

TENDER**Trentham, 4 Thackeray Street**

When Location And Potential Collide

bayleys.co.nz/3280790

This property is being sold by Tender:

How can I buy it?

WHAT IS A REAL ESTATE TENDER?

A Tender is a form of marketing a property through intensive advertising media designed to capture the maximum attention of buyers within a set time frame. The process is a means of purchasing Real Estate through a Tender process to determine the true market value of the property.

TENDER DOCUMENTS

A Once you have decided that you would like to submit a Tender please ask the salesperson who is conducting the Tender to provide you with the Tender documents (these will normally consist of an Agreement for Sale and Purchase By Tender, a copy of the Certificate of Title, and further property details).

SHOULD I INFORM MY SOLICITOR?

A Yes, we always recommend consultation with your solicitor. You should then decide the terms of the Tender you wish to submit. The information you require will include your full particulars as Purchaser, the amount tendered, the possession date, any conditions, and your solicitor's details.

WHAT PRICE DO I HAVE TO PAY TO BUY THE PROPERTY?

A This is the price YOU are prepared to pay. Generally, your price will be established by what property has sold and is currently listed around the area, and also the particular features that the home offers you. It is essential that you submit your very best price.

TERMS?

A The agreement for sale and purchase by tender should be completed in duplicate, signed and forwarded with a deposit (normally 10% of the tendered purchase price). All cheques must be crossed and made payable to Bayleys Trust Account. No cheques will be banked unless you are the successful tenderer in which case the deposit shall form part payment of the agreed purchase price.

I CAN'T BUY AT TENDER BECAUSE I HAVE TO GET FINANCE?

A That's OK. You can organise, through your bank or Mortgage Broker approval to tender up to a price that you are prepared to pay. The tender would be subject to the Bank's valuation. This is easy to organise and only takes a short time.

WHAT DO I DO WITH MY COMPLETED TENDER DOCUMENTS?

A Once you have completed your tender it should be placed in a sealed envelope with the address of the property written on it, and delivered to Bayleys and held in a locked Tender Box at reception until tender closure. Please include a contact address and telephone number for the purposes of notifying you of the results of the Tender

WHAT HAPPENS NEXT?

A It is stressed that the Vendor does not have to accept any tender, remember that in a Tender situation, as opposed to an Auction, Tenders may be conditional upon certain criteria, i.e. finance, the sale of other property etc. (although a Vendor will often favour an unconditional Tender)

The Tender shall be decided and all prospective Purchasers notified of the outcome normally within 5 days of the Tender closing date. All unsuccessful Tenders shall be returned together with the deposits.

If you require any assistance with the preparation of the Tender documents or have any question regarding the property for sale, please contact your local Bayleys sales consultant.

Wellington: Level 6, The Bayleys Building, 36 Brandon Street, Wellington | **04 499 6044**

Upper Hutt: 62 Queen Street, Upper Hutt | **04 568 6044**

Kapiti Coast: 169 Rimu Road, Paraparaumu | **04 299 6044**

What is a tender?

A tender is a method of selling a property, which requires all buyers to submit their sealed offers to the seller, through the seller's agent, by a set date.

For Sellers

Should I Consider Selling by Tender

Your sales consultant may recommend selling by tender on the basis that this process imposes a time limit on buyers. This may create a sense of urgency and competition for buyers, and may therefore result in a quicker sale or better price. Buyers may also be prepared to limit the conditions that they attach to their offer in a competitive situation.

A tender will not guarantee that your property sells – this will depend on a range of factors, including the state of the market, and how attractive your property is to buyers compared with other similar properties. If a tender does not result in a sale, you can consider other selling methods.

Do I need to have an agency agreement?

Yes, you do. This will be a sole agency agreement (not a general agency) as the process needs to be run through a single agent. During the period of the tender, you cannot sell the property by any other method.

How does the process work?

When a property is advertised by tender, there is a set period during which potential buyers can inspect the property and submit their sealed offers. Properties offered by tender are generally advertised on the basis of “not selling prior”. This means that buyers must submit their offers along with all other buyers, and the seller will not negotiate with any buyer before the closing date.

Properties sold by tender are advertised without a price although sometimes advertising will include the rating valuation (RV).

The tender can call for either unconditional offers only, or allow conditional offers. A tender that is confined to unconditional offers means that buyers must be in a position to conclude the sale if they are the successful bidder. This means that they will have to have arranged finance in advance and taken any legal and technical advice they require. Unconditional offers provide the seller with more certainty that the sale will be concluded. However, accepting only unconditional offers does carry a risk that fewer offers will be made.

