

Dated

2016

SHAREHOLDERS' AGREEMENT

Between:

Her Majesty the Queen in Right of New Zealand acting by and through the Minister of Finance and the Minister for Building and Housing

and

Auckland Council, the unitary local authority for Auckland established under section 6 of the Local Government (Auckland Council) Act 2009

Relating to:

Tāmaki Transformation Programme



Auckland Council
Te Kaunihera o Tāmaki Mōkeaurau



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SHAREHOLDERS' AGREEMENT

DATED the day of 2016

PARTIES

- (1) **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by and through her Minister of Finance and Minister for Building and Housing ("**Crown**"); and
- (2) **AUCKLAND COUNCIL**, the unitary local authority for Auckland established under section 6 of the Local Government (Auckland Council) Act 2009 ("**Council**").

BACKGROUND

- A. Tāmaki has a unique mix of social and economic challenges and opportunities:
 - (a) A strong community identity and sense of place within Auckland.
 - (b) Natural advantages, including proximity to the CBD and other employment centres, coastal boundaries, and green spaces, and a location on a key transport corridor (road and rail) adjacent to major commercial, education and property developments.
 - (c) High levels of unemployment and crime, and low levels of education and health.
 - (d) High levels of low-density social housing (owned by HNZ), of which housing stock is aging and in need of substantial reinvestment and development.
- B. To address the challenges and opportunities in Tāmaki, the Crown and Council have agreed to work together to pursue the Transformation Objectives.
- C. The Crown and Council incorporated the Company to pursue the Transformation Objectives in 2012. In addition to the initial Transformation Objectives, the Company has also undertaken some catalyst developments in Tāmaki which are being funded by a loan from the Crown.
- D. The Crown wants to accelerate the regeneration of Tāmaki by:
 - (a) procuring HNZ to sell the Tāmaki Houses to TRC Sub (and funding that company to acquire those assets through the subscription of convertible preference shares); and
 - (b) having the Company, either directly or through a related entity, implement the Business Case.
- E. The Crown and Council wish to record the basis on which they are contributing to the Company, the objectives of the Company and the basis on which they, as shareholders, intend to operate.

THE PARTIES AGREE:

1. INTERPRETATION

1.1 Definitions: In this Agreement, unless the context requires otherwise:

"**Agreement**" means this agreement, as altered from time to time;

"Board" means the board of the Company;

"Business Case" means the document titled "New Zealand Treasury and Tāmaki Redevelopment Company: Large Scale Redevelopment Options Report to Shareholders" dated 30 September 2015 and any document supplementary to or replacing that document;

"Commencement Date" means the date on which both parties have executed this Agreement;

"Company" means Tāmaki Redevelopment Company Limited;

"Council" means the unitary authority established under the Local Government (Auckland Council) Act 2009;

"Crown" means Her Majesty the Queen in right of New Zealand;

"Crown Entities Act" means the Crown Entities Act 2004;

"Crown Requirements" means requirements that the Crown has of entities such as the Company to comply with Cabinet Office circulars and the Cabinet Manual;

"Heads of Agreement" means the document titled "Heads of Agreement" between the parties dated on or about 23 July 2012;

"HNZ" means Housing New Zealand Corporation and Housing New Zealand Limited;

"Public Finance Act" means the Public Finance Act 1989;

"Redevelopment Programme" means the programme for the accelerated regeneration of Tāmaki involving the acquisition of HNZ's approximately 2,800 houses in Tāmaki and their redevelopment in accordance with the Business Case;

Strategic Planning Documents means the "Strategic Framework" dated July 2013 and other strategic planning documents of the Company that guide its performance of the Transformation Objectives and Redevelopment Programme, such as any Implementation Plan, Outcomes Framework, or Tamaki Master Plan;

"Subscription Agreement" means the agreement between the Crown and TRC Sub relating to the subscription for convertible preference shares dated on or about 4 March 2016;

"Tāmaki" means the Tāmaki geographic area of Auckland, encompassing approximately 600 hectares of Glen Innes, Point England and parts of Panmure as indicatively set out in the map attached as Appendix A;

"Tāmaki Houses" means the approximately 2,800 houses in Tāmaki owned by HNZ to be sold to TRC Sub;

"Transformation Objectives" means the following four objectives for the transformation of Tāmaki:

- (a) **Social:** Supporting Tāmaki residents and families to get the skills, knowledge and employment opportunities to progress in their lives.
- (b) **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 (with a

focus on increasing the return on investment and realising the potential value from state and council owned housing).

