

HEADS OF AGREEMENT RELATING TO THE TĀMAKI TRANSFORMATION PROGRAMME – A PLAIN ENGLISH AND SIMPLIFIED VERSION

INTRODUCTION

The Heads of Agreement or "HoA" is a document between the Crown and Auckland Council as shareholders in the Company. It would normally be referred to as a shareholders' agreement.

- 1. ITS PURPOSE IS LARGELY TO SET OUT HOW THE SHAREHOLDERS WILL WORK TOGETHER IN SETTING UP THE COMPANY. IT ALSO INCLUDES A NUMBER OF AGREED POSITIONS OF HOW THE COMPANY WILL OPERATE.**

HOW IS THE TAMAKI REDEVELOPMENT COMPANY'S TRANSFORMATION PROGRAMME TO BE PROGRESSED?

- 1.1 The Transformation Programme is intended to be carried out in two distinct stages. Stage 1 can be referred to as the planning stage while Stage 2 can be referred to as the project stage.
- 1.2 **Stage 1:** Stage 1 has two elements. The first (which has already happened) is the setting up of the Company. The second element requires the Company to produce the Strategic Framework and the Business Case. These documents are then given to the Shareholders for their approval.
- 1.3 **Stage 2:** If the documents are approved by the Shareholders then during Stage 2 the Company is required to pursue the programme's objectives.
- 1.4 **Timing of Stage 1:** Stage 1 commenced on the date that the HoA was executed by the Shareholders and will end when:
 - (a) the Shareholders have agreed to proceed with Stage 2; or
 - (b) if the Shareholders do not agree to proceed with Stage 2, when the HoA is terminated.

2. HOW THE SHAREHOLDERS WILL WORK TOGETHER?

- 2.1 The HoA includes a number of provisions dealing with how the Shareholders will work together. These do not necessarily impact on the day-to-day operations of the Company. Key provisions are:
- 2.2 **Good faith:** The Shareholders will have a co-operative relationship that facilitates achievement of the Transformation Objectives by the Company and will not do anything that could prevent the Company from communicating with them.
- 2.3 **Liaison office:** Each Shareholder will establish a liaison office as the one-stop contact point for their dealings with each other and with the Company in relation to the Transformation Programme.
- 2.4 **Communications plans:** The Shareholders will discuss and agree a Tāmaki Transformation communications plan with the Company, and will try at all times to harmonise and synchronise any media and PR statements that they make.

3. BASIC PRINCIPLES OF THE TRANSFORMATION PROGRAMME

- 3.1 **Objectives:** The Transformation Programme will be implemented by pursuing the Transformation Objectives.
- 3.2 **Tāmaki area:** The area outlined in the Tāmaki map attached at Appendix A of the HoA is indicative only. Some Transformation Programme activities may have effects beyond this area or require coordination with activities outside the immediate area. The Shareholders will consider any adjustments to the indicative boundary during Stage 1.
- 3.3 **Scope of the HoA:**
- (a) The HoA does not bind any:
 - of the Council's council-controlled organisations;
 - Crown agency; or
 - Crown owned or controlled entity.
 - (b) Actual performance of business-as-usual activities by the Shareholders and any Affiliates is outside the scope of the HoA. The Shareholders expressly agree that such activities will form part of Stage 2 or be included under a Development Plan.
- 3.4 **Key financial principles:**
- (a) The outcomes for the Shareholders will be equal to their respective net contributions and risks. This can be made directly to the Company or by enabling activities on which the Company's financial activities depend. In particular, the Shareholders do not intend the Transformation Programme to give either of them a financial stake or interest in the other's assets.
 - (b) Neither the Shareholders nor any Affiliate will be obliged to give any guarantee, indemnity or security in the respect of the performance of any obligation of the Company.
 - (c) Any lending or financial accommodation by either Shareholder to the Company must be approved by the other Shareholder.
- 3.5 **Development contributions:** The Council is not obliged to waive any development contributions, application or consenting fees or similar fees and contributions. However, subject to finalising the terms for Stage 2 (including financial structuring), the Council will explore ring-fencing development contributions for reapplication within the Tāmaki area.
- 3.6 **Approvals process:**
- (a) Any contributions by the Crown to the Transformation Programme are subject to the Crown's normal approvals processes.
 - (b) Any contributions by the Council to the Transformation Programme are subject to Council's normal approvals processes.

