

RUSSELL WHARF MEMORANDUM OF UNDERSTANDING

Date:

8 October 2019

PARTIES

Far North Holdings Limited (FNHL)

John David Bell, Barry Heath, Peter Joseph Parkes, Debra May Rewiri, Lance Frazer Sigley and Erle Gregory Williams as trustees of the **Kororareka / Russell Community Wharf Kaitiaki Trust (Trust)**

BACKGROUND

- A Far North District Council (FNDC) owns and operates the wharf known as the Russell Wharf (that wharf, and all attached and associated structures from time to time, being referred to in this Memorandum of Understanding as the "Wharf").
- B The Trust was established to (amongst other things):
- (a) contribute to reconstruction, repair, maintenance and extension to the Wharf;
 - (b) be a vehicle for community engagement in relation to the Wharf and its stakeholders;
 - (c) raise and provide funding to assist in all and any of the above objects;
 - (d) take any such action as the trustees of the Trust consider appropriate to protect and enhance the long-term value of the Wharf to the residents of Russell and the tangata whenua of Kororareka (together, the *Community*), their manuhiri and the Far North District generally.
- C FNDC is currently responsible for routine maintenance of the Wharf. FNDC's commercial subsidiary, FNHL, currently carries out that maintenance on behalf of FNDC. FNDC now proposes to transfer ownership of the Wharf to FNHL.
- D FNDC and FNHL acknowledge the commercial, social, cultural and community significance of the Wharf for the Community, their manuhiri and the Far North District generally.
- E Accordingly, in connection with and as a condition to the transfer of the Wharf to FNHL, FNHL and the Trust have entered into this Memorandum of Understanding (*Memorandum*) to record their agreements and understandings in relation to the operation (commercial and public), long-term maintenance, asset management and development of, and their cooperation in relation to, the Wharf.

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THE PARTIES AGREE as follows:

2 PURPOSE

This Memorandum records the basis upon which the Parties will work together to:

- (a) provide for the long term maintenance and operation of the Wharf, as a key piece of local infrastructure with significant amenity value, for the benefit of the Community, their manuhiri and the Far North District generally;
- (b) establish governance arrangements relating to the Wharf;
- (c) facilitate the earning by FNHL, as a commercial entity, of a commercial return on the Wharf and the securing by it of additional funding, in a manner consistent with its statement of intent as a Council Controlled Trading Organisation subsidiary of FNDC; and
- (d) provide for the ongoing provision of relevant information to, and consultation and liaison with, FNHL in relation to matters affecting the Wharf (including, but not limited to, the operation, appearance, long-term maintenance, asset management and usage of the Wharf),

and sets out related matters.

3 PRINCIPLES

The Parties will, in relation to matters affecting the Wharf under this Memorandum:

- (a) act towards each other in good faith, honestly and reasonably;
- (b) consult with each other where reasonably required on issues of significance;
- (c) work collaboratively and conscientiously;
- (d) exercise due care, diligence, and skill; and
- (e) not pursue any course of action which would not comply with applicable resource consent conditions or any other legal or regulatory requirement relating to the Wharf or its associated sea bed or marine navigation area.

4 TERM

- (a) This Memorandum will come into force on the date first written above and will continue in force unless terminated in accordance with its terms.
- (b) This Memorandum may be terminated by the Parties in writing. This Memorandum shall terminate immediately if the Trust is wound up. The Trust may terminate this Memorandum at any time by giving at least one month's written notice to FNHL (unless, following consultation between FNHL and the Trust, such notice is withdrawn before the notified termination date). FNHL may terminate this Memorandum by giving at least one month's written notice to the Trust if the Trust has persistently and materially breached its obligations under this Memorandum and has not, within two months following receipt of notice from FNHL of such persistent and material breach, remedied such breach (to the extent reasonably practicable) and (to the extent that

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remedy is not reasonably practicable) taken steps to prevent further such persistent material breaches which FNHL (which must act reasonably) is satisfied are adequate for that purpose.

