



Memorandum of Understanding –

Proposed housing development at Mt
Crawford, Miramar, Wellington

The Sovereign in Right of New Zealand acting
by and through the Ministry of Housing and
Urban Development (*HUD*)

Taranaki Whanui Limited (*TWL*)

MEMORANDUM OF UNDERSTANDING – Mt Crawford, Miramar, Wellington

Date:

PARTIES

The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Housing and Urban Development (*HUD*)

Taranaki Whānui Limited (*TWL*)

BACKGROUND

- A HUD is responsible for the Land for Housing Programme within the KiwiBuild unit.
- B Pursuant to the Land for Housing Programme, the KiwiBuild unit evaluates vacant and underutilised Crown land or private land for purchase and contracting with developers to deliver KiwiBuild Dwellings.
- C HUD and TWL have held a preliminary discussion regarding the potential development of the Site for housing.
- D The Site is comprised of the Corrections Land and the Defence Land. The Corrections Land was previously the site of the Mt Crawford prison, administered by the Department of Corrections. The Defence Land was previously administered by the Ministry of Defence. Land Information New Zealand (*LINZ*) is now responsible for the disposal of the Site.
- E The trustees of the Port Nicholson Block Settlement Trust have a right of first refusal (*RFR*) over the Site.
- F TWL has, without solicitation, approached HUD to explore how HUD and TWL achieve housing outcomes for both parties. HUD acknowledges that the next stage of the LINZ disposal process would have been to make a formal offer of the Corrections Land to TWL under its RFR. If TWL exercised its right, TWL would have an unfettered right to develop the Corrections Land as it wished. Partnering with HUD will deliver some benefits to TWL but also obligate TWL to delivery of agreed HUD outcomes.
- G HUD will not offer any third party an opportunity to acquire the Site under an RFR exception in sections 99 to 109 of the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 on terms that are more favourable than those offered to TWL.
- H HUD anticipates acquiring the Site and holding it for State housing purposes under the Housing Act 1955 (*the Act*). HUD anticipates making the Site available for a housing development in accordance with the Act.
- I The parties have entered into this MOU to record:
 - I.1 the parties intention to continue discussions regarding the Site;

- I.2 the parties intention to carry out due diligence to determine whether the Site has development potential to meet the Crown's Housing Requirements and TWL's and its agents and contractors combined experience as a developer of land similar to the Site;
- I.3 the process to be carried out by the parties before entering into a development agreement for the Site;
- I.4 that the RFR will not be affected by this MOU; and
- I.5 that, if no agreement for the development of the Site can be reached by the parties in accordance with this MOU, TWL would like to be returned to that pre HUD approach stated.
- J It is anticipated that HUD will enter into a development agreement with TWL which will provide for the desired housing and community outcomes for HUD and the desired housing, community and commercial outcomes for TWL.

THE PARTIES AGREE:

1 DEFINITIONS

1.1 In this memorandum:

Corrections Land means the land located at 6, 7 and 20 Main Road and 209-234 Nevay Road, Miramar, Wellington comprised in records of title 760897, 760898, WN46B/923, WN46B/926 and WN46B/927, which is outlined in red on the indicative site plan in Schedule 1;

Crown's Housing Requirements means the Crown's requirement that the housing development on the Site includes 40% KiwiBuild Dwellings and 20% public housing dwellings out of the total number of dwellings (such percentages are open to suitability during the due diligence and valuation process);

Defence Land means the land known as the East Prison site and the West Prison site which forms part of the land legally described as Part Section 2 and Part Section 3 Watts Peninsula District held pursuant to Proclamation 55, New Zealand Gazette 1886, page 694, which is outlined in green on the indicative site plan in Schedule 1;

HUD means Her Majesty the Queen acting by and through the Ministry of Housing and Urban Development;

KiwiBuild Dwelling(s) means a dwelling that is priced at or below the KiwiBuild price cap for the Wellington region, is offered for sale in the first instance to Crown nominated purchasers and has been approved by the KiwiBuild Unit for entry on the KiwiBuild register;

LINZ means Land Information New Zealand;

MOU means this memorandum of understanding;

Site means the Corrections Land and the Defence Land;

TWL means Taranaki Whanui Limited.

2 BEHAVIOUR AND COLLABORATION

2.1 This MOU describes the collaborative relationship between HUD and TWL in relation to the development potential of the Site and the process under which HUD will engage with LINZ, and will keep TWL informed of its progress in acquiring the Site.

2.2 The parties will:

- (a) work collaboratively;
- (b) communicate openly;
- (c) adopt a no surprises approach, sharing information in a timely manner, with appropriate regard to the likely sensitivity of some information;
- (d) respect the obligations resulting from each party's statutory, legislative and contractual requirements and their respective ways of operating; and
- (e) recognise the importance of the Treaty principles of partnership, shared decision-making and mutual benefit.

2.3 HUD and TWL will work together to agree the terms of the development agreement.

2.4 TWL will provide reasonable assistance to HUD to provide input into the processes to be undertaken by HUD to have the Site valued.