- (c) **Spatial**: Creating safe and connected neighbourhoods that support the social and economic development of Tāmaki and its community.
- (d) **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; and

"TRC Sub" means the subsidiary of the Company that has been incorporated to hold the Tāmaki Houses transferred from HNZ.

1.2 Interpretation: In the interpretation of this Agreement, unless the context otherwise requires:

- (a) references to the "**parties**" include their respective executors, administrators, successors and permitted assigns;
- (b) references to "**persons**" include individuals, companies, partnerships, limited partnerships, joint ventures, firms, associations, unincorporated bodies of persons, government or semi-government or local body or municipal bodies (and agencies or political subdivisions of them) and any other association of persons (in each case whether or not having separate legal personality);
- (c) "**including**" and similar words do not imply any limitation;
- (d) **headings** have been inserted for convenience only and will not affect the construction of this Agreement;
- (e) reference to a **statute** includes all statutes amending, consolidating or replacing the statute referred to;
- (f) references to "\$" are references to New Zealand dollars and all moneys to be paid pursuant to this Agreement shall be paid in New Zealand currency;
- (g) references to **time** are to New Zealand time;
- (h) references to **clauses** and **Appendices** will be construed as references to clauses of, and Appendices to, this Agreement; and
- (i) the **Appendix** and **background** to this Agreement form part of the Agreement and have the same force and effect as if expressly set out in the body of this Agreement and any references to this Agreement will include the Appendix and the background.

2. HEADS OF AGREEMENT

This Agreement supersedes the Heads of Agreement which the parties agree terminates with effect from the date of execution of this Agreement by both parties.

3. TĀMAKI TRANSFORMATION

3.1 Agreement for Tāmaki transformation: The Crown and Council agree to pursue the Transformation Objectives and the Redevelopment Programme on the terms of this Agreement.

3.2 Public Finance Act:

- (a) The Company is listed in Schedule 4A of the Public Finance Act. Accordingly, the Company is not a council-controlled organisation of the Council (and because the Company is majority owned and controlled by the Crown).
- (b) The Company shall ensure that all of its subsidiaries are governed in a manner consistent with the obligations imposed on it by virtue of being listed in Schedule 4A of the Public Finance Act.

3.3 Company purpose: The Crown and Council incorporated the Company to pursue the Transformation Objectives in 2012 in accordance with its original Statement of Intent by:

- (a) leading and integrating a programme of activities (with involvement from public, private and non-government organisations) to transform Tāmaki, including planning and preparatory activities;
- (b) procuring and/or influencing physical and spatial development, including with regard to housing, infrastructure and amenities; and
- (c) facilitating the alignment, design and delivery of place-based social and economic projects to lift prosperity and well-being in Tāmaki.

3.4 Accelerating regeneration: The Crown and Council wish to accelerate the transformation of Tāmaki and believe that the Company is best placed to facilitate that transformation by undertaking the Redevelopment Programme. The Crown has agreed to procure the transfer of the Tāmaki Houses from HNZ to TRC Sub for that purpose.

3.5 Statement of Intent: The Crown and Council agree to work together with the Company to replace its Statement of Intent as soon as practical which, in particular, should now reflect its role as owner (through TRC Sub) of the Tāmaki Houses and the Business Case and ensure that the Company updates or replaces its Statement of Intent from time to time to reflect any major changes to its role which are agreed by shareholders.

3.6 Majority/minority input to Statement of Intent: In accordance with section 45OA(2) of the Public Finance Act, the shareholders agree that the Council, as the minority non-Crown shareholder, shall be involved in the preparation, review and amendment of the Company's Statements of Intent and Statements of Performance Expectations on the following basis:

- (a) **Benefit and purpose:** The Company's Statement of Intent is for the benefit of all shareholders.
- (b) **Content:** The content of the Statement of Intent shall also cover:
 - (i) the Council's policy interests in addition to the Crown's; and

- (ii) matters on which the Company will consult or notify the Council, and report to the Council, in addition to consulting, notifying and reporting to shareholding Ministers.
- (c) **Shareholder involvement:** In exercising any powers under sections 145 to 147 of the Crown Entities Act 2004, the responsible Minister shall consult with the Council and have due regard to the Council's interests in the Company, its business, and under this Agreement. The Council shall be copied on draft and final Statements of Intent and all correspondence between the Company and responsible Minister relating to the Statement of Intent.

For avoidance of doubt, none of the provisions of this clause 3.6 shall be interpreted or applied inconsistently with sections 136 to 157A of the Crown Entities Act.

If the shareholders have fundamental differences of opinion about the strategic direction of the Tamaki regeneration programme (as reflected in TRC's Statement of Intent), then Council as minority shareholder may, through the process and timings in clause 7.1, withdraw from this Agreement, and the parties shall effect an orderly unwind of the arrangements including transferring Council's shares in TRC to the Crown.