5 **FNHL'S OBLIGATIONS**

FNHL will:

- (a) procure that full and unencumbered legal and beneficial title to the Wharf is transferred to it no later than the date that is one month after the date upon which this Memorandum comes into effect, or such other date as determined by FNDC;
- (b) maintain the Wharf so that it is fit for public and commercial use, safe and legally compliant – including (without limitation) by ensuring that:
 - (i) there is at all times an appropriate, fit-for-purpose and up-to-date long-term asset management (including capital expenditure) plan for the Wharf (*Asset Management Plan*) and that FNHL's relevant budgeting and operational planning is at all times consistent with the Asset Management Plan;
 - (ii) there is at all times an appropriate, fit-for-purpose and up-to-date maintenance schedule for the Wharf (*Maintenance Schedule*) and that FNHL's relevant budgeting and operational planning is at all times consistent with the Maintenance Schedule;
 - (iii) the Wharf is managed consistently with the Asset Management Plan;
 - (iv) the Wharf is maintained in accordance with the Maintenance Schedule;
 - (v) FNHL makes all reasonable endeavours to consult with the Trust, on a quarterly basis during the first year following entry into this Memorandum and thereafter every six months, in relation to the Asset Management Plan and the Maintenance Schedule and FNHL's compliance with them;
 - (vi) at least once every five years, FNHL commissions (in consultation with the Trust) a review from an independent expert with appropriate experience and professional expertise on:
 - (A) the condition of the Wharf;
 - (B) the Asset Management Plan and FNHL's compliance with it; and
 - (C) the Maintenance Schedule and FNHL's compliance with it;

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- (c) operate the Wharf in a manner which takes proper account of its significance to the economic, cultural and social welfare of the Community, their manuhiri and the Far North District generally, including (without limitation) by:
- (i) consulting with the Trust on, and using reasonable endeavours to reflect the Trust's input in relation to, the use of the Wharf, including (to the extent reasonably within FNHL's power, having regard to the terms of concession agreements to which it is party and the commercial requirements of both FNHL and ferry and wharf operators) in relation to:
 - (A) scheduling;
 - (B) ferry routes and frequencies; and
 - (C) ferry pricing, and other terms and conditions,

FNHL acknowledging the significance of such matters to the Community, their manuhiri and the Far North District generally, and at the same time the Trust acknowledging that (A) - (C) above are commercially driven imperatives of both FNHL and the commercial charter and ferry operators and deserving of significant weight accordingly;
 - (ii) using all reasonable endeavours to ensure that the Wharf is always available for normal use (subject to maintenance, capital upgrades and emergencies) - and, in particular, to limit downtime at times of the year when there is high demand for use of the Wharf;
 - (iii) ensuring that all Wharf tenants, and using reasonable endeavours to ensure that all other users of the Wharf:
 - (A) are, and conduct their Wharf-related activities in a manner which is, appropriate and consistent with the prominence and community significance of the Wharf;
 - (B) do not change (and FNHL will not itself change) the appearance of the Wharf in a manner or to an extent which is inconsistent with that prominence and significance without consent of the Trust (which is not to be unreasonably withheld) in accordance with clause 8 - provided that, subject to clause 5(1), nothing in this clause shall apply in respect of any Wharf development which has been approved prior to the date of this Memorandum;
 - (d) keep the Trust informed in a timely manner of, and consult with the Trust on, any events, circumstances, alterations, developments, proposals or other matters (actual or proposed) which may materially affect the Wharf, its operations or users;
 - (e) consult with the Trust on all applications for funding made by FNHL which relate (directly or indirectly, and whether in whole or in part only) to the Wharf;