4. COMPANY INCORPORATION

4.1 The nature of the Company:

- (a) The Company is a public benefit entity for purposes of financial reporting standards.
- (b) The Company is not a council- controlled organisation of the Council.
- (c) The Company is listed in Schedule 4 of the Public Finance Act 1989 ("PFA").

4.2 How the Public Finance Act and Crown Entities Act apply to the Company:

- (a) The Controller and Auditor-General will be the Company's auditor.
- (b) The following provisions of the Crown Entities Act 2004 ("CEA") will apply to the Company (no others will apply):

Compulsory provisions of the CEA

- Sections 133 and 134 – Power to request information
- Sections 154 to 156 – Audited financial statement
- Section 158 – Bank account

Optional provisions of the CEA that will apply to the Company

- Sections 150 and 151 – Annual Report
 - Sections 161 to 164 (inclusive) – Restrictions on securities, borrowing etc
- (c) Section 139 relating to Statements of Intent does not apply. The Company's constitution deals with the SOI.

4.3 **Financial reporting:** The Company will provide year-end audited (or audit cleared) financial information in time to enable Council to fulfil its New Zealand stock-exchange reporting requirements.

4.4 Post-incorporation matters

Rights and Obligations of the Shareholders

- (a) **Transitional board:** For the first six months after incorporation, the Company may have a transitional board of any number and composition of directors that are agreed between the Shareholders.
- (b) **Board recruitment, removals and remuneration:**
 - The Shareholders will coordinate with each other on board recruitment and removal processes (including where practicable on consultants, advertising, media, and timeframes) and may agree appointment duration and rotation policies.

- The Shareholders will comply with their respective processes relating to appointment of directors to subsidiaries, including any requirements as to competency, independence, experience and the like when making discretionary appointments or voting on appointment of other directors.
 - Director remuneration will be set by the Shareholders by notice to the Company. The parties will rely on professional advice in setting appropriate remuneration levels for each director and the chairperson.
- (c) **Board performance:** Board performance will be monitored and reviewed by the Shareholders in accordance with their respective procedures.

Rights and Obligations of the Company's Board

- (d) **Director remuneration and indemnification:** The Company will indemnify and insure its directors to the extent permitted by section 162 of the Companies Act 1993.
- (e) **Company officers:** The board will select and appoint a CEO and the CEO's remuneration, subject to approval by the parties (such approval not to be unreasonably withheld). Remuneration of the CEO and senior Company officers will reflect market rates, the complexity of the roles and be performance based.
- (f) **Information:** Any information provided by the Company to one Shareholder must be provided to the other Shareholder at the same time.

5. WHAT ARE THE GENERAL OBLIGATIONS ON THE COMPANY?

5.1 **What Shareholder policies should the Company have regard to?** The Company will have regard to relevant policies, strategies and plans of the:

- (a) Crown (including Government policy statements, development Schemes approved by the Minister under the Housing Act 1955); and
- (b) Council (including the Auckland Plan, Long-Term Plan, and Maungakiekie-Tāmaki Local Board Plan).

The Company will not be bound by these documents except to the extent the Shareholders require any aspects of them to be reflected in any Statement of Intent (SOI).

5.2 **Is the Company required to engage with the community?** The Company will establish and maintain processes for seeking and receiving community input on its activities, including:

- (a) consulting and engaging with local iwi and the Council's Independent Maori Statutory Board, Pacific peoples community groups and other stakeholder groups, including the relevant Council Local Boards and community organisations and representative groups; and
- (b) promoting cultural opportunities (where appropriate, given the Company's Purpose) and identifying "sites of significance" within the Tāmaki area (including wahi tapu, archaeological, historic and geological).

5.3 **What are the Company's reporting requirements?** On request by the Shareholders, the Company will deliver, no later than one month after the end of the first and third quarter of each financial year (except for the first year after incorporation), a report on the Company's operations during each quarter that includes the information required to:

- (a) be included in the report under the Statement of Intent; and
- (b) comply with any specified requirements for the:
 - management of the assets of the Company identified by the Shareholders as strategic assets; and
 - processes for the approval of major transactions in relation to those assets.

