor until the Lessee obtains all approvals, consents and permits necessary to enable the erection of any such building or structure to be lawfully effected and on request produce to the Lessor copies of such approvals, consents or permits.
- 3 The Lessee will throughout the said term keep and maintain in good order, condition and repair all buildings structures, walls and retaining walls, fixtures, fences, drains, paths and ways which are now or hereafter may be erected placed or made upon the

said land and will so yield up the same at the end or other sooner determination of the said term (fair wear and tear damage by fire earthquake tempest or inevitable accident excepted).

- 4 The Lessee acknowledges that the said land has been reclaimed from the sea and will make no claim against the Lessor for any damage suffered by the Lessee by reason of any subsidence or other defect in the said land or matter or thing arising therefrom and indemnifies the Lessor against any claim by any person arising out of any subsidence or other defect in the said land or matter or thing arising therefrom. Such indemnity is given to the Lessor by the Lessee both as Lessee and developer of the said land.
- 5 The Lessee will not carry on offensive trades as defined in the fourth schedule to the Land Transfer Act 1952.
- 6 The Lessee shall at all times during the continuance of this lease or any extension or renewal hereof in all respects duly and punctually observe and comply with all the provisions of all statutes ordinances proclamations orders rules regulations by-laws requirements or requisitions present or future so far as the said provisions relate to the said land and/or are such that the obligation and liability to observe or comply with them arises out of the use which the Lessee makes of the said land or out of activities carried on therein by the Lessee or its servants agents invitees licensees subtenants or underlessees and will comply with all requirements and requisitions which may be made or notices or orders which may be given or promulgated by governmental or semi-governmental city municipal health licensing civic public or any other authority having competent jurisdiction or power and the Lessee shall keep the Lessor safe and indemnified against all such actions claims proceedings and demands arising out of or in respect of any breach or non-observance herewith by the Lessee its directors servants agent employees workmen invitees licensees subtenants and underlessees and will indemnify and reimburse the Lessor in respect of any fine penalty requirement or liability imposed on the Lessor by reason of the breach of the Lessee of its obligations hereunder.
- 7 The Lessee will not require the Lessor to contribute towards the cost of the erection or maintenance of any fence dividing the said land from any adjoining land of the Lessor but this provision shall not enure for the benefit of any Lessee or occupier (other than the Lessor) of such adjoining land.
- 8 The Lessee will not during the said term assign transfer sublet or part with the possession or occupation of the said land or any part thereof for the whole or any part of the said term without the consent in writing of the Lessor first had and obtained provided that:
 - 8.1 Such consent shall not be necessary to any underletting for a period, including renewals, not exceeding 5 years.
 - 8.2 Any consent which is required shall not be arbitrarily withheld in the case of a respectable responsible fit solvent and suitable sublessee or assignee and, in the case of an assignee, who covenants with the Lessor as the Lessor may

hereinafter require (the costs of such consent and covenants to be paid by the Lessee).

- 8.3 If any such assignment of the whole of the said land shall be to a limited liability company not listed on the Stock Exchange or corporation, the Lessor, as a condition to its consent to such assignment and (in addition to the covenants otherwise provided for and if it is reasonable so to do in the circumstances of the case), may require the shareholders (which term shall include the shareholders and any holding company of a company shareholder) and (if it is reasonable so to do in the circumstances of the case) directors of the assignee company, at the expense of the assignor to execute a deed of covenant whereby they and the assignee will be jointly and severally responsible and liable for the due performance of the covenants and conditions on the part of the Lessee in this lease contained and implied as if they themselves did execute this lease and were personally bound thereby but without prejudice to the rights of the Lessor against the Lessee, the assignee or any subsequent assignee and such deed of covenant shall also provide that if there should be any change of shareholders or variation of the rights of any shareholders by which effective control or management of the said company or corporation shall pass to any person other than those executing such deed of covenant such change of shareholders or variation of rights of shareholders shall be deemed to be an assignment shall require the consent of the Lessor as above set out and the Lessor may require the shareholders and directors of the assignee company at the expense of the assignor to execute a deed of covenant whereby they and the assignee will be jointly and severally responsible and liable for the due performance of the covenants and conditions on the part of the Lessee in this lease contained and implied as if they themselves did execute this lease and were personally bound thereby but without prejudice to the rights of the Lessor against the Lessee, the assignee or any subsequent assignee and such deed of covenant shall also provide that if there should be any change of shareholders or variation of the rights of any shareholders by which control of the said company or corporation shall pass to any person other than those executing such deed of covenant such change of shareholders or variation of rights of shareholders shall be deemed to be an assignment shall require the consent of the Lessor as above set out.