- 3.7 Procuring Company compliance:** The Crown and Council agree to act as shareholders in such a manner as is reasonable to enable the Company and its subsidiaries to operate in accordance with this Agreement and its Statement of Intent, from time to time.
- 3.8 Tāmaki:** The area outlined in the Tāmaki map attached at Appendix A of this Agreement is indicative only as the area of activity for the Company. It is acknowledged by the parties that some Company activities may have effects beyond this area or require coordination with activities outside the immediate area (ie. effectively areas of influence).
- 3.9 Strategic Planning Documents:** The Crown and Council shall engage and collaborate with TRC on the Strategic Planning Documents to ensure maximum alignment between TRC's activities and the objectives and priorities of the Crown and Council.

4. CROWN ROLE

4.1 Crown obligations: The Crown has or will:

- (a) procure HNZ to sell the Tāmaki Houses to TRC Sub;
- (b) subscribe for convertible preference shares in TRC Sub to fund the acquisition of the Tāmaki Houses on the terms of the Subscription Agreement;
- (c) provide up to \$200m of financing for catalyst developments on the terms agreed with the Company; and
- (d) work with the Council to minimise and mitigate regulatory costs of uncertainty associated with the long term Tāmaki redevelopment.

4.2 Crown discretions: The Crown:

- (a) will not be under any obligation to provide any additional funding to the Company or its related entities; and

- (b) subject to clause 3.7, may make any decision in relation to the Company at its absolute discretion.

5. COUNCIL ROLE

- 5.1 Relationship to statutory plans:** Subject to clause 5.2, 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 pertain to Tāmaki and the Transformation Objectives and Redevelopment Programme. This Agreement does not bind Council in its regulatory capacity.
- 5.2 Spatial priority area:** The Council will continue to designate the Tamaki area as one of its spatial priority areas in its long-term plan, and as such the Tamaki area will remain a high priority for future Council investment and effort.
- 5.3 Council obligations:** The Council will work with TRC to:
 - (a) Minimise regulatory costs and streamline consenting and planning processes for the Redevelopment Programme;
 - (b) Facilitate exchange of Council land and reconfiguration of public open spaces to help meet regeneration outcomes; and
 - (c) Promote the orderly and efficient provision of infrastructure in alignment with the phasing of the Redevelopment Programme, including by:
 - (i) Agreeing infrastructure plans (as part of TRC's master-planning and development phasing) that help to maximise the Council's ability to leverage its infrastructure spend in Tamaki;
 - (ii) Agreeing a master "infrastructure funding agreement" with TRC for phased provision of infrastructure, including setting out key principles for the planning and funding of each phase of work, and providing an overarching contract governance structure; and
 - (iii) Applying for TRC's benefit any innovative infrastructure funding strategies developed by Council.

6. JOINT SHAREHOLDER MATTERS

- 6.1 Shareholder responsibilities:** The shareholders agree to comply with their obligations as shareholders in the Company in accordance with this Agreement and the Company's constitution. Each party agrees that as a shareholder it will:
 - (a) work in a collaborative, partnering and constructive manner with the other party;
 - (b) provide all information reasonably required for the others to achieve the outcomes contemplated by this agreement;
 - (c) act honestly and in good faith; and
 - (d) communicate with the other parties openly, promptly and in a clear and timely manner.

6.2 Officers and employees: The shareholders will inform their officers and employees of the existence of this Agreement and ensure that their officers and employees when involved with the Company or other parties in respect to this Agreement:

- (a) comply with this Agreement and the Company's constitution;
- (b) act honestly and in good faith;
- (c) maintain appropriate standards of discretion, ethics and behaviour; and
- (d) provide any related services in a competent and professional manner.

6.3 Director recruitment:

- (a) The Crown and Council agree that the Board should reflect the high proportion of Pacific and Māori peoples in Tāmaki and accordingly at least one of the directors shall have experience and knowledge of relevant Maori and Pacific issues. Subject to meeting required competencies, appointments should be made on an equal opportunities basis, in accordance with good public sector practice. The parties shall agree appropriate competencies for individual directors, and the Board as a whole, which may include experience in property development and tenancy management, business and commercial affairs, infrastructure management, and community and social sector issues, and relevant knowledge and experience of local (Tāmaki) issues.
- (b) The parties will agree on:
 - (i) Board recruitment and removal processes (including where practicable on consultants, advertising, media, and timeframes);
 - (ii) Processes for shortlisting candidates and convening interview panels (which should be comprised of officials / officers representing the parties); and
 - (iii) Appointment duration and rotation policies.
- (c) The parties may elect not to make discretionary appointments, and instead consider appointment of the Board as a whole. If the parties make discretionary appointments, then they shall do so in accordance with their own appointment processes.
- (d) Board performance shall be monitored and reviewed by the shareholders in accordance with Crown and Council procedures.