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- (f) ensure the Wharf is insured at all times with a reputable and credit-worthy insurer for no less than reasonable replacement value, and consult with the Trust when reasonably requested by it on that insurance (including the assessed reasonable replacement value);
- (g) in the event of damage (other than of a negligible nature) to the Wharf:
 - (i) consult promptly with the Trust in relation to:
 - (A) options for repair or replacement, unless said repairs are urgent and time is of the essence and
 - (B) interim arrangements which will substitute as nearly as practicable in the circumstances for the Wharf pending that repair or replacement; and
 - (ii) use its reasonable endeavours to repair or replace (as applicable) the Wharf as soon as practicable so that the Wharf (or its replacement) is at least as serviceable and fit for purpose as the Wharf was prior to that damage;
- (h) not make, approve or otherwise facilitate any material change (or a series of related changes which together are material) to, or in relation to, the Wharf (including its operation or appearance, the Asset Management Plan, the Maintenance Schedule, or usage arrangements), other than signage owned by FNHL and the fuel pontoon owned by FNHL as at the date of this Memorandum, unless:
 - (i) made in accordance with clause 8; and
 - (ii) reasonably required for upgrade, maintenance or operational reasons;but subject always to clause 5(l).
- (i) not encumber or grant any security interest or other third party interest in or over the Wharf, other than:
 - (i) any interest granted by FNHL in or over solely the building on the Wharf owned by FNHL;
 - (ii) the licence granted by FNHL to the Bay of Islands Swordfish Club;
 - (iii) any licence given to fuel providers;
 - (iv) any encumbrance or security interest over the Wharf granted to any financial institution on usual commercial terms for the purposes of obtaining debt funding solely for upgrades to (but not maintenance of) the Wharf, provided the financial institution (i) acknowledges the existence of this Memorandum and (ii) agrees (in favour of the Trust) to ensure that the Wharf is not transferred by the institution or any receiver or manager appointed by or at the request of the institution to any third party other than FNDC in accordance with clause 9.2; and
 - (v) any signage owned by FNHL;

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- (j) not sell, transfer or otherwise dispose of, whether directly or indirectly, the Wharf or any interest in the Wharf except in accordance with clause 9; and
- (k) provide, no later than three months after the conclusion of each of FNHL's financial years, an annual report to the Trust in relation to the Wharf and its operation, maintenance and (where relevant) upgrades during that financial year, which report must include (without limitation):
 - (i) key statistics (such as usage, downtime, passenger numbers and trip numbers) to the extent known by or available to FNHL;
 - (ii) implementation of, and any changes to, the:
 - (A) Asset Management Plan; and
 - (B) Maintenance Schedule;
 - (iii) operational changes;
 - (iv) insurance arrangements;
 - (v) expert reports provided during the year (including a copy of the report); and
 - (vi) expectations and plans (including for operations, maintenance, and upgrades), the Asset Management Plan and the Maintenance Schedule for the then-current financial year (being the financial year immediately following the financial year to which the report relates).

FNHL will (and agrees that the Trust may) make that report publicly available.

- (l) Notwithstanding any other provision of this Memorandum, FNHL will not:
 - (i) take any further steps to agree to, implement or otherwise facilitate any Wharf development approved (or substantially approved) prior to the date of this Memorandum (including any proposal affecting any building or other structure (or proposed building or other structure) on the Wharf, or any change or addition to any services provided on or from the Wharf); or
 - (ii) make, permit or facilitate any change to the existing public usage (and public usage areas) of the Wharf (except to the extent, if any, as it reasonably considers to be required by law),

until it has consulted with the Trust on that development or change (as the case may be) - which consultation must include provision for what the Trust reasonably considers adequate time to take community soundings on the matter.