- 8.4 As a condition precedent to any consent under this clause the Lessor shall be entitled to the performance by the Lessee of the following conditions:

- (a) The Lessee shall submit to the Lessor the name and address and occupation of any proposed transferee or assignee or sublessee of the whole or part of the said land together with reasonable evidence that such person is respectable, responsible, fit, solvent and suitable.
- (b) The Lessee shall furnish to the Lessor a copy of every document to which such consent shall be requested whether it be by way of assignment transfer sublease of the whole or part change of

shareholding or variation of rights of shareholders or otherwise howsoever.

- (c) The Lessee shall procure the execution by such transferee or assignee of a covenant with the Lessor that the said transferee or assignee will at all times during the continuance of the term hereby created duly pay the rent hereby reserved at the times and in the manner herein mentioned and observe and perform the covenants conditions and agreements herein contained or implied and such covenant shall not affect release or qualify the Lessor's rights for the time being against the Lessee, or any subsequent lessee transferee or assignee.
- (d) The Lessee shall procure the execution of any other document which the Lessor may be entitled to require in terms of this clause.
- (e) The Lessee shall have paid all rent and other moneys for the time being due or payable by the Lessee hereunder and performed all other obligations of the Lessee hereunder up to the date of such transfer or assignment.
- (f) The Lessee shall in every case pay the Lessor's solicitors' costs and reasonable accounting expenses (if any) in connection with any such application for consent whether or not the same be granted

And it is hereby agreed and declared that any assignment or underletting of the interest of the Lessee hereunder within the meaning of Section 109(2) of the Property law Act 1952, or if any lessee hereunder for the time being is a private limited liability company, then any sale, transfer or other disposition of any of the shares in the capital of such lessee company or variation of the rights of the members thereof whereby the effective control of the said company shall be changed without the prior written consent of the Lessor shall in either case be deemed to be a breach of the provisions of this clause.

- 9 The Lessee will not without the consent of the Lessor as landowner subdivide the said land provided that the consent of the Lessor will not be unreasonably or arbitrarily withheld to any subdivision under the Unit Titles Act 1972.
- 10 The Lessee will not use the said land other than for one or more of the purposes of shops, restaurants, car park, club premises or facilities, commercial or recreational amenities for the use and convenience of the general public as well as that of the boating public provided that the Lessee shall make proper provision as approved by the Lessor for the public and users of the marina adjoining the said land to have access to the said land
 - 10.1 the said Lot 2 DP 195238 for the purposes of a car parking rigging/ derigging area and public launching ramp, and,
 - 10.2 the said Lot 16 DP112480 for the purposes of foreshore pedestrian access,

upon such terms and conditions and subject to such rules and regulations and during such reasonable and practical hours in each case as the Lessor shall approve (such approval not to be unreasonably duly withheld) as the Lessee may from time to time prescribe to ensure the orderly secure and safe use of the said land for such purposes provided further that nothing in the preceding proviso shall prevent the development of the said land on a strata basis and the use of such strata (other than the ground level strata) for any of the other purposes herein specified as long as the ground level strata is reserved for the purpose specified in the preceding proviso.