2.5 HUD and TWL acknowledge that the success of these arrangements is based on each party cooperating with the other, and for the free and frank exchange of documents and information pertaining to the development of the Site, (to the extent lawfully permissible).

2.6 The parties recognise the importance of collaborating with Heritage New Zealand and the Wellington City Council (*Key Stakeholders*) and accordingly will work together with the Key Stakeholders in planning the development of the Site. In particular:

- (a) TWL will continue its discussions with Heritage New Zealand in regard to the proposed heritage covenant to be registered on the record of title of the Corrections Land. TWL acknowledges that HUD must be consulted on the wording of the heritage covenant before TWL communicates its approval of the heritage covenant to Heritage New Zealand.
- (b) TWL will undertake the consultation, discussions and negotiations with the Key Stakeholders in respect of the development of the Site. HUD will support TWL in such consultations, discussions and negotiations. HUD will attend monthly meetings with TWL and the Wellington City Council.

3 DEVELOPMENT OPPORTUNITY

3.1 The parties shall meet regularly throughout the term of this MOU to discuss the development opportunity for the Site.

4 TERM

4.1 This MOU will start on the date on which it is signed by both parties (or if two dates, the later date).

4.2 This MOU will expire on the earlier of:

- (a) HUD being unsuccessful in agreeing suitable terms with LINZ for the acquisition of the Site (including, for the avoidance of doubt, the price payable for the Site to enable a development meeting the Crown's requirements to be realised); or
 - (b) a party to this MOU assigns it without prior written consent of the other party; or
 - (c) a change in government policy or position which was not reasonably foreseeable at the time this MOU was entered into; or
 - (d) HUD and TWL being unable to agree on the development potential for the Site; or
 - (e) the Site being determined by HUD and TWL as being unsuitable for a development that meets the Crown's Housing Requirements, such determination to be made after considering (without limitation):
 - (i) due diligence on the land conditions;
 - (ii) an assessment of development costs;
 - (iii) an assessment of likely timing for the development;
 - (iv) an assessment of the development capacity of the Site (including any requirements for public and/or affordable housing and/or KiwiBuild Dwellings (whether at a particular price point or model, or form, of ownership for that type of housing)); or
 - (f) notice has been given under clause 9.2; or
 - (g) the parties enter into a development agreement for the Site; or
 - (h) HUD and TWL being unable to agree on the terms of the development agreement in a reasonable time period,
- (the Term).

4.3 Notwithstanding clause 4.2(b):

- (a) HUD may assign its interest in this MOU to another Ministry or its successor; and
- (b) TWL may assign its interest in this MOU to a wholly-owned subsidiary of TWL or a limited partnership that is wholly-owned or controlled by TWL.

5 PROCESS

5.1 Before entering into a development agreement the parties acknowledge that:

- (a) the heritage covenant for the benefit of Heritage New Zealand Pouhere Taonga will be agreed and registered on the record of title for the Corrections Land;
- (b) the parties will carry out due diligence of the Site;

- (c) TWL and its agents and/or contractors will prepare an indicative bulk and location plan for a housing development on the Site which is considered to be the highest and best use for the Site;
 - (d) the parties will carry out a valuation process in relation to the proposed housing development on the Site (such valuation process will also involve LINZ);
 - (e) HUD will seek the Minister of Housing and Urban Development's approval to purchase the land for State housing purposes;
 - (f) an invitation will be sent from HUD to TWL to submit a housing development proposal to HUD for the Site;
 - (g) HUD will arrange for an independent assessment of the housing development proposal for the Site;
 - (h) the parties will negotiate the development agreement; and
 - (i) the parties will sign the development agreement, which will be subject to Ministerial approval.
- 5.2 The parties acknowledge that the right of first refusal to the trustees of the Port Nicholson Block Settlement Trust will not be affected by this MOU.
- 5.3 Notwithstanding any other matter provided for in this MOU, HUD confirms that it shall not be entitled to use any power it may have to take all or any part of the Site for any purpose other than development by TWL. The restriction in this clause expires:
- (a) 90 working days after the expiration of the Term; or
 - (b) on Port Nicholson Block Settlement Trust's receipt of a written offer in respect of the RFR from LINZ,
- whichever is earlier.

6 TEMPLATE DEVELOPMENT AGREEMENT

- 6.1 The template development agreement is attached to this MOU as schedule 2. The parties acknowledge the KiwiBuild Dwellings will be sold pursuant to the underwrite process that is set out in clauses 52 to 58 (Part K) of the template development agreement.
- 6.2 TWL acknowledges that the template development agreement may be updated from time to time by HUD (at its sole discretion) as a result of any change in government policy.

7 EXCLUSIVITY

- 7.1 Subject to clause 4.3, the parties agree that this MOU creates an exclusive arrangement between HUD and TWL with regard to the development of the Site for the Term.
- 7.2 TWL may subcontract the completion of any of its obligations under this MOU to an agent and/or contractor.
- 7.3 This clause 7 is binding on the parties.