A tender that allows conditional offers may result in more offers. If your property is being marketed to overseas buyers, you will need to allow for conditional offers as overseas buyers may not be able to conclude a purchase without first getting approval from the Overseas Investment Commission.

The agent or salesperson will make available to buyers the Particulars and Conditions of Sale by Tender that have been agreed by the seller. The agent is also required to give you the approved Guide to New Zealand Residential Property Sale and Purchase Agreements.

The offers are held securely and remain sealed until the tender closing date. The seller considers all of the offers once that date has been reached.

Do I have to accept the highest offer?

No. You can accept any offer you wish. For example, a lower offer with fewer conditions may be more attractive as it gives you more certainty about a potential sale than a higher offer with more conditions. Before deciding, you should get advice from your lawyer. If you have a preferred offer, you may want to accept, or negotiate further with that buyer, through your agent. If none of the offers are satisfactory to you, you can reject them all and discuss other selling methods with your agent.

For Buyers

Most of the information set out above is relevant to buyers as well as sellers. The following provides some additional information if you are a buyer.

What should I think about when submitting an offer?

Buying at tender requires the same care and research as buying by any other method. You should ensure you carefully read the Particulars and Conditions of Sale by Tender that the agent must give you. You should also take advice from your lawyer before finalising your offer.

When submitting your offer you will generally be required to include a deposit of a specified amount. This will be held in a trust account and returned to you if your bid is not accepted.

If the tender calls for unconditional offers only, you will need to ensure that you have arranged any finance you need, obtained a Land Information Memorandum (LIM), building inspection report, or other information that you need, before you submit your offer. If you have submitted an unconditional offer and you are the successful bidder, you will not be able to impose any conditions or change the offer subsequently.

Will other buyers know what I've offered?

No. Unlike an auction, which is a public process, tenders protect the privacy of the bidders. You submit your sealed offer to the seller's agent, who is required to hold it securely until the closing date. The only people who will see your offer are the seller and agent.

Fact sheets that provide further information on the property buying and selling process are available from www.reaa.govt.nz or by calling **0800forREAA** (0800 367 7322).

Real Estate Agents Authority

PO Box 25371, Wellington, 6146
Phone: 0800forREAA (0800 367 7322)
Fax: 04 815 8468
Email: info@reaa.govt.nz
Website: www.reaa.govt.nz

To the best of the Real Estate Agents Authority knowledge, the information in this guide is accurate at the date shown below. However, the requirements on which this information is based can change at any time and the most up-to-date information is available at www.reaa.govt.nz [Version 1.0, 17 November 2009].



PRE-TENDER OFFER PROCEDURE & AGREEMENT PURCHASER'S ACKNOWLEDGEMENT

Subject Property Address:

Vendor(s) Names:

.....

.....

Prospective Purchaser(s) Names:

Date: Time:

The following procedure will occur in the event of offers made which are not made pursuant to the tender process ("pre-tender offers"):

1) Terms of Offer:

Any pre-tender offer by prospective purchaser(s) must be: submitted in writing; drawn up on the current ADLS / REINZ approved terms & conditions of tender sale documentation; approved by the vendor's Solicitor; a deposit of 10% payable on the execution of the tender contract by the purchaser.

2) The offer to be conditional upon the following clauses:

22.0 Pre-Tender Offer Condition

22.1 This agreement is conditional upon the vendor not receiving an offer at the tender close at a purchase price higher and or terms better than the purchase price and terms set out in this agreement. If no better offer is received, this agreement shall be deemed to be accepted. If a higher bid or with terms better is received, this agreement shall be cancelled.

22.2 The vendor agrees that the date of the tender close shall be brought forward and held before 4pm on the second working day after the date this agreement is signed by both parties.

22.3 As soon as reasonably practicable but no later than 4.00pm on the next working day following the tender close negotiations having been completed, the vendor shall notify the purchaser in writing as to whether or not the condition in clause 22.1 has been satisfied.

22.4 For the purposes of this clause 22.0 the tender shall be deemed to have been completed when the vendor notifies the purchaser in writing as to whether or not Clause 22.1 has been satisfied.