6. WHAT ARE THE COMPANY'S OBLIGATIONS DURING STAGE 1?

6.1 **What are the transformation expectations?** The Shareholders' and the Company's activities in Stage 1 will be "guided" by the Transformation Expectations, which will be communicated via a "Letter of Expectations".

6.2 What is the budget during Stage 1?

(a) The Company's Stage 1 activities will be funded from the initial issue of shares to the Shareholders, being \$8,500,000 (the "Stage 1 Budget").

(b) The Company will not:

- make any other funding calls on the Shareholders;
- seek funding from any other person;
- incur any obligations or liabilities in excess of the Stage 1 Budget;

during Stage 1, unless first approved by the Shareholders.

(c) The Company will properly account for all expenditure, and cooperate fully with the Shareholders in reviewing and monitoring the Company's expenditure.

6.3 What are the steps for preparing the First Statement of Intent?

(a) The Company will prepare a first draft of the Statement of Intent in consultation with the Shareholders.

(b) The Company will consult with stakeholders on the draft Statement of Intent before providing the final draft Statement of Intent to the Shareholders for comment and approval in accordance with the constitution.

(c) The Shareholders will use their best endeavours to approve the draft Statement of Intent, having regard to each of their reasonable interests and expectations. The disputes resolution procedure in the HoA will apply to any differences between the Shareholders.

6.4 **What about the subsequent Statements of Intent?** Subsequent Statements of Intent will be approved by unanimous Shareholder agreement as provided under the Constitution.

6.5 **Will the SOIs be publicly available?** On delivery to the Shareholders, each completed Statement of Intent will be made publicly available.

6.6 **What is the Tāmaki Vision?** The Company will develop and finalise a draft Tāmaki Vision. The draft will be approved by the Shareholders as part of the Strategic Framework process outlined below.

6.7 **What is and how does the Company produce the Strategic Framework?** The HoA deals with the strategic framework in two different places. These places are Article 3 and Schedule 3. The Company will prepare a draft 20-25 year strategic framework for Stage 2 of the Transformation Programme ("**Strategic Framework**").

- (a) The draft Strategic Framework will:
- set out the vision for where Tāmaki will be in 20-25 years;
 - "have regard" to the Transformation Expectations;
 - reflect the Transformation Objects and any Shareholder goals for the Transformation Programme advised to the Company through the process for preparing and finalising the Company's Statements of Intent;
 - include all matters specified in the initial Statement of Intent for inclusion in the Strategic Framework, including, for example: boundary of development area; phasing; desired densities, scale and tenure mix; proposed land use (including location of community facilities and retail etc); appropriate building heights; open space; access (by all modes of transport); street hierarchy; drainage and the governing urban design principles. reflect and (to the extent required) redefine the draft Tāmaki Vision;
 - cover all of Stage 2 of the Transformation Programme,. It will also incorporate the supporting activities to be performed by the parties in their own right, and indicate complementary activities by other entities / agencies that may be agreed as contributing to the Transformation Objects.
 - take into account the Auckland Plan and previous public consultation on Tāmaki plans, including the Auckland City Council Future Planning Framework Tāmaki Area Plan;
 - set deliverable and measurable targets for Transformation Programme outputs, covering all Transformation Objects (such as appropriate densities, social housing targets and employment targets). Progress towards the targets should be measurable at periodic intervals, and the targets should be firm wherever possible, and if not then be clear indicative targets and aspirational goals;
 - principles to guide decision-making, which emanate from the Heads of Agreement. Include a high level spatial plan for Tāmaki, which takes into account other area and Auckland planning work.
 - include project phasing;
 - contain key spatial and design principles;
 - articulate priorities and sequencing;
 - provide the framework for more specific "master-planning", which is undertaken by precinct.
- (b) During the formulation of the draft Strategic Framework, the Company will actively engage with stakeholders and engage in appropriate public consultation. As part of this engagement, the Company will release the draft Strategic Framework for stakeholder comment by April 2013 or by July 2013 at the latest. Stakeholders will include (but are not limited to):
- The community of Tāmaki;

- Local iwi and groups representing Pacific peoples in Tāmaki;
 - Government agencies and entities (including housing, health, education, social development, transport etc),
 - Council, its Local Board, and its departments and CCOs;
 - District health boards, community health boards, and public health authorities;
 - NGOs and social services / community organisations; and
 - Private sector (including local businesses, developers, construction firms as appropriate).
- (c) The Company will not release the draft Strategic Framework for stakeholder comment without the Shareholders' prior consent. Such consent does not constitute approval of the Shareholders to any part of the Strategic Framework. Formal approval will only be given as part of the process of reviewing and agreeing Stage 2.
- (d) The Company will seek and take into account stakeholder comments on the draft Strategic Framework.