8 MEETINGS AND RESOURCES

- 8.1 The parties will meet as regularly as necessary to review and discuss the development opportunity under this MOU, including any proposal by TWL, and each party agrees to make available to the other its personnel with the necessary authority, skills and experience to assist with any reviews and negotiation of any development agreement for the development of the Site.
- 8.2 TWL and HUD will form for regular discussions a Project Development Group (PDG) to assess the Site and its development potential and provide suitably qualified members for the PDG.
- 8.3 The PDG will meet during the Term to discuss:
- (a) the Site;
 - (b) the status of discussions with LINZ and the Key Stakeholders;
 - (c) the Crown's requirements for the scheme of development;
 - (d) any of TWL's assessment of market conditions and development potential for the Site; and
 - (e) the development costs anticipated for the development of the Site, including the status of any information required by the valuers and the party who will or has obtained that information.

9 DISAGREEMENTS

- 9.1 Each party shall use all reasonable efforts in good faith, provided that each party shall be entitled to act in accordance with their commercial interests, to resolve any disagreement arising under or in connection with this MOU as expeditiously as possible.
- 9.2 Where the matter is unable to be resolved between the parties, the matter will be referred to the senior managers of each organisation for resolution. If the dispute is unable to be resolved within 20 working days of the matter being referred to the senior managers, either party can elect to give notice that the term of this MOU is at an end.

10 COSTS AND INTELLECTUAL PROPERTY

- 10.1 Except where:
- (a) the parties enter into a development agreement for the Site, or
 - (b) a party assigns this MOU without the prior written consent of the other,
- at the end of the Term, HUD will meet an equal share of TWL's actual costs for all professional reports and documents obtained by TWL relating to the development opportunity and prepared as a result of this MOU, where those reports and documents are co-addressed and assignable to HUD (*the Costs*).
- 10.2 TWL may recover the Costs (including GST) from HUD at the end of the Term. The Costs will be capped to \$100,000.00 (being a 50% share of costs to a maximum of

\$200,000.00). For the avoidance of doubt, the Costs represent the maximum liability of HUD to TWL under this MOU.

10.3 This clause 10 is binding on the parties.

11 COMMUNICATIONS PLAN

11.1 As part of the PDG, the parties will work together to prepare and agree a communications plan.

11.2 Neither party will comment publicly on the development, Site, policies, practices, procedures or actions of the other without the agreement of the other party, to achieve a 'no surprises' approach to communications regarding the Site or the development opportunity.

12 GENERAL

12.1 No Release

At the end of the Term, except where:

- (a) the parties enter into a development agreement for the Site, or
- (b) a party assigns this MOU with the prior written consent of the other party and that other party elects to terminate this MOU,

the parties remain bound by the obligations stated under this MOU as being expressly binding.

12.2 Law

This MOU is governed and is to be construed under the laws in force in New Zealand. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

12.3 Key contact

Each party will appoint a key contact to manage applicable responsibilities in this memorandum.

HUD's key contact and email address for notifications is: Phil Stroud, Development Manager, KiwiBuild Unit, phil.stroud@kiwibuild.govt.nz.

TWL's key contact and email address for notifications is:

12.4 Confidentiality

All information made available by either party to the other in any manner in connection with this memorandum is confidential, unless stated otherwise save where it is:

- (a) already available publicly;
- (b) required by law to be disclosed;
- (c) disclosed to a Minister, a party's employees or contractors or a government agency on a need-to-know-basis provided reasonable steps are taken to ensure that any such person maintains that confidentiality.

For the avoidance of doubt any valuation, price negotiations or agreed price are confidential.

12.5 Counterparts

This MOU may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute (which may include receipt of a signed PDF copy by email), each counterpart will be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

EXECUTION

Signed by **an authorised delegate of the Chief Executive of the Ministry of Housing and Urban Development**
by:



Signature:


Matthew Fraser

Print Full Name:

Title: Manager, Land for Housing Programme

Date: 1/2/19

Signed for and on behalf of, by a director or an authorised signatory of
Taranaki Whanui Limited
by:



Signature:

Peter Allport

Print Full Name:

Title: Director

Date: 24 January 2019

Schedule 1

INDICATIVE PLAN OF SITE



Corrections Land means the land located at 6, 7 and 20 Main Road and 209-234 Nevay Road, Miramar, Wellington comprised in records of title 760897, 760898, WN46B/923, WN46B/926 and WN46B/927 and outlined in RED on the aerial photograph above;

Defence Land means the land known as the East Prison site and the West Prison site which forms part of the land legally described as Part Section 2 and Part Section 3 Watts Peninsula District held pursuant to Proclamation 55, New Zealand Gazette 1886, page 694 and outlined in GREEN on the aerial photograph above.

Schedule 2

TEMPLATE DEVELOPMENT AGREEMENT

Released under the provision of
the Official Information Act 1982

Released under the provision of
the Official Information Act 1982