6 **TRUST'S OBLIGATIONS**

The Trust will:

- (a) seek to understand the views and expectations of the Community in relation to the Wharf (including, where and to the extent that the Trust considers it appropriate or necessary, by seeking and considering input and feedback from relevant Community groups) and (to the extent permitted by law and by assurances or obligations of confidentiality) update FNHL on the material particulars of all such consultation;
- (b) to the extent requested by FNHL, work collaboratively with FNHL in relation to any funding applications FNHL may wish to make concerning the operation, maintenance and/or upgrade of the Wharf;
- (c) keep FNHL informed in a timely manner of, and consult with FNHL on, any events, circumstances, alterations, developments, proposals or other matters (actual or proposed) coming to the Trust's attention which the Trust considers will materially affect the Wharf, its operations or its users;
- (d) consult with FNHL whenever FNHL is required by this Memorandum to consult with the Trust;
- (e) whenever the Trust, acting reasonably, considers it appropriate, consult with FNHL on matters affecting the Wharf, including:
 - (i) matters on which the Community's views and expectations may be of particular benefit to FNHL; and
 - (ii) in relation to applications for funding made by FNHL which relate to the Wharf; and
- (f) maintain a website and/or social media presence as a vehicle for providing information to the Community, including (without limitation):
 - (i) this Memorandum;
 - (ii) agendas for and minutes of calls under clause 7(c) and meetings under clause 7(d) below;
 - (iii) FNHL's annual reports provided to the Trust under clause 5(k) above;
 - (iv) any other reports provided in accordance this Memorandum (including under clause 5(b)(vi) above); and
 - (v) any material or information relating to the Wharf which FNHL may reasonably request the Trust make available to the Community via that website and/or social media presence; and
- (g) hold a public meeting for members of the Community at least once in each year (excepting 2019) to report on matters arising in relation to the Wharf and this Memorandum.

7 **MUTUAL OBLIGATIONS**

Each Party will:

- (a) recognise the views and expectations of the Community in relation to the Wharf and, as and when necessary, consult with appropriate members of the Community;
- (b) make available to the other Party its relevant knowledge and expertise in relation to matters relevant to this Memorandum;
- (c) before it seeks to raise any material amount of funds with the intention that they be used for maintenance or enhancement of the Wharf, advise the other Party of its intended fundraising initiative and, if the other Party wishes, discuss whether the Parties should collaborate in that initiative or otherwise co-ordinate their relevant fundraising activities (and, if so, in what manner), each Party acknowledging the likely advantages for the Wharf and the Community of co-ordinated or collaborative fundraising initiatives;
- (d) arrange and attend conference calls, on a quarterly basis during the first year following entry into this Memorandum and thereafter every six months, to discuss any matters arising in relation to the Wharf;
- (e) arrange and attend an annual meeting, in person, to formally review FNHL's annual report prior to its release by FNHL to the public;
- (f) in relation to all such conference calls and annual meetings:
 - (i) act reasonably beforehand in an endeavour to agree an appropriate agenda; and
 - (ii) use all reasonable endeavours to ensure minutes are taken which record all material matters discussed and are approved promptly by both Parties - which minutes may, except to the extent (if any) that FNHL reasonably requires otherwise for reasons of commercial sensitivity, be made publicly available by the Trust;
- (g) use reasonable endeavours to meet (in person or by conference call) at the request of the other Party in response to any event, circumstance or other matter arising in relation to the Wharf or the Trust; and
- (h) meet with the other Party in person every three years in order to review the operation of this Memorandum and discuss any changes which may be desirable to better achieve the Parties' objectives.

All such conference calls and meetings shall, except to the extent agreed otherwise by the Parties (and subject to unforeseen circumstances which could not reasonably be avoided), be attended by at least two Trustees and at least two FNHL managers or executives of appropriate seniority and with the requisite background knowledge of the Wharf, this Memorandum and matters arising in relation to it.

8 **CHANGE PROCEDURE**

8.1 **Notice of change**

If FNHL wishes to make, approve or otherwise facilitate any material change (or, any series of related changes which together are material) in relation the Wharf (including its operation or appearance, the Asset Management Plan, the Maintenance Schedule, or usage arrangements) (the *Change*), FNHL will give reasonable notice to the Trust in accordance with clause 10. For the purposes of this clause 8.1, the parties agree that "reasonable notice" means notice of no less than:

- (a) three months (in relation to a Change solely relating to maintenance); and
- (b) six months (in relation to any other Change).