6.8 **What is a Development Plan?** The Company will prepare precinct-based five-year development plans ("**Development Plans**"). The following requirements are included in various parts of the HoA. The Development Plans:

- (a) for particular phases of development could have their own budgets and asset mixes, including with contributions from the private sector and/or Affiliates;
- (b) will identify:
- goals and key projects for five year period;
 - assets to be transferred/developed; and
 - detailed goals (spatial, social and economic) and key parameters (funding, partners); and
- (c) will include detailed master-planning by precinct and address zoning issues.

6.9 **What is the Business Plan?** The Company will prepare a rolling three-year business plan ("**Business Plan**") that will be reviewed annually by the Shareholders. The Business Plan will include:

- (a) detailed operational planning that sets out objectives, deliverables, milestones, resourcing and accountabilities that will be required or will apply over the relevant period;
- (b) operational planning for delivery of spatial goals; and
- (c) resource consenting.

6.10 **What is the Business case(s)?** The Company will, in parallel with preparing the draft Strategic Framework, prepare a business case or cases for Stage 2 (“**Business Case**”) that will:

- (a) "have regard" to the Transformation Expectations;
- (b) cover the implementation of the Strategic Framework by the Company and the preferred business model(s) to be adopted by the Company (including matters relating to capitalisation, asset transfers, Shareholder contributions, and indicative precinct plan commercial methodologies);
- (c) cover the proposed roles for the Company in the Transformation Programme and any development projects;
- (d) to the extent applicable, be prepared using the Crown “Better Business Case” process. (This will include any Cabinet and/or Council decision making processes and timeframes). The Business Case supports decision making on whether and how to proceed to Stage 2, and is not a Precinct Plan or Business Plan.

6.11 **What are the deadlines for these documents?** The Company must provide the:

- (a) completed draft Strategic Framework;
- (b) Business Case;
- (c) draft initial Development Plan; and
- (d) draft initial Business Plan

to the Shareholders by September 2013. However, the Company is encouraged to provide these documents to the Shareholders earlier if possible.

6.12 **What are the catalyst projects?** In the period starting 1 August 2012, the Company will identify and provide non-financial support for a number of catalyst projects (including any ongoing legacy projects) to maintain the momentum of the Transformation Programme (including community engagement and overall strategic direction).

6.13 **What are the prohibited activities?** The Company will not do any of the following during Stage 1, except to the extent permitted in its Statement of Intent or otherwise approved by ordinary resolution of the Shareholders:

- (a) any matter which would require approval under the Applicable Provisions of the Crown Entities Act 2004;
- (b) issue to any person or acquisition from any person of any debt, equity or hybrid securities; or
- (c) enter into any third party financing arrangements, including any non-ordinary course of business securitisation of any Company assets; or
- (d) issue a guarantee (with or without security) or an indemnity to any person (with or without security) other than in the ordinary course of business or permitted director and officer indemnification.

7. HOW DO THE SHAREHOLDERS APPROVE THE TĀMAKI REDEVELOPMENT COMPANY'S STAGE 2?

7.1 Review and approval: On receipt of the draft Strategic Framework from the Company, the Shareholders will meet to decide whether to proceed to Stage 2.