- 11 For the purposes of Sections 2 and 14 of the Waitemata City Council (West Harbour) Empowering Act 1979 it is agreed and acknowledged that the said land is hereby leased to the lessee on the basis that the lessee shall enjoy exclusive occupancy thereof.
- 12 The Lessee will at the Lessee's own cost and expense forthwith insure and at all times during the said term keep insured in the names of the Lessor and the Lessee against loss or damage by fire and other risks usually covered, under comprehensive policies in the full insurable value thereof on replacement or reinstatement conditions including cover for removal of debris all buildings, structures, fixtures and improvements of an insurable nature (all of which are hereinafter included in the term 'Improvements') which are now or may at any time hereafter be erected upon or affixed to the said land in some responsible insurance office carrying on business in New Zealand and will produce satisfactory evidence to the Lessor that the Improvements have been so insured and will if in any year so required by the Lessor at least seven days before the due date of such premiums respectively lodge with the Lessor a duplicate receipt or receipts for the payment of the premium or premiums for the ensuing year and in default the Lessor may insure the Improvements and pay the premiums payable in respect thereof and any premiums and moneys so paid may be recovered as is provided in clause 16 hereof.
- 13 In case the Improvements or any part thereof shall at any time during the said term be destroyed or damaged by fire then and so often as the same shall happen all moneys received in respect of such insurance shall be expended with all convenient speed in repairing and reinstating any Improvements partially destroyed or in erecting new Improvements in place of any Improvements completely destroyed subject to any necessary planning approvals being available, which approvals the Lessee will use its best endeavours to obtain. If such approvals cannot be obtained, for identical Improvements but can be obtained for Improvements equally suitable for the purposes of the Improvements so destroyed and of no greater cost (hereinafter called "the Alternative Improvements"), then the Lessee will expend the moneys available from such insurance to construct the Alternative Improvements.
- 14 Without prejudice to or in derogation of the generality of any other provisions hereof the Lessee will and does hereby indemnify the Lessor from and against all actions claims demands losses damages costs injury and Expenses for which the Lessor whether as owner of the said land or arising out of the reclamation and/or the development of the said land shall have or may be or become liable in respect of or arising from—

- (a) The negligent use misuse waste or abuse by the Lessee any servant, agent, invitee, licensee, subtenant or underlessee of or any other person claiming through or under the Lessee of the services or facilities on the said land.
- (b) Loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the land by the Lessee or any servant, agent, invitee, licensee subtenant or underlessee or other person as aforesaid.
- (c) Loss damage or injury from any cause whatsoever to property or person within or without the said land occasioned or contributed to by any act, omission, neglect, breach or default of the Lessee or any servant, agent, invitee, licensee, subtenant or underlessee or other person as aforesaid

And for the aforesaid purposes the Lessee will take out and keep in force a comprehensive insurance policy in the joint names of the Lessor and Lessee for their respective rights and interests covering liability up to a reasonable limit arising out of such actions, claims, demands, losses, damages, costs and expenses or injury and shall upon demand produce such policy and any renewal receipt for premia paid or other document relating to such policy to the Lessor provided that this indemnity shall not relieve the Lessor of liability for, nor shall this indemnity extend to indemnify the Lessor against, breach of statutory duty by the Lessor or any person or persons for whom it may be responsible, negligence or contributing negligence on the part of the Lessor or any person for whom it may be responsible, or liability assumed by the Lessor by contract.