22.5 This clause is for the sole benefit of the vendor.

23.0 Confidentiality

23.1 The parties agree and warrant they will keep the contents (but not the existence) of this agreement strictly confidential between them (and their legal advisers) until

STRICTLY CONFIDENTIAL

the unconditional date or such time prior or later as agreed by both parties. It is agreed that this is an essential term of the agreement.

3) Confidentiality of Offer:

The terms of the offer shall remain confidential to the agent, the purchaser(s), the vendor(s) and their solicitor(s) and will not be disclosed to any other party.

4) Offer Presentation:

The offer will be presented to the vendor(s) by the listing salesperson and / or manager.

5) Pre-Tender Offer Procedure:

- (a) In the event that a pre-tender offer is received prior to the closing date and time under the tender process the vendor acknowledges the following protocol will be followed:
 - (i) the Bayleys licensee shall advise one of the specified independent Bayleys tender management personnel of the offer;
 - (ii) following consultation with the Bayleys licensee the vendor shall decide if the vendor wishes to accept the pre-tender offer;
 - (iii) if the vendor elects to treat with the pre-tender offeror, all prospective tenderers who have registered their interest during the tender campaign must be contacted either by the Bayleys licensee or the introducing licensee and be given the opportunity to submit an offer;
 - (iv) all offers will be required to be submitted by 4.00pm on the day following receipt of notice or such later time as the vendor may stipulate.
 - (v) if the vendor declines to treat with the pre-tender offeror no further negotiations by the vendor shall take place and the tender process shall continue.

IMPORTANT:

The tender will be conducted in accordance with all normal Bayleys tender policies and procedures.

PURCHASER ACKNOWLEDGEMENT:

The Purchaser(s) agree with the procedure as outlined above and, by way of signing below, confirm their acceptance of the Bayleys tender protocol.

.....
Purchaser	Date
.....
Purchaser	Date

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Consent by Customer (Purchaser)

Prior to entry into contractual document



I/We as Customer/Purchaser(s) of the property located at:

PROPERTY ADDRESS _____

Hereby acknowledge that prior to entering into and signing the Agreement for **SALE & PURCHASE of Real Estate**

- 1. I/We were given a copy of the Sale and Purchase Agreements Guide issued by the Real Estate Agents Authority.
- 2. I/We were given a copy of Bayleys Real Estate Ltd Complaints Procedure.
- 3. I/We confirm that we were advised to seek legal advice before entering into any agreement or contract.
- 4. I/We acknowledge that at the time we entered into this Agreement we did so freely and voluntarily without any influence or duress.
- 5. I/We confirm that neither I/we as the Customer or any party associated with me/us is a party who is an Agent or employee of an Agent or is in any way associated with an Agent.
- 6. I/We acknowledge that any relationship between the Client (Vendor) or any party associated with the Client (Vendor and the Agent, was disclosed to us prior to entering into and signing the Agreement and that the provisions of section 134 of the Real Estate Agents Act 2008. **DO/DO NOT APPLY.**
- 7. I/We acknowledge that prior to entering into a multiple offer situation for the purchase of the property we were advised of the terms upon which we may enter into the multiple offer situation, and that it should be our best offer, and that we may be unsuccessful if our offer is not accepted.
- 8. I/We acknowledge that we were given a copy of the Title to the said property and were advised by the Agent of any easements / covenants / registrations on the Title, and were advised to have a Title Search done by our solicitor as a condition of any offer that we make, so that the Title could be explained to us in more detail.
- 9. I/We acknowledge that the following matters (if any) were specifically disclosed to us by the Agent prior to entering into and signing the Agreement:
 - (i) That any house built of monolithic cladding, either Polystyrene or Harditex with a plastered finish and typically built between approximately 1990 and 2006, may be prone to water tightness issues and we were advised that we should seek our own independent expert advice. **(CLIENT INITIALS)**

SIGNED:

Customer _____	Date: _____
Customer _____	Date: _____
Agent _____	Date: _____

Wellington: Level 6, The Bayleys Building, 36 Brandon Street, Wellington | **04 499 6044**
Upper Hutt: 62 Queen Street, Upper Hutt | **04 568 6044**
Kapiti Coast: 169 Rimu Road, Paraparaumu | **04 299 6044**

Complaints Procedure

Bayleys Real Estate Limited

BAYLEYS

At Bayleys Real Estate Ltd we are committed to providing you with excellent customer service. If you have a complaint, we will do everything possible to resolve the matter in a prompt and professional manner.