To avoid doubt, subject always to clause 5(l) this clause 8.1 shall not apply to any Change relating solely to maintenance which is already provided for in the then-current Maintenance Schedule approved in accordance with this Memorandum.

8.2 **Approval, amendment or disapproval**

Upon receiving a notice pursuant to clause 8.1, the Trust:

- (a) may (but need not) seek feedback and input from the Community generally, or from any one or more specific Community groups and/or members;
- (b) will, within a reasonable period following receipt of that notice (having regard, amongst other things, to the nature and extent of any Community input and feedback sought by the Trust), notify FNHL that:
 - (i) the Trust approves the Change without conditions;
 - (ii) the Trust approves the Change subject to proposed conditions and/or amendments (which the Trust must specify and for which the Trust must provide reasons), in which case:
 - (A) the Parties will consult in an endeavour to reach agreement on the Change (or any variation to it); but
 - (B) if, despite such consultation, the Parties do not agree on the Change (or any variation to it), the Trust will be regarded as not approving the Change And clause 8.2(b)(iii) will apply accordingly; or
 - (iii) the Trust does not approve the Change, together with reasons, in which case FNHL will reconsider and either:
 - (A) not proceed with the Change;
 - (B) propose an alternative option (which shall, for the purposes of this clause 8, constitute a new proposed Change); or

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- (C) except to the extent (if any) that FNHL has agreed not to do so, proceed with the Change, in which case FNHL will explain in writing to the Trust:
- the reasons for continuing with the Change despite the Trust's objections; and
 - how, notwithstanding the Trust's objections, the Change remains consistent with the purposes of this Memorandum.

9 DISPOSAL OF THE WHARF

9.1 No transfer of Wharf

FNHL may not sell, transfer or otherwise dispose of the Wharf, or any interest in the Wharf, except as permitted by clause 5(i), clause 9.2 or clause 9.3(h) and (i).

9.2 Permitted sale or transfer

- (a) Subject to clause 9.2(b), if FNHL wishes to dispose of the Wharf it must offer its full legal and beneficial interest in the Wharf to FNDC.
- (b) FNHL shall not be entitled to transfer the Wharf under clause 9.2(a) unless:
- (i) FNDC first agrees in writing (in a manner enforceable by the Trust) to:
- (A) upon acquiring the Wharf, become party to (and accordingly subject to all obligations of FNHL under) this Memorandum in place of FNHL; or
- (B) enter into a replacement agreement with the Trust on terms and conditions which are the same or substantially the same as this Memorandum (and, in particular, will result in FNDC being subject to obligations substantially the same as those of FNHL under this Memorandum); and
- (ii) FNHL has provided to FNDC all data, records, minutes, plans, contracts and other written information in its possession of material relevance to the Wharf and/or this Memorandum,

and any offer of the Wharf by FNHL to FNDC under clause 9.2(a) must accordingly be conditional on compliance by FNHL and FNDC with this clause 9.2(b).

9.3 Material breach

- (a) If FNHL materially breaches any of its obligations under this Memorandum, the Trust may, without prejudice to any of its other rights or remedies, within three months of becoming aware of the material particulars of that breach, give notice to FNHL requiring that breach (where capable of remedy) to be remedied.

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- (b) If:
- (i) that breach, if capable of remedy, is not remedied within three months of that notice; or
 - (ii) within one year following that notice FNHL again materially breaches any of its obligations under this Memorandum (whether the same obligations as the prior breach or otherwise),

the Trust may, without prejudice to any of its other rights or remedies, within three months of becoming aware of the material particulars of that failure or new breach (as the case may be), give notice to FNHL (*Notice to Consult*) requiring FNHL to consult with the Trust in relation to that breach or those breaches and:

- (iii) how it or they might be remedied or otherwise compensated for; and/or;
- (iv) how similar or related breaches can be prevented in the future; and/or
- (v) any related matters.

