

## HEADS OF AGREEMENT

Between the trustees of the Rangitāiki Lot 28B No 22 Block Ahu Whenua Trust, Te Rūnanga o Ngāti Awa, Ngāti Awa Group Holdings Limited and Whakatāne District Council, (collectively, the parties).

Dated 26 August

2019

### Background

- A. The Whakatāne District Council (**WDC**) owns wharf infrastructure in the Whakatāne CBD. WDC is investigating alternative sites for a new larger capacity boat harbour. As part of the Whakatāne Regeneration Programme, a new boat harbour has been identified as an infrastructural priority to enable the marine and tourism sectors to unlock and drive economic development within the district.
- B. The trustees of the Rangitāiki Lot 28B No 22 Block Ahu Whenua Trust (**Trust**) hold Māori freehold land on Keepa Road, being Rangitāiki Lot 28B No 22 (**Land**), part of which has been identified as the preferred site for the development of a fit-for-purpose boat harbour (**Proposed Boat Harbour**). The Proposed Boat Harbour hopes to address the existing demand for additional berthage and offer vessels protection from the dynamic river environment while at the same time providing long-term and holistic benefits to the Land, the beneficiaries of the Trust, Ngāti Awa and the district.
- C. Te Rūnanga o Ngāti Awa (**TRONA**) is the mandated entity that manages the collective affairs of the members of Ngāti Awa in accordance with the Te Rūnanga o Ngāti Awa Charter.
- D. Ngāti Awa Group Holdings Limited (**NAGHL**), is company established by TRONA to undertake commercial activities on its behalf. NAGHL has expressed an interest in investing in the Proposed Boat Harbour by way of a Letter of Intent. NAGHL is wholly owned by TRONA.
- E. This Heads of Agreement (**HoA**) arises from the desire of the parties to develop a relationship in good faith as a way of working together on the Proposed Boat Harbour.
- F. The parties intend to apply to the Provincial Development Unit for Provincial Growth Fund (**PGF**) funding to progress the Proposed Boat Harbour.

### Purpose

1. The purpose of this HoA is to set out, broadly, the basis on which the Trust, TRONA, NAGHL and WDC will foster their relationship in regard to investigating the viability of and progressing the development of the Proposed Boat Harbour including the submission of an application to the Provincial Growth Fund by 10 September 2019.
2. This HoA creates clear expectations for how the relationship between the Trust, TRONA, NAGHL and WDC will operate. The parties record that they intend to cooperate and work together by meeting and communicating regularly and openly to progress the investigation into the Proposed Boat Harbour and promote the mutual interests of the parties. All parties agree to raise any issues or perceived problems at any early stage.

## Principles

3. The parties will be guided by this whakataukī in the context of their work with one another:

*Te Kākahoroa tū tōtahi mōriroriro, kā whati i te hau, Te Kākahoroa tū  
pāhekoheko e kore e whati*

*The Toetoe that stands in isolation will be destroyed by the elements with ease, however the Toetoe that grows in mass, will with-stand the wind's destructive forces. Strength to survive can only be possible through true unity.*

4. The Trust, TRONA, NAGHL and WDC agree that they will consult one another in good faith in progressing the Proposed Boat Harbour development by ensuring that:
- (a) consultation is not simply a process of informing the other parties of impending actions but one that involves a genuine invitation to give advice and a genuine consideration of such advice; and
  - (b) sufficient time and information is provided and each party is adequately informed.
5. The parties' representatives will meet regularly to discuss progress and seek each other's thoughts and opinions during all critical stages of advancement of the Proposed Boat Harbour.
6. The Trust, TRONA, NAGHL and WDC recognise that this HoA upholds the principles of:
- (a) Whanaungatanga: relationships.
  - (b) Kotahitanga: unity.
  - (c) Manaakitanga: care.
  - (d) Kaitiakitanga: guardianship.

## Application to Provincial Growth Fund

7. The Trust, TRONA, WDC and NAGHL agree to jointly submit an application to the Provincial Development Unit of the Ministry of Business, Innovation and Employment, for funding for the Proposed Boat Harbour (PGF Application).
8. That agreement is subject to the PGF Application providing that, if the application is successful, any funds will be paid to a special purpose vehicle (Project SPV) to be created (at a later date) for the purpose of developing and operating the Proposed Boat Harbour.
9. TRONA, WDC and the Trust will be responsible for preparing and submitting the PGF application by the due date at clause 12. NAGHL will support TRONA, the Trust and WDC in their preparation and submission of the PGF application.

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10. The parties acknowledge that the timeframes set by the PGF have necessitated the preparation of an application on a confidential basis to ensure that the views of the owners are sought by the Trust at a duly convened meeting of beneficiaries before any public announcement is made about the Proposed Boat Harbour.
  11. The Land was endorsed by the PGF Whakatane Regeneration Programme Governance Board at the meeting held 13 August 2019.
  12. The PGF Application is due for submission by 10 September 2019.