STEPS TO FOLLOW IF YOU HAVE A COMPLAINT:

Complain to the Company first.

Our registered Company name is:

Bayleys Real Estate Limited

Licensed under the Real Estate Agents Act 2008

A member of the Bayleys Realty Group

Please contact the manager of the office who will personally investigate your complaint and return to you with their findings. If we have made a mistake, we would like an opportunity to resolve the problem. If there is a misunderstanding, we will attempt to clarify the situation.

When contacting the Branch Manager it is important to use the word "Complaint" so that he/she is in no doubt that you are beginning the complaint process.

- You will need to specify which licensee (salesperson) the complaint is about.
- The address of the property in relation to the complaint.
- Give a detailed explanation of the complaint.

Once the Branch Manager has received your complaint, he/she will acknowledge and notify you that he/she has received your complaint. The Branch Manager will investigate the complaint and will respond within 10 working days to try and resolve the matter with you.

- The Company cannot charge you for looking into your complaint
- The Company agrees not to take further action over any amounts in dispute while it is working through the complaint process.

REFER TO OUR COMPANY LICENSEE:

If you remain unsatisfied, you can write to the Company Licensee of the franchise, providing a full explanation and all correspondence. Upon receipt of any written complaint, The Company Licensee will acknowledge and notify you that he/she has received your complaint. The Company Licensee will review the situation in full and reply in writing within 10 working days.

Tony Bayley

Company Licensee / Compliance Manager

Bayleys Real Estate Ltd
PO Box 8923, Symonds Street
Auckland 1150

Phone: 09 309 6020

Mobile: 021 936 242

Email: tony.bayley@bayleys.co.nz

If, after 20 working days you have not reached an acceptable solution – or you have not received an answer from the company – you may choose to take the complaint to the Real Estate Agent Authority.

GOING TO THE AUTHORITY:

Once you have been through Bayleys Real Estate's complaints procedure and in the unlikely event you are not satisfied with our response / actions you may wish to complain to the Real Estate Agents Authority. To do this you can go to their website and follow the complaints procedure there. **www.reaa.govt.nz**

You may access the Real Estate Agents Authority's complaints process direct without first using the Bayleys Real Estate Limited in-house procedures and the use of the in-house procedures does not preclude you making a complaint to the Real Estate Agents Authority.



Residential Land Statement

Section 51A of the Overseas Investment Act 2005

A separate Residential Land Statement will need to be completed for each individual or entity (non-individual/corporate).

Please complete Part 1a for individuals or Part 1b for entities (non-individual/corporate).

Part 1a Individuals

☐

I am an individual completing the statement for myself (*purchasing the residential land in your own name*)

Am I eligible to buy under the Overseas Investment Act 2005?

(Tick which applies)

☐

Yes, I am a current New Zealand citizen

☐

Yes, I am an Australian or Singaporean citizen buying residential land only

☐

Yes, I hold a New Zealand residence class visa **or** Australian or Singaporean Permanent Resident visa **and all** of the following applies:

- I have been residing in New Zealand for at least the immediately preceding 12 months; and
- I am a tax resident in New Zealand; and
- I have been present in New Zealand for 183 days or more in the immediately preceding 12 months.

☐

Yes, I am an Australian or Singaporean Citizen buying residential land that is also sensitive for another reason and I have consent from the Overseas Investment Office

→ Please provide Overseas Investment Office case number

☐

Yes, I have consent from the Overseas Investment Office or an exemption applies

→ Please provide Overseas Investment Office case number or statutory reference

If you require consent and have not applied, or an exemption does not apply, contact the Overseas Investment Office or seek legal advice.

Part 1b Entities (non-individual/corporate)

(Tick which applies)

☐

I am completing the statement for a body corporate, company, partnership or other entity

☐

I am completing the statement for someone else under an enduring power of attorney or on behalf of trustees of a trust



Please attach a certificate of non-revocation if you are acting under an enduring power of attorney

Is the entity eligible to buy under the Overseas Investment Act 2005?

☐

Yes, the entity is neither an overseas person nor an associate of an overseas person

☐

Yes, the entity has consent from the Overseas Investment Office or an exemption applies

→ Please provide Overseas Investment Office case number or statutory reference

Part 2

Name(s) of person or entity

What is the full name(s) of the person or entity that will appear on the record of title as the new owner(s)?

Part 3

The residential land being acquired

What is the record of title reference for the residential land or the street address?

Part 4

Signature

I certify that all of the information in this statement is true and correct.