AND IT IS HEREBY EXPRESSLY DECLARE AND AGREED as follows:

- 15 In the event of the occurrence of any of the following:
- (a) The sums (including rent and sums deemed to be rent hereunder) herein provided to be paid by the Lessee to the Lessor on the due date appointed therefor being outstanding whether the same shall have been legal or formally demanded or not; and/or
 - (b) A breach, non-observance or non-performance of any covenant, condition or agreement, restriction or proviso on the part of the Lessee herein contained or implied; and/or
 - (c) An effective resolution being passed or any order of a Court of competent jurisdiction being made for the winding up or dissolution or bankruptcy of the Lessee (or any company comprising the Lessee or deemed to comprise the Lessee) and/or
 - (d) The Lessee (or any company comprising or deemed to comprise the Lessee) becoming insolvent or unable to pay its debts or committing any act of bankruptcy; and/or

- (e) The Lessee (or any company comprising or deemed to comprise the Lessee) entering into a composition or arrangement with its creditors; and/or

and notwithstanding that the Lessor may have waived a previous default or matter of the same or other nature then it shall be lawful for the Lessor forthwith or at any time thereafter without suit re-enter on the said land or any part thereof in the name of the whole and thereupon this lease and the term hereby created shall immediately cease and determine and to expel and remove the Lessee and all persons found in occupation or possession from the said land without being liable to any action for damages trespass or account whatsoever and that without releasing the Lessee from liability for any rent or other payments accruing due hereunder or from liability for any antecedent breach, non-observance or non-performance of any covenant or condition herein contained or implied.

- 16 In the event of default being made by the Lessee in payment of any rates, insurance premiums or other moneys payable hereunder it shall be lawful for the Lessor to recover the same from the Lessee by distress or otherwise in the same manner as if such rates insurance premiums or other moneys were rent in arrear reserved by this Lease.
- 17 On the 26th day of September 2006, and at the expiration of the following twenty one year periods thereafter, namely on the 26th day of September 2027, the 26th day of September 2048 and the 26th day of September 2069, contingent on this lease being renewed as provided in clause 25 of this lease, the rent shall be such rental determined pursuant to clause 25 and for each subsequent period of seven years commencing from the 26th day of September 2013 in respect of the first renewal lease of 21 years, from the 26th day of September 2034 in respect of the second renewal lease of 21 years, from the 26th day of September 2055 in respect of the third renewal lease of 21 years, and from the 26th day of September 2076 in respect of the final renewal lease of 15 years such reviewed rental shall be determined in accordance with section 22 of the Public Bodies Leases Act 1969 and in fixing such rental no account shall be taken of the value of improvements erected or made on the said land after the 27th day of September 1985 by the lessee or its successors in title and the rental payable in respect of each such period shall be not less than the rental payable for the period immediately preceding such review.
- 18 Such of the provisions of the Land Transfer Act 1952 and the Property law Act 1952 or any amendment thereof respectively as are inconsistent with or contradictory to these presents or anything herein contained shall be and the same are hereby negated or modified to the extent of such inconsistency.
- 19 The Lessee paying the rent and performing and observing the covenants conditions agreements and restrictions on the part of the Lessee herein contained shall during the said term peaceably enjoy the said land without interruption by the Lessor or any person rightfully claiming through or under or in trust for the Lessor.

- 20 No waiver by the Lessor of one breach of any covenant obligation or provision in this lease contained or implied shall operate as a waiver or another breach of the same or of any other covenant obligation or provision in this lease contained or implied.
- 21 The provisions hereof whether expressed or implied shall not in any way affect the powers or discretions which might be exercisable from time to time by the Lessor in its capacity as local authority.
- 22
- (a) The expression "the Lessor" whenever used throughout these presents shall include and bind the Lessor its successors and assigns in its capacity as owner of the fee simple of the said land and not in its capacity as the territorial local authority within whose district the said land is situated and a consent given as Lessor shall not constitute a consent as the territorial Local Authority and vice versa.
 - (b) The expression "the Lessee" when so used shall include and bind the Lessee its successors and permitted assigns and where the context so requires the companies named as being included in that term for the purposes of the obligations of the Lessee.
 - (c) Words importing the singular number shall include the plural and vice versa and words importing a person shall include companies or corporations.
 - (d) Any term covenant condition or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.
- 23 The Lessee shall pay the Lessor's reasonable legal costs and stamp duty and other proper disbursements in respect of and incidental to the preparation completion stamping and registration of this lease and the counterpart and of any renewal hereof.
- 24
- (a) The Lessor and the Lessee acknowledge that the Auckland Harbour Board has granted to The Waitakere City Council, which has accepted a licence dated 8 December 1987 whereby The Waitakere City Council is entitled to occupy and use a certain area of the foreshore and seabed adjacent to the said land for a term of 20 years from 8 October 1985 (with rights of renewal upon and subject to the terms and conditions set out in the said licence) and The Waitakere City Council has sublicensed its rights thereunder to the Lessee by sublicense dated 8 December, 1987 upon the same terms (*mutatis mutandis*) and the Lessee hereby covenants with the Lessor that any such seabed sublicense shall at all times be held by the Lessee conjointly with this lease and shall not be separately charged assigned or transferred.
 - (b) The Lessee will not do or cause or permit to be done any act or thing which may amount or contribute to either the breach of the terms and conditions of, or the non-observance of any negative or restrictive covenant contained in, the