Such consultation shall, if so requested in writing by FNHL or the Trust, be facilitated by an experienced independent mediator agreed between FNHL and the Trust (each acting reasonably) appointed at FNHL's cost.

- (c) If the Trust does not confirm in writing to FNHL, by the date that is six months after the date of the Trust's Notice to Consult, that the Trust is satisfied with the outcome of that consultation, the Trust may, without prejudice to any of its other rights or remedies, no later than nine months after the date of the Trust's Notice to Consult, give notice to FNHL (*Further Notice to Remedy*) that FNHL must fully and effectively remedy all material breaches of this Memorandum by FNHL which have not already been remedied by FNHL or waived by the Trust.
- (d) If FNHL does not fully and effectively remedy all such breaches within a further period of one year from the date of the Further Notice to Remedy, the Trust may commission a report from one or more experts, who or which the Trust and FNHL (each of which must act reasonably and in a timely manner) are satisfied is or are independent and possessed of appropriate experience and professional expertise, on the cost of engaging one or more third parties to carry out such works and take such other actions as may be required to fully and effectively remedy the breaches by FNHL identified in the Further Notice to Remedy (*Remedy Cost*).

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- (e) FNHL shall provide all such information to each such expert as that expert may request for the purposes of providing that report, shall waive all liability of each such expert to FNHL in connection with that report (except liability for fraud), and shall promptly pay (or reimburse the Trust, on demand, for) each such expert's fees and expenses.
- (f) Upon the report or reports of the expert/s being finalised and delivered to the Trust and FNHL, FNHL shall pay to the Trust the Remedy Cost, free of all withholdings and counterclaims, as liquidated damages and that payment will enable the Trust to take steps to further the objects of the Trust in respect of the Wharf.
- (g) Each such expert will act as an expert and not an arbitrator, and the determination of each such expert shall be final.
- (h) Subject to clause 9.3(i), at any time between:
- (i) the date on which FNHL receives the Further Notice to Remedy, and
 - (ii) the date that is one month after the expert determination of the Remedy Cost,

FNHL may transfer the Wharf to FNDC. To avoid doubt, upon that transfer taking effect FNHL shall remain liable for all amounts then owing or accrued (such as, by way of example only, amounts payable to any expert engaged in accordance with this clause 9.3, including any amounts payable to any such expert as a result of early termination of that engagement).

- (i) FNHL shall not be entitled to transfer the Wharf under clause 9.3(h) unless:
- (i) FNDC first agrees in writing (in a manner enforceable by the Trust) to, upon acquiring the Wharf:
 - (A) become party to (and accordingly subject to all obligations of FNHL under) this Memorandum in place of FNHL; or
 - (B) enter into a replacement agreement with the Trust on terms and conditions which are the same or substantially the same as this Memorandum (and, in particular, will result in FNDC being subject to obligations substantially the same as those of FNHL under this Memorandum);except that, in either case, FNDC shall:
 - not be obliged to pay the Remedy Cost to the Trust; but
 - instead, be obliged to remedy the relevant material breaches as soon as practicable (and failure to do so shall constitute a material breach of this Memorandum by FNDC); and
 - (ii) FNHL has provided to FNDC all data, records, minutes, plans, contracts and other written information in its possession of material relevance to the Wharf and/or this Memorandum.

