



**Dated** this                      day of                      2007

## **Parties**

**Wellington Regional Council**, together with its successors and assigns (WRC)

**Hutt City Council**, together with its successors and assigns (HCC)

## **Background**

- a) WRC owns land held for the purposes of water supply and recreation (WRC land), refer schedule 1, accessed off Hine Road, Wainuiomata which is adjacent to Department of Conservation land which is under lease to Hutt City Council (HCC) and administered as a Garden of Remembrance by HCC, (HCC Garden of Remembrance land).
- b) HCC wishes to develop and maintain the WRC land immediately adjacent to the HCC Garden of Remembrance land as a sealed carpark and recreation garden for use as an integral part of its Garden of Remembrance.
- c) WRC wishes to transfer its Administering Body powers and responsibility for management in relation to WRC land to HCC to the extent and on the conditions set out in this agreement. Refer schedule 2

## **Operative provisions**

### **1. Transfer of responsibility under section 17 Local Government Act 2002**

- 1.1 The parties agree that WRC will transfer to HCC the WRC administering body powers and management responsibilities in relation to the WRC land listed in Schedule 1, in accordance with WRC's current powers, duties and responsibilities under the Reserves Act.
- 1.2 The transfer of powers, duties and responsibilities is subject to the reservations and conditions set out in Schedule 2.
- 1.3 The parties confirm and warrant each to the other that in accordance with section 17 Local Government Act 2002:
  - 1.3.1 They have each approved this transfer through the annual planning process; and
  - 1.3.2 They shall each notify the Minister of Local Government of their respective proposals.

## **2. Term of agreement and commencement date**

- 2.1 This agreement shall commence and take effect from the date the Minister of Local Government has been advised of the proposal by both WRC and HCC.
- 2.2 The term of this agreement shall be until such time as HCC no longer retains and maintains the WRC land as carpark and recreation garden and the immediately adjacent Department of Conservation land as a Garden of remembrance or as earlier terminated under the terms of this agreement.

## **3. Cooperation in achieving objectives**

- 3.1 The parties agree to cooperate with each other, and do whatever is necessary to achieve the requirements and objectives of this agreement. In particular:
- 3.1.1 Where the achievement of any term of the agreement requires a further consent from either party, and that consent may be given without following a statutory process, then that consent shall not be unreasonably withheld;
- 3.1.2 Where the achievement of any term of the agreement requires consent from either party, but that consent is subject to a statutory decision-making process, then the party with the power to grant consent shall act in good faith.

## **4. Resolution of disagreement**

- 4.1 Any disagreement between the parties, which cannot be resolved, shall be referred to the Wellington Conservator of the Department of Conservation, whose direction shall be binding on HCC and WRC.

## **5. Termination of agreement – WRC Land**

- 5.1 Either party may, in accordance with section 17 Local Government Act 2002, require the termination of this agreement, but shall in any event proceed as agreed below:
- 5.2 Where a party wishes to terminate the agreement under clause 5.1, the following terms shall apply:
- 5.2.1 Two year's notice of termination is to be given, and notice is not to be given until the party proposing the termination has made a resolution to that effect in accordance with section 17 after following the special consultative procedure;
- 5.2.2 Despite the notice provisions contained in paragraph 5.2.1 the parties may mutually agree to terminate this agreement at any time.

**6. Variation of the agreement**

6.1 The parties may at any time by agreement between them propose to vary this agreement in accordance with section 17 Local Government Act 2001. No such proposed variation shall be binding on the parties until each of them has resolved to proceed with it in accordance with section 17.

6.2 Nothing in paragraph 6.1 shall apply to any proposed variation agreed between the parties which does not affect the substance of the original proposal;

**7. No interest in land created**

7.1 The transfer of responsibilities for the land under this agreement does not affect the ownership of the land and does not create or assign any interests in that land.

## **Schedule 1 – description of land affected by transfer of responsibilities – the WRC land**

### **Description of WRC land**

That part of Part Section 34 Wainuiomata District situated in Block XVII Belmont Survey District being contained in Certificate of title WN 704/51 and containing 22.6510 hectares which is shown edged yellow on the attached plan “WRC land for HCC Garden of Remembrance”

## **Schedule 2 – Transfer of powers and responsibilities, reservation of responsibilities and conditions of transfer of the WRC Land**

### **Responsibilities transferred by WRC to HCC**

Subject to the reservations and the conditions set out below, WRC transfers to HCC all its current administering body powers and management responsibilities in relation to the WRC land. To the extent necessary to give effect to this transfer, WRC also transfers to HCC all its powers, rights, and obligations in relation to the WRC land. For the avoidance of doubt, this transfer does not affect the ownership of the WRC land, and does not create nor vest in HCC an interest in those WRC lands. The transfer is to allow HCC to manage the land as if it were held for the purposes set out in the Reserves Act 1977. The co-operation and resolution provisions contained within sections 3 and 6 of this agreement will apply throughout any management processes.

### **Use of the WRC land**

HCC shall restrict its use of the WRC land to development, maintenance and use as a carpark and recreation garden. Should, at some future time, HCC wish to use the WRC land for some other purpose, HCC shall in terms of Section 6 of this agreement seek WRC approval to that variation of use of the WRC land.

### **Management plans**

WRC transfers its powers under the Reserves Act 1977 to HCC for the preparation of management plans over and in respect of the WRC land contained in schedule 1 and in accordance with section 41 of the Act.