said seabed sublicence or any renewal thereof or which would cause the said seabed sublicence or any renewal thereof to be terminated.

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- 25.1 On the expiry by effluxion of time of the term hereby granted, the lessee shall have a right to obtain, in accordance with the provisions hereinafter contained, a renewal lease of the land hereby demised, at a rent for the first seven (7) years of the term of the renewal lease to be determined in accordance with the said provisions, for the term of twenty one (21) years computed from the expiration of the lease hereby granted, and subject to the same covenants and provisions as this lease, including this provision for the renewal thereof, for a further two terms of twenty one (21) years each from the 27th day of September 2027 and the 27th day of September 2048 respectively and one further provision for renewal of fifteen (15) years from the 27th day of September 2069 so that the total number of years including the initial term and all renewal terms shall expire on the 26th day of September 2084, and all provisions ancillary or in relation thereto. The rent for subsequent periods of seven (7) years of the term of the lease shall be determined in accordance with section 22 of the Public Bodies Leases Act 1969.
- 25.2 Not earlier than 9 calendar months and not later than 3 calendar months before the expiry by effluxion of time of the term of the lease hereby granted, or as soon thereafter as may be, the lessor shall cause a valuation to be made by a person whom the lessor reasonably believes to be competent to make the valuation of the fair annual rent of the land hereby demised, so that the rent so valued shall be uniform throughout the whole of the first seven (7) years of the term of the renewal lease and the rent payable in respect of each such period shall be not less than the rental payable for the period immediately preceding such period.
- 25.3 In making the said valuation no account shall be taken of the value of the improvements erected or made on the land after the 27th day of September 1985 by the lessee or its successors in title.
- 25.4 As soon as possible after the said valuation has been made, the lessor shall give to the lessee notice in writing informing the lessee of the amount of that valuation and requiring the lessee to notify the lessor in writing within 2 calendar months whether the lessee will accept a renewal lease at the rent specified in the notice.
- 25.5 Within 2 calendar months after the giving of that notice to the lessee, the lessee shall give notice in writing to the lessor stating:
- (a) That the lessee desires to accept a renewal lease at the rent stated in the notice given to the lessee by the lessor; or
 - (b) That the lessee requires the rent for the renewal lease to be determined by arbitration; or

(c) That the lessee does not desire to accept a renewal lease.