Your name

Signature

Date signed

Position or office held (if signing as an authorised person)



You must provide this statement to your conveyancer or lawyer

The conveyancer or lawyer will rely on the information provided in the statement in giving effect to the acquisition of the interest in residential land.

Providing a statement that is false or misleading is an offence under the Overseas Investment Act 2005 and you may be liable for a penalty of up to \$300,000.

Contact the Overseas Investment Office

Phone: 0800 665 463 (in NZ) or +64 7 974 5595 (if overseas)

Email address: oio@linz.govt.nz

Website address: www.linz.govt.nz/oio

[New Zealand Government](#)

RLS October 2018 V2.0



Buying or selling your property?

New Zealand Residential
Property Sale and Purchase
Agreement Guide

Brought to you by the
Real Estate Authority



This guide tells you...

what a sale and purchase agreement is

what's in a sale and purchase agreement

what happens after you sign the sale and purchase agreement

what happens if you have a problem

where to go for more information



About settled.govt.nz and the Real Estate Authority

Settled.govt.nz guides kiwis through home buying and selling.

Buying or selling your home is a big move and one of the biggest financial decisions Kiwis make. It's a complex and sometimes stressful process with potentially significant emotional and financial impacts if things go wrong.

Settled.govt.nz provides comprehensive independent information and guidance for home buyers and sellers. It'll help you feel more in control and help to get you settled. You can find information about the risks, how they can impact you, and get useful tips on how to avoid some of the major potential problems.

You'll learn your tender from your BBO, your price by negotiation from your auction. You'll find valuable information, checklists, quizzes, videos and tools. From understanding LIMs, to sale and purchase agreements, to when to contact a lawyer, settled.govt.nz explains what you need to know.

Settled.govt.nz is brought to you by the Real Estate Authority (REA). REA is the independent government agency that regulates the New Zealand real estate industry. Our aim is to promote and protect the interests of consumers involved in real estate transactions, and to promote a high standard of professionalism and service in the industry.



For more information on home buying and selling, visit settled.govt.nz or email info@settled.govt.nz

To find out more about REA visit rea.govt.nz, call us on **0800 367 7322** or email us at info@rea.govt.nz



Key things to know about sale and purchase agreements



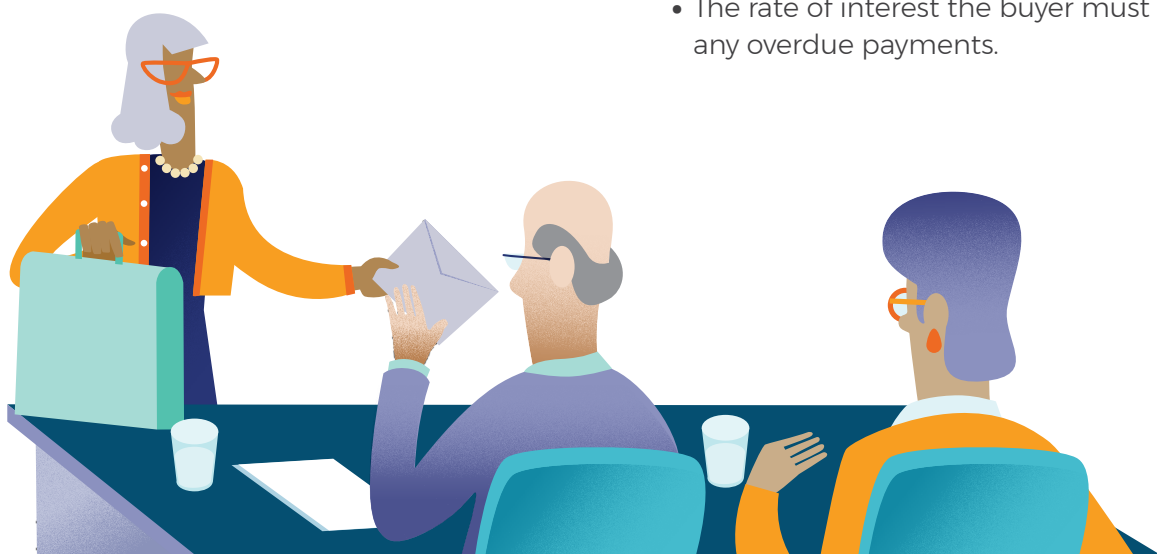
- A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property.
- You must sign a written sale and purchase agreement to buy or sell a property.
- You need to read and understand the sale and purchase agreement before you sign it.
- You should always get legal advice before you sign the agreement and throughout the buying and selling process.
- You can negotiate the conditions in a sale and purchase agreement.
- A sale and purchase agreement becomes unconditional once all the conditions are met.
- The real estate agent is working for the seller of the property but must treat the buyer fairly.
- If your agent or anyone related to them wants to buy your property, they must get your written consent to do this. They must also give you an independent registered valuation of your property.