#### **Due Diligence**

13. WDC will carry out certain feasibility and due diligence investigations (DD Investigations) in relation to the Land and its suitability (from a practical, technical, consenting and financial perspective) for the Proposed Boat Harbour. WDC has engaged Philip Wardale of Wardale Consultancy to manage the feasibility of the Proposed Boat Harbour and undertake the DD Investigations.
14. The Trust, NAGHL and TRONA agree that WDC may continue to engage Philip Wardale s 9(2)(a) and to carry out the DD Investigations and will procure and permit access to the Land (after consultation and agreement from the lessee) for WDC and its contractors, employees and consultants at all reasonable time for the purposes of carrying out all reasonably necessary DD Investigations.
15. The costs of the DD Investigations will be paid for by WDC and WDC will keep complete and accurate records of all such costs.
16. In addition to the DD Investigations, the Trust will undertake preparatory work and seek advice on the approvals that the Trustees will require pursuant to, among other things, Te Ture Whenua Maori Act 1993. An Annual General Meeting will be held in October 2019.
17. WDC will provide the key contact people for the Trust, NAGHL and TRONA with regular updates on its DD Investigations as they progress.
18. All parties agree to share all due diligence and all relevant material relating to the Proposed Boat Harbour as it becomes available.

#### **Trust Project Management**

19. The Trust has appointed Dayle Hunia as its project manager in respect of the Proposed Boat Harbour and the matters set out in this HoA.
20. The parties recognise Dayle Hunia's role as advisor to the Trust and project manager, and will continue to liaise with Dayle Hunia in relation to the Proposed Board Harbour.

#### **Key Contacts**

21. The key contact people for each party, as at the date of this HoA, are:

(a) Trust: Dayle Hunia s 9(2)(a)



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(b) **TRONA:** Leonie Simpson s 9(2)(a)

(c) **NAGHL:** Peter Thomas (Interim CEO s 9(2)(a))

(d) **WDC:** Stephanie O'Sullivan s 9(2)(a)

22. Each party will use all reasonable endeavours to ensure that all communications of material matters, related to the Proposed Boat Harbour, are copied to the key contact people for each party as well as others as agreed from time to time.

#### **Project Governance Board**

23. The parties acknowledge that they each retain the right to choose their own nominated representatives depending on the nature of the discussion, level or initiative that they are working on collectively. The Trust, TRONA, NAGHL and WDC recognise that those representatives are authorised to speak for their respective organisations.
24. The parties acknowledge and agree that a project governance board (**Project Board**) will be established at an appropriate time in the near future. The purpose and role of the Project Board will be to:
- (a) meet regularly to update and report on progress by the various parties and work streams;
  - (b) to provide a forum for discussion of challenges, issues and matters that require agreement or consensus;
  - (c) monitor and observe the progress of the Proposed Boat Harbour;
  - (d) receive, consider and provide feedback on any reports required to be produced by the parties; and
  - (e) review, discuss and consider any proposals for executing and realising the Proposed Boat Harbour.
25. The Project Board will meet at such times as the parties may agree, but in any event at intervals of not less than once every 3 months.

#### **Media and communications**

26. The parties acknowledge that it is important that each party consults with, and fully briefs, the other parties prior to the release of any communications relating to the Proposed Boat Harbour.
27. No party will make any public statements relating to, associated with the Proposed Boat Harbour or impacting upon its relationship with the other parties without the prior written approval of the other parties through their key contact (which will not be unreasonably withheld).

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### **Confidentiality**

28. The parties acknowledge that information shared between the parties will be treated in good faith and information received from consultation with each other shall be used by the parties for its intended purposes or with the express consent from the parties.
29. Any privileged or confidential information must not be passed on to any third party without the prior written approval of all the other parties.

### **Term**

30. The term of this HoA will be for one (1) year from the date of this HoA (unless terminated earlier, or extended, by mutual agreement of the parties).

### **Variation**

31. The parties may amend this HoA at any time by agreement in writing.

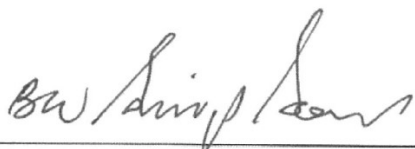
### **Dispute Resolution**

32. If a dispute arises in connection with this HoA, the parties will attempt to resolve the issue (noting the principles and whakataukī) as a matter of priority.
33. If the dispute is not resolved within five (5) working days of it being resolved, the party invoking the dispute resolution procedure shall be entitled to call a meeting within five (5) working days of written notice being given to the parties.
34. A representative of each party will meet to endeavour to negotiate a resolution.
35. If the matter has not been resolved within 20 working days from the meeting held in accordance with clause 33, any party may escalate the matter for resolution between the respective Chairs/Mayor of the parties.
36. There shall be no right to refer a dispute arising in connection with this HoA to arbitration or to any court of law.

### **Execution**

37. This HoA may be executed and delivered in any number of counterparts (including by way of electronic transmission), all of which when taken together shall constitute one and the same instrument and, notwithstanding the date of execution of any counterpart, will be deemed to bear the date of this Agreement when the last party signs it.

EXECUTED ON 26 AUGUST 2019



Brian Simpson  
Chairman  
Rangitāiki Lot 28B No 22 Block Ahu Whenua  
Trust



Dr Joseph Mason  
Chairman  
Te Rūnanga o Ngāti Awa



Tony Bonne  
Mayor  
Whakatāne District Council



Paul Quinn  
Chairman  
Ngāti Awa Group Holdings Limited

Released under the provision of  
the Official Information Act 1982