- 25.6 If the lessee fails to give to the lessor within the time specified in clause 25.5 hereof the notice referred to in that clause, the lessee shall be deemed to have agreed to accept a renewal lease at the rent specified in the notice given to the lessee by the lessor.
- 25.7 Where the valuation of the rent payable under a renewal lease is to be determined by arbitration, that valuation shall be made by 2 persons as arbitrators, each such person being reasonably believed by the party appointing him to be competent to make the valuation, one of whom shall be appointed by the lessor and the other by the lessee provided that where, in the opinion of the lessor, the annual rent payable under a renewal lease would not exceed \$400, the lessor shall so advise the lessee and the lessee may agree to accept the renewal lease at such rent as may be agreed upon between the lessor and the lessee or, in default of agreement, as may be fixed by the valuation of one independent person to be appointed by agreement between the lessor and the lessee. In default of agreement on such appointment, the rent shall be fixed by arbitration in the manner provided for in the foregoing provisions of this clause.
- 25.8 The arbitrators, before commencing to make the said valuation, shall together appoint a third person, who shall be an umpire as between them.
- 25.9 The decision of the 2 arbitrators if they agree or in such respects as they agree, or of the umpire if the arbitrators do not agree or in such respects as they do not agree, shall be binding on all parties.
- 25.10 The duty of the umpire, on reference to him of any question, shall be to consider the respective valuations of the 2 arbitrators in the matters in which their valuations do not agree, and then to make an independent and substantive valuation, and the last-mentioned valuation shall be the decision of the umpire; but in giving his decision on any question so referred to him the umpire shall in every case be bound to make a valuation not exceeding the higher and not less than the lower of the valuations made by the arbitrators respectively.
- 25.11 The provisions herein contained for the making of the said valuation shall be deemed to be a submission to arbitration under and within the meaning of the Arbitration Act 1996, or any enactment for the time being in force in substitution therefor or amendment thereof, and all the provisions of any such enactment shall, so far as applicable, apply accordingly.
- 25.12 Within 2 calendar months after the making of the said valuation and the giving of notice thereof to the lessee, the lessee shall give notice in writing signed by him or by his agent duly authorised in that behalf and delivered to the lessor stating whether the lessee desires to accept a renewal lease of the land.

- 25.13 Any such notice may be given by the lessee within the time aforesaid, although the term hereby granted has already expired by effluxion of time, or although the said valuation has not been made or notice thereof has not been given to the lessee until after the expiry of the said term by effluxion of time, unless before the giving of such notice by the lessee he has given up to the lessor the possession of the land hereby demised or has been duly ejected therefrom in pursuance of the judgment or order of any Court of competent jurisdiction.
- 25.14 If the lessee fails within the time aforesaid to give any notice under clause 25.12 hereof as to whether he desires a renewal lease or not, or if he gives notice in writing signed by himself or by his agent duly authorised in that behalf that he does not desire a renewal lease, his right to a renewal lease shall cease on the expiry of the time aforesaid, or on the date at which the notice is received by the lessor, as the case may be.
- 25.15 Any notice by the lessee under clause 25.5 or clause 25.12 hereof of his desire to accept a renewal lease shall be deemed to constitute a contract between the lessor and lessee for the granting and acceptance of a renewal lease at the rent accepted by the lessee or determined by arbitration, as the case may be for the first seven (7) years of the term thereof, and for the term and subject to the covenants and provisions referred to in clause 25.1 of these presents.
- 25.16 The term of any renewal lease shall run from the date of the expiry of the prior lease, and the rent thereunder shall accrue as from the said date instead of the rent reserved in the prior lease, notwithstanding the fact that the renewal lease may not be executed until after that date.
- 25.17 If the lease hereby granted is not renewed in accordance with the foregoing provisions, or if it is determined by forfeiture, re-entry, or otherwise, all buildings, and improvements on the land demised shall absolutely revert to the lessor free from any payment or compensation whatever.
- 25.18 Any notice required to be given to the lessee in accordance with the foregoing provisions shall be given in the manner prescribed by section 25 of the Public Bodies Leases Act 1969.
- 25.19 Nothing in the foregoing provisions shall exclude or restrict the right of the lessee to obtain relief against any forfeiture or determination of the lease or of his right to a renewal thereof in the same cases and on the same conditions as if the lease had been granted otherwise than in the execution of statutory powers in that behalf.
- 25.20 The expression "lessor" as herein used includes the successors and assigns of the lessor, and the expression "lessee" as herein used includes the successors, executors, administrators, and assigns of the lessee.
- 26 This lease is in substitution for Lease Numbers B.781508.3 and B.781510.2.