HCC currently, and shall continue to do so in the future, prepares and holds in place a number of management plans in full accord with the provisions of the Reserves Act 1977 for all of the various categories of HCC Park lands. HCC undertakes to incorporate the WRC land into the schedule attached to the most appropriate HCC Park management plan.

Accordingly:

HCC shall:

- (i) notify HCC's intent to review a management plan in accordance with the provisions of the Reserves Act 1977;
- (ii) prepare a draft management plan that provides for and ensures the use, enjoyment, maintenance, protection, preservation and development, as appropriate, for the classified purpose and ensure compliance with the principles of that purpose;
- (iii) approve the release of the draft management plan for public comment;
- (iv) receive and consider submissions on the draft plan;
- (v) prepare a final plan;
- (vi) provide a summary of any objections and comments received in respect of the WRC land;
- (vii) provide WRC with a copy of the HCC approved final plan.

WRC shall:

- (i) provide any comments to HCC in accordance with the statutory requirements for consultation under the Reserves Act and

WRC acknowledges that HCC shall retain the right to use decision making processes that HCC deems appropriate to meet its Management Plan obligations, provided that these processes comply with the provisions of the Reserves Act.

### **Utility structures**

The approval for placement of any new utility structure on the land is a decision for WRC as the land owner in consultation with HCC. For this purpose 'utility structure' includes any structure in connection with telecommunications, energy, water supply, drainage, waste disposal or treatment, or any form of transport; but it does not include:

- (i) Any structure, pipe, cable or line which is entirely underground, and which, after installation, will not interfere with either the visual character of the land, or the public enjoyment of it; or
- (ii) The replacement of any utility structure existing at the commencement date, provided that the effect of any replacement structure is no greater than that of the existing structure, and provided that WRC has been advised of the proposed replacement and agrees that the replacement structure has no greater effect than that of the existing structure.

### **Leases, licenses, concessions and easements**

- (i) HCC shall not, without reference to WRC, be permitted to grant any lease, licence or concession over the WRC land. In any event, if WRC does approve any such grant, the term of the grant shall not exceed 5 years and shall be in full accord with the Reserves Act 1977, the Management Plan and this agreement.
- (ii) A decision to grant an easement, over any part of the WRC land may only be made by WRC, in consultation with HCC.

### **Bylaws and enforcement**

HCC bylaws will apply to WRC lands listed in schedule 1

WRC shall not be required to revoke any Rangers powers or delegated authority over lands in schedule 1

HCC and WRC will co-operate in relation to any proposed bylaw under section 149 LGA, which specifically relates to the WRC land

HCC has full authority to enforce HCC bylaws over WRC lands listed in schedule 1

### **Operational & capital expenditure**

HCC shall be responsible for all expenditure and agrees all expenditure is to be consistent with the Management Plan.

## **Revenue**

HCC and WRC agree that any income earned by HCC from the WRC land shall be applied, as directed by section 78 of the Reserves Act 1977, to the WRC land in which it was earned.

## **Maintenance of land**

HCC shall be responsible for maintaining the WRC land and its vegetation, specifically to: provide and maintain carparking, tracks, signage, shelters and interpretation material; control pests and weeds; undertake specific projects in accordance with the Reserves Act and any operative Management Plan or as agreed with WRC from time to time and in accordance with any other relevant legislation e.g. Resource Management Act.

## **Indemnity**

HCC shall indemnify WRC against all claims and actions arising from the HCC management of the WRC land, which arises from this agreement, except where that liability arises from a decision made by WRC under one of the reserved powers listed in Schedule 2.

WRC shall indemnify HCC against all claims and actions arising from the WRC management of the WRC lands, prior to the transfer of management to HCC.

HCC shall be responsible for compliance with building and safety requirements, except for the operations of WRC.

## **Contamination and dangerous materials**

Should any contamination or dangerous goods be identified WRC and HCC will work together to jointly resolve any problems. HCC shall hold no responsibility for contamination within the WRC land that is found to have been in existence prior to the commencement of this agreement. If the WRC land is contaminated during the term of the HCC occupation, it shall be the responsibility of HCC to remove all contamination.

## **Condition of WRC land on termination**

At the end of this agreement, or the early mutual termination of the agreement, HCC shall be responsible for the WRC land being returned to a condition as near as possible as the condition was at the date of commencement of this agreement. In any event, HCC shall obtain WRC approval to the condition of the land prior to termination being effected.

## **Other legislation and responsibilities**

This agreement in no way affects or alters the statutory responsibilities of HCC and WRC under any legislation, except the Reserves Act 1977 or the Local Government Act 2002 and only in accordance with this agreement.

## **Preservation of access rights**

For the term of this agreement WRC, its employees, contractors and invitees shall retain right to access, occupy and pass over the WRC land for the purpose of work on the WRC land or access to the balance land retained by WRC to undertake work. In exercising this right, WRC shall be responsible for repair and remedy to the land or HCC improvements thereon if the WRC entry causes damage.

**THE COMMON SEAL** of

**WELLINGTON REGIONAL COUNCIL**

Was affixed in the presence of:

\_\_\_\_\_ (Authorised Signatory)

The **COMMON SEAL** of

The **HUTT CITY COUNCIL**

Was affixed pursuant to a

Resolution of Council

in the presence of:

\_\_\_\_\_ (Authorised Signatory)

\_\_\_\_\_ (Authorised Signatory)