7.2 What does proceeding to stage 2 involve? Proceeding to Stage 2 will involve:

- (a) reviewing and agreeing the purpose and scope of the Transformation Programme;
- (b) reviewing, accepting or amending and approving the Strategic Framework;
- (c) reviewing and agreeing the Company structure for Stage 2, including shareholding and board representation, capitalisation and financial structure and operating principles and constitution;
- (d) reviewing and agreeing the role of the Company in the Transformation Programme and in particular development projects;
- (e) reviewing, accepting or amending and approving the Business Case(s), including the Company's proposed financial and operational business model(s);
- (f) reviewing and agreeing any modifications to the Transformation Expectations;
- (g) agreeing the Shareholders' contributions to Stage 2, and their respective rights and obligations for the Transformation Programme;
- (h) ensuring the Company has access to social housing stock in Tāmaki for development; and
- (i) negotiating and entering into a binding Shareholders agreement, reflecting the matters agreed under (a) to (e) above and "with reference" to the Transformation Expectations. The shareholders agreement for Stage 2 will provide a termination and exit regime from the Transformation Programme, including Company disestablishment.

7.3 Disengagement: If the Shareholders do not agree to proceed to Stage 2 by 31 December 2013 (or any later day the parties may agree), they will work together to effect orderly disengagement from the HoA. This may involve:

- (a) disestablishing the Company and liquidating its assets,
- (b) transitioning the Company's residual assets to another entity, or entities or
- (c) one of the parties transferring its shareholding to the other.

8. WHAT ARE THE COMPANY'S STAGE 2 OBLIGATIONS?

8.1 **The Company's obligations:** In Stage 2, the Company's activities will be guided by the Transformation Expectations (as reviewed and agreed by the Shareholders at the end of Stage 1) and the Company will pursue the Transformation Objects at all times act in a way that:

- (a) is consistent with the Company Purpose and the Statements of Intent;
- (b) is in accordance with the Strategic Framework, Development Plan and Business Plan;
- (c) is consistent with the principle of being a good employer (defined in section 118(2) of the CEA);
- (d) has regard to the local training and employment objectives of Tāmaki Transformation specified in Statements of Intent;
- (e) shows a sense of social and environmental responsibility by having regard to the interests of the Tāmaki community and by trying to accommodate or encourage these interests when able to do so;
- (f) establishes and maintains processes for seeking and receiving community input on its activities, including opportunities for input from Māori and Pacific peoples;
- (g) is financially responsible and, for this purpose, prudently manage, its assets and liabilities and use its funding and revenue efficiently and effectively in a manner that seeks value for money;
- (h) ensures that the Company's revenue and expenditure are accounted for in a transparent manner;
- (i) is consistent with sound urban regeneration principles and practices, having regard to appropriate development phasing and social viability considerations;
- (j) is consistent with good procurement practices, including open and competitive procurement processes which further the Company's Purposes (wherever practicable) as appropriate for a public sector entity;
- (k) is consistent with the Tāmaki Way of Working (as modified from time to time by Statements of Intent); and
- (l) is consistent with any "no-surprises" policy which is approved by the Shareholders and is included in the Statements of Intent.

8.2 **Projects:** The Company will procure / undertake substantive Transformation Programme activities in accordance with the Shareholders agreement for Stage 2, the adopted Strategic Framework, and the Company's Development Plans and Business Case. All of these are will be reflected in its ongoing Statements of Intent. Transformation Programme development options will have regard to:

- (a) a range of contracting, commercial partnerships and other innovative delivery mechanisms to achieve the objectives of Transformation;

- (b) the Crown's objectives in growing third sector housing providers;
- (c) the potential to use Māori-led contractors or development companies where commercially appropriate and to further the Company's Purposes;
- (d) the housing aspirations of Māori in the area, including the potential for papakainga development; and
- (e) opportunities for mixed tenure and mixed ownership models of housing provision.

8.3 **Commitment deeds:** In Stage 2, the Company may enter into "deeds of commitment" with third party entities (including any Affiliates) for the purposes of securing their cooperation and contributions to the Company's activities under the Transformation Programme.

8.4 **Unitary plan:** The Company will engage with the Council on the Council's draft unitary plan, with the objective of allowing for as many as possible of the Company's projected development activities to be permitted activities under resource management laws and planning policy and rules, or only requiring non-notified resource consents.