The Lessee named and described in the foregoing Memorandum of Lease hereby accepts this Lease of the land described in the Schedule hereto to be held by the Lessee as tenant upon and subject to the covenants conditions and restrictions above set forth.

EXECUTION

**SIGNED for WAITAKERE
PROPERTIES LIMITED by:**

Ad Young

Name [Director]

Rainbaker

Name [Director]

**SIGNED for WESTRARK MARINA
LIMITED by:**

Joanna Maree Pidgeon

Name [Director]
Authorised Signatory

Janis Andrew Nespersen

Name [Director]
Authorised Signatory

IN THE PRESENCE OF:

**ALISON MOORE
LEGAL SECRETARY
AUCKLAND**

Alison Moore

SCHEDULE

All those parcels of land containing first, 1576 square metres more or less being Lot 2 on Deposited Plan 195238 and secondly, 2022 square metres more or less being Lot 16 Deposited Plan 110480 Certificate of Title 123B/558 (North Auckland Registry).

Register in Triplicate

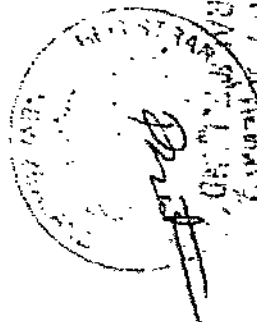
MEMORANDUM OF LEASE
LOT 2 DP 195238 & LOT 16 DP 110480
CT 123B/558
(NORTH AUCKLAND REGISTRY)

Correct for the purposes of the Land
Transfer Act



Solicitor for the Lessee

214 04 OCT 1999 D 4362437
PARTICULARS ENTERED IN REGISTER
LAND REGISTRY NORTH AUCKLAND
FOR REGISTER 123B/558
123B/558



KENSINGTON SWAN
SOLICITORS
AUCKLAND & WELLINGTON



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy


R. W. Muir
Registrar-General
of Land

Identifier **NA123B/558**
Land Registration District **North Auckland**
Date Issued 04 October 1999

Prior References

NA62B/336 NA62B/349

Estate	Fee Simple
Area	3598 square metres more or less
Legal Description	Lot 2 Deposited Plan 195238 and Lot 16 Deposited Plan 110480