What a sale and purchase agreement is

A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property. It sets out all the details, terms and conditions of the sale. This includes things such as the price, any chattels being sold with the property, whether the buyer needs to sell another property first and the settlement date.

A sale and purchase agreement provides certainty to both the buyer and the seller about what will happen when.

Always check your sale and purchase agreement with a lawyer before signing.



Before you sign a sale and purchase agreement, whether you're the buyer or the seller, the agent must give you a copy of this guide. They must also ask you to confirm in writing that you've received it.

What's in a sale and purchase agreement

Your sale and purchase agreement should include the following things.

Basic details of the sale

- The names of the people buying and selling the property.
- The address of the property.
- The type of title (for example, freehold or leasehold).
- The price.
- Any deposit the buyer must pay.
- Any chattels being sold with the property (for example, whiteware or curtains).
- Any specific conditions you or the other party want fulfilled.
- How many working days you have to fulfil your conditions (if there are conditions).
- The settlement date (the date the buyer pays the rest of the amount for the property, which is usually also the day they can move in).
- The rate of interest the buyer must pay on any overdue payments.

General obligations and conditions you have to comply with

The sale and purchase agreement includes general obligations and conditions that you will need to comply with. For example, these may include:

- access rights – what access the buyer can have to inspect the property before settlement
- insurance – to make sure the property remains insured until the settlement date and outline what will happen if any damage occurs
- default by the buyer – the buyer may have to compensate the seller if they don't settle on time, for example, with interest payments
- default by the seller – the seller may have to compensate the buyer if they don't settle on time, for example, by paying accommodation costs.

Your lawyer will explain these clauses to you.

Specific conditions a buyer may include

Some buyers will present an unconditional offer, which means there are no specific conditions to be fulfilled. Some buyers will include one or more conditions (that must be fulfilled by a specified date) in their offer such as:

- title search – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if there are any other interests over the property such as caveats or easements
- finance – this refers to the buyer arranging payment, often requiring a mortgage or loan
- valuation report – a bank may require the buyer to obtain a valuation of the property (an estimate of the property's worth on the current market) before they agree to a loan



The agent helps the buyer and the seller to include the conditions they each want. Even though the agent works for the seller, they also have to deal fairly and honestly with the buyer. They can't withhold any information, and they must tell the buyer about any known defects with the property.

Your agent will probably use the agreement for sale and purchase approved by the Auckland District Law Society and the Real Estate Institute of New Zealand.

- Land Information Memorandum (LIM) – provided by the local council, this report provides information about the property such as rates, building permits and consents, drainage, planning and other important information
- builder's report – to determine the condition of the building
- engineer's or surveyor's report – similar to the above but more focused on the entire section and the structure of the property
- sale of another home – the buyer may need to sell their own home in order to buy another.

What happens after you sign the sale and purchase agreement

Signing the sale and purchase agreement is not the end of the sale or purchase.

Both parties work through the conditions until the agreement is unconditional

A conditional agreement means the sale and purchase agreement has one or more conditions that must be met by a specified date.

The buyer pays the deposit. Depending on what the agreement says, the buyer may pay the deposit when they sign the agreement or when the agreement becomes unconditional. Usually the deposit is held in the agency's trust account for 10 working days before it is released to the seller.

An agreement for sale and purchase commits you to buy or sell

Once you've signed the sale and purchase agreement and any conditions set out in it have been met, you must complete the sale or purchase of the property.

Payment of a commission

Once the sale is complete, the seller pays the agent for their services. The agent or agency usually takes the commission from the deposit they're holding in their trust account. The seller should make sure the

deposit is enough to cover the commission. The agent cannot ask the buyer to pay for their services if they have been hired by the seller.