6.4 Director remuneration: In approving director remuneration in accordance with clause 11 of the Constitution, the parties shall rely on professional advice in setting appropriate remuneration levels for each director and the chairperson. A director will not be entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a director.

6.5 No guarantees: Neither the Crown nor the Council nor any of their related parties shall be obliged to give any guarantee, indemnity or security in the respect of the performance of any obligation of the Company.

6.6 Financial support: Any lending or financial accommodation by either shareholder to the Company must be approved by the other shareholder.

6.7 Regulatory functions: This Agreement and actions pursuant to it (such as formulation and approval of the Statement of Intent) are separate from and do not fetter any regulatory, quasi-judicial or other statutory functions of either party.

6.8 Working together:

- (a) **Liaison office:** Each party shall establish a liaison officer as the one-stop contact point for their dealings with each other and with the Company. The liaison officer shall mediate the interests of the parties' respective internal stakeholders so that the Crown and Council deal with each other and the Company, and the Company deals with each party, as far as possible on a "one-position" basis.
- (b) **Communications plans:** The parties shall coordinate on a Tāmaki transformation communications plan with the Company, and endeavour at all times to harmonise and synchronise media and PR statements. The parties acknowledge that such statements will increasingly come from the Company.
- (c) **Exercise of shareholder rights:** The parties shall each exercise their rights as shareholders in the Company consistently with their obligations under this Agreement. The parties shall endeavour to reach shareholder decisions by consensus wherever reasonably practical.

6.9 Dispute resolution: Without limiting clause 6.8, if any dispute or difference arises between the parties as to the interpretation or performance of this Agreement (including exercise of shareholder rights in the Company), they shall first attempt to resolve that dispute in good faith by negotiations between each other's liaison officers, and then, if the dispute remains unresolved, escalate as follows to:

- (a) senior officers of the Crown agency responsible to the Chief Executive of the Ministry that, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Crown's interest in the Company and senior officers of the Council;
- (b) the Chief Executives of the Crown agency (as above) and the Council; then
- (c) shareholding Ministers and the Mayor of Auckland.

6.10 Shareholder Information: The parties agree that any information provided to one party may be provided by the Company to both parties at the same time and, if requested, a party will provide any information received from the Company to the other party.

7. GENERAL

7.1 Review of Agreement: There will be a review of the terms of this Agreement every five years from the Commencement Date. This review and any negotiation or resolution required under this Agreement will be instigated and managed by the relevant Chief Executives. All parties will undertake all processes and consider any proposals in good faith.

7.2 No assignment: Neither party may assign or otherwise dispose of its rights and/or obligations under this Agreement without the prior written consent of the other party.

- 7.3 Further assurance:** Each party must do anything, including executing and delivering documents, as may be reasonably required by the other party to obtain the full benefit of this Agreement according to its true intent.
- 7.4 No partnership or agency:** Nothing in, or done in connection with, this Agreement will create or be taken to evidence a partnership or other fiduciary relationship between the parties. Except as expressly set out in this Agreement, nothing in, or done in connection with, this Agreement will be taken as authorising a party to act as the agent of, or pledge the credit of, any other party.
- 7.5 No waiver or variation:**
- (a) None of the provisions of this Agreement shall be considered to be waived by a party except when such waiver is given in writing.
 - (b) No delay by or omission of a party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.
 - (c) This Agreement may not be varied except by agreement in writing signed by the parties which is expressed as a variation. No company director is an agent of, or authorised by, any party to make variations, and Board minutes or resolutions of the Company do not constitute variations.
- 7.6 Contracts (Privity) Act 1982:** This Agreement is not and is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.
- 7.7 Severability:** If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement.
- 7.8 Governing law:** This Agreement will be governed by, and construed in accordance with, the laws of New Zealand, without regard to its conflict of laws provisions.

SIGNED AS AN AGREEMENT:

For and on behalf of **Her Majesty the Queen in Right of New Zealand** acting by and through the Minister of Finance and the Minister for Building and Housing:



Hon Bill English, Minister of Finance

For and on behalf of **Auckland Council** by:

Stephen Town, Chief Executive

Hon Nick Smith, Minister for Building and Housing

APPENDIX A - INDICATIVE TĀMAKI MAP



**Tamaki Transformation
Programme**

2010 / 2011 Aerial Imagery

Indicative Boundary Alignment