Proprietors

Waitakere Properties Limited

Interests

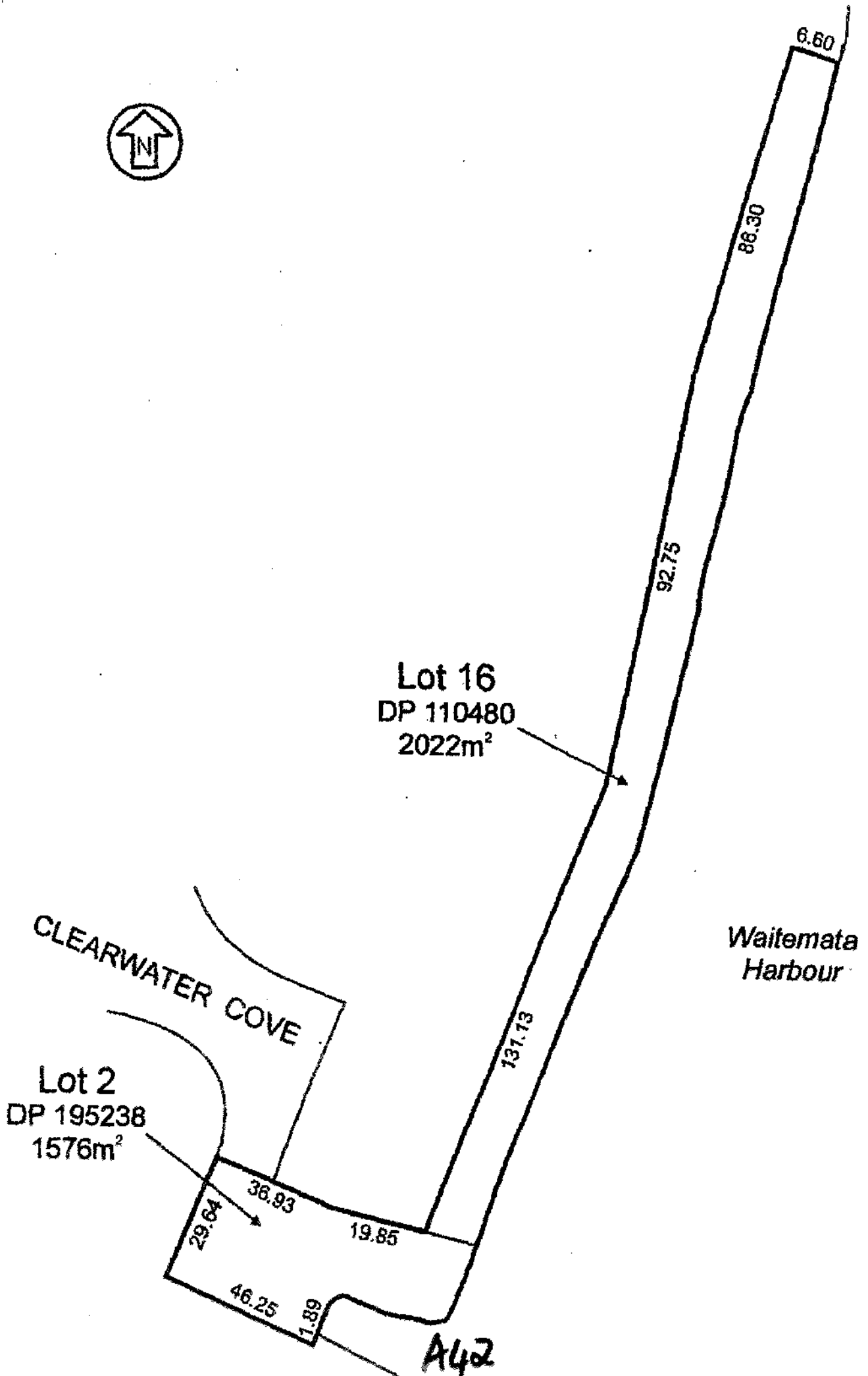
D436423.4 Consent Notice pursuant to Section 221(1) Resource Management Act 1991

Subject to Section 241(2) Resource Management Act 1991

Subject to an electricity right (in gross) over part marked C on DP 195238 in favour of Waitemata Electric Power Board created by Transfer C653716.1 - 13.9.1994 at 10.46 am

D436243.7 Lease Term 7 years 6 months commencing on 27 March 1999 And expiring on 26 September 2006 (renewal clause) CT 118665 issued - 4.10.1999 at 2:14 pm

A41



Lot 16
DP 110480
2022m²

Lot 2
DP 195238
1576m²

CLEARWATER COVE

Waitemata
Harbour

A42



**COMPUTER INTEREST REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy


R. W. Muir
Registrar-General
of Land

Identifier 118665
Land Registration District North Auckland
Date Registered 04 October 1999 02:14 pm

Prior References
NA123B/558

Estate	Leasehold	Instrument	L D436243.7
Area	3598 square metres more or less	Term	7 years 6 months commencing on 27.3.1999 and expiring 26.9.2006

Legal Description Lot 2 Deposited Plan 195238 and Lot 16
Deposited Plan 110480

Proprietors
Westpark Marina Limited

Interests

Fencing covenant in Lease D436243.7 - 4.10.1999 at 2.14 pm
5771159.2 Mortgage to Westpac Banking Corporation - 21.10.2003 at 9:00 am

A43