9. GENERAL PROVISIONS

- 9.1 **Regulatory functions:** The HoA and actions under it (such as formulation and approval of the Strategic Framework) are separate from and do not restrict any regulatory, quasi-judicial or other statutory functions of either Shareholder.
- 9.2 **Relationship to statutory plans:** The Council will remain responsible for preparation of statutory plans under the Resource Management Act 1991, Local Government Act 2002 and Local Government (Auckland Council) Act 2009 and other relevant legislation as they relate to Tāmaki and the Transformation Programme. However, the Shareholders recognise that the Strategic Framework will touch on the objectives of the Auckland Plan and on area spatial planning matters, and accordingly agree that the Strategic Framework and the Tāmaki area spatial planning and the Auckland Unitary Plan should be harmonised to the maximum degree possible.
- 9.3 **Opt-out:** If there is any law change or other regulatory action or decision by the Crown materially adversely impacting on the Council's rights and interests under the HoA, especially as regards the governance and accountability framework for the Company, or any adoption or modification of a Statement of Intent during Stage 1 without the Council's agreement, the Council may notify the Crown. The Shareholders will then negotiate in good faith to endeavour to agree new arrangements or Statement of Intent modifications to address the adverse impact on the Council. If such new arrangement or modification cannot be agreed, the Council may terminate the HoA by not less than 30 days' notice to the Crown. The disengagement provisions of the HoA will then apply, and the Council may (at its discretion and without payment) transfer its shares in the Company to the Crown by written notice.

10. KEY DEFINITIONS AND CONCEPTS

(a) Key entities:

- "**Affiliates**" means any entity that is wholly-owned or controlled by either of the Shareholders. For example Housing New Zealand or Watercare.
- "**Shareholders**" means the Crown and the Council.

▪ Key concepts:

- "**Company Purpose**" - This means to pursue the Transformation Objects, in accordance with the Strategic Framework, the Company's constitution and the Shareholder objectives specified in the Company's Statements of Intent, by:
 - leading and integrating a programme of activities (public, private and NGO) to transform Tāmaki;
 - procuring and/or influencing physical and spatial development (housing, infrastructure and amenities); and
 - facilitating alignment and the design and delivery of placed-based social and economic programmes to lift prosperity and well-being in Tāmaki.
- "**Transformation Expectations**" means the following indicative Shareholder's expectations for Stage 2 as at the date of the HoA (which will be a starting point for review and agreement on Stage 2 and are intended to guide the Shareholders' and Company's activities during Stage 1):
 - **Integrated approach:** An integrated approach should be taken across the four Transformation Objects.
 - **Current residents:** The projects undertaken should try to minimise disruption to residents, and avoid displacement or reduction in accessibility of Tāmaki housing and resources to current residents.
 - **Community development:** Transformation is a framework supporting opportunity, and recognises that community and values and well-being are built from the ground-up.
 - **Local employment:** Transformation activities should promote employment and economic development within Tāmaki (e.g. through the Company employing and training local residents and using local resources where possible, and encouraging any contractors engaged by the Company or working on projects undertaken for the Transformation Programme to do likewise). The Transformation Programme should also have regard to the employment needs of Maori and Pacific peoples.
- "**Transformation Objects**" means the following four objectives:
 - **Social:** Supporting Tāmaki residents and families to get the skills, knowledge and employment opportunities to progress in their lives.

- **Economic:** Strengthening the local economy and unlocking the potential of the Tāmaki area to enable a prosperous community and deliver better value for money to the Crown.
 - **Spatial:** Creating safe and connected neighbourhoods that support the social and economic development of Tāmaki and its community.
 - **Housing resources:** Optimising the use of land and existing housing stock to effectively support and deliver social and economic results, including progressing private housing development and better public housing options for Tāmaki.
- **"Transformation Programme"** means the pursuit of the regeneration and renewal of Tāmaki in the manner set out in the HoA.
 - **"Tāmaki Vision"** means a vision statement for the Transformation Programme that has been developed in consultation with the Tāmaki community.
 - **"Tāmaki Way of Working"** means the following and is intended to be adopted in interactions between the Company and the Tāmaki community
 - **Company values and working principles:**
 - (i) Sustainability (environmental, social and economic)
 - (ii) Collaboration
 - (iii) Respectful consultation
 - (iv) Tikanga
 - (v) Intergenerational/lifecycle thinking
 - (vi) Cross 'silo' assessment of Programme benefits
 - (vii) Evidence-based decision making
 - (viii) Innovation
 - (ix) Needs based thinking
 - (x) Transparency