10 **TRUSTEES**

- (a) Notwithstanding anything contained or implied in this Memorandum, the Parties acknowledge and agree that the trustees of the Trust are party to this Memorandum in their capacities as trustees of that trust and not in their personal capacities. The liability of each such trustee under or in connection with this Memorandum shall be limited to the assets of the Trust which are (or, but for any fraud of that trustee, would be) available to that trustee for that purpose in accordance with the terms of that trust at the time that the liability is discharged.
- (b) This Memorandum shall inure to the benefit of and be enforceable accordingly by any additional or replacement trustee of the Trust and FNHL shall, upon request at any time, execute such documentation as may be reasonably requested to confirm that this Memorandum constitutes an agreement between FNHL and the trustees of the Trust at that time.
- (c) Without limiting clause 10(a), FNHL acknowledges and agrees that the Trust is community-based and reliant upon volunteers for its operation and funding, and that its obligations under this Memorandum are binding on it at any time only to the extent that its financial and personnel resources enable it reasonably to comply with those obligations.
- (d) FNHL further acknowledges that the trust deed constituting the Trust provides for a procedure under which all trustees of the Trust may be replaced at or about the same time, and agrees that, if it receives notice from the Trust to the effect that that procedure has been invoked, it will, until that procedure has concluded:
 - (i) use all reasonable endeavours not to take any action which requires consultation with the Trust; and
 - (ii) agree with the extension, by a period equivalent to the period from its receipt of that notice to the conclusion of those procedures, of any period of notice to the Trust or period within which the Trust is required to take any action.

11 **GENERAL**

11.1 **Notices**

- (a) Any notice or other communication to be given under this Memorandum must be in writing addressed to the recipient at the address or email address from time to time notified by that Party in writing to the other Party. Until a change is so notified, the address and email address of each Party are those set out under the name of that Party at the end of this Memorandum.
- (b) Delivery may be effected by hand, or by post with postage prepaid, or by email. A notice or other communication will be deemed to have been received:
 - (i) in the case of hand delivery, at the time of actual delivery to the recipient's address;



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- (ii) in the case of delivery by pre-paid post, on the 5th working day after posting;
 - (iii) in the case of delivery by email, on receiving an active response from the addressee (not being an automatically generated response such as an out of office notification or read receipt).
- (c) However, if a notice or other communication is received or deemed to have been received after 5pm on a working day in the place to which it is sent, or on a day which is not a working day in that place, it will be deemed not to have been received until the next working day in that place.

11.2 Amendment

No amendment to this Memorandum will be effective unless it is in writing and executed by all the parties.

11.3 Costs

Except as otherwise provided in this Memorandum, the Parties will meet their own costs relating to the negotiation, preparation and completion of this Memorandum, and the performance of its obligations under it.

11.4 Legal effect

This Memorandum is legally binding on the Parties.

11.5 Counterparts

This Memorandum may be executed in counterparts which together shall constitute one and the same instrument. The email transmission by a Party of copy of this Memorandum signed by that Party shall be treated as if that Party had signed and delivered an original of this Memorandum. This Memorandum shall not take effect until it has been executed and delivered by both Parties.

11.6 Assignment

No Party may transfer, assign, delegate, sub-contract or deal in any manner with any rights or obligations in this Memorandum without first obtaining the written consent of the other Party.

11.7 Governing Law

This Memorandum is governed by and shall be construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this Memorandum.


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EXECUTION

Signed by **John David Bell** as trustee of the **Kororareka / Russell Community Wharf Kaitiaki Trust**:



Signed by **Barry Heath** as trustee of the **Kororareka / Russell Community Wharf Kaitiaki Trust**:



Signed by **Peter Joseph Parkes** as trustee of the **Kororareka / Russell Community Wharf Kaitiaki Trust**:



Signed by **Debra May Rewiri** as trustee of the **Kororareka / Russell Community Wharf Kaitiaki Trust**:



Signed by **Lance Frazer Sigley** as trustee of the **Kororareka / Russell Community Wharf Kaitiaki Trust**:



Signed by **Erle Gregory Williams** as trustee of the **Kororareka / Russell Community Wharf Kaitiaki Trust**:



Signed for and on behalf of **Far North Holdings Limited** by:



Director/Authorised signatory