The buyer pays the rest

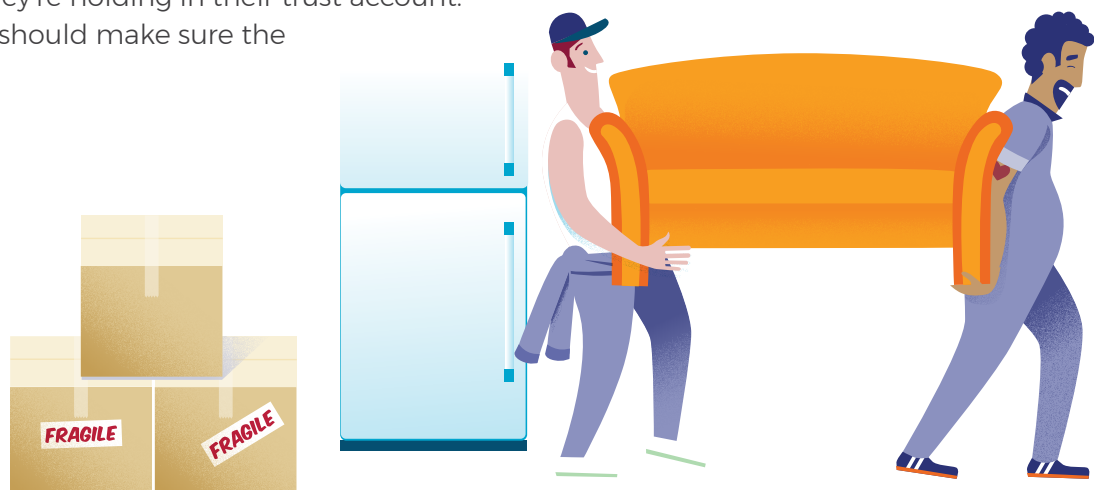
The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer.

Buying a tenanted property

The agreement for sale and purchase may contain a specific date for possession that may differ from the settlement date, for instance, where the property is tenanted. If the property is tenanted, the agreement for sale and purchase should specify this.

If the buyer requires the property to be sold with 'vacant possession', it is the seller's responsibility to give the tenant notice to vacate, in accordance with the tenant's legal rights.

It is recommended that you seek legal advice if you are buying a property that is currently tenanted.



What happens if you have a problem

If you're worried about the behaviour of your agent, discuss it with them or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA).^{*} We can help in a number of ways if your complaint is about the behaviour of a real estate agent. For example, we can help you and the agent or agency to resolve the issue and remind the agent of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

^{*} Settled.govt.nz is brought to you by REA.

Call us on
0800 367 7322,
email us at
info@rea.govt.nz
or visit us
online at
rea.govt.nz



Where to go for more information

You can get more help and information from various places.

Read more about buying and selling a property at settled.govt.nz

[Settled.govt.nz](http://settled.govt.nz) provides comprehensive independent information and guidance for home buyers and sellers.

The New Zealand Residential Property Agency Agreement Guide is also available on settled.govt.nz. The guide tells you more about the agreement you sign with the agent or agency helping to sell your property.

Your lawyer

Community Law Centres
communitylaw.org.nz

Citizens Advice Bureau
cab.org.nz

Consumer Protection
(Ministry of Business, Innovation and Employment)
consumerprotection.govt.nz

We welcome any feedback you have on this publication.

The information in this guide was accurate when published. However, the requirements this information is based on can change at any time. Up-to-date information is available at rea.govt.nz.



Notes



BAYLEYS REAL ESTATE LTD, LICENSED UNDER THE REA ACT 2008

PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY TENDER

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

TENDER DETAILS

Closing Date and Time: 7th October 2020 at 2pm

Delivery Address for Tenders: 62 Queen Street, Upper Hutt

Licensed Real Estate Agent acting for Vendor: Bayleys Real Estate Ltd.

Salesperson(s) : Stephen Taylor (020 4002 7720) stephen.taylor@bayleys.co.nz , Bev Harris (021 577 667) bev.harris@bayleys.co.nz

Vendor: Brian Norman Pedersen, Straco Trustees Limited and John Brian Pedersen

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement:

Yes/No

PROPERTY

Address: 4 Thackeray St, Trentham, Upper Hutt City

Estate: **FREEHOLD** **LEASEHOLD** **STRATUM IN FREEHOLD**
~~STRATUM IN LEASEHOLD~~ **~~CROSS LEASE (FREEHOLD)~~** **~~CROSS LEASE (LEASEHOLD)~~**

If none of the above are deleted, the estate being sold is the first option of freehold.

Legal Description:

Area (more or less):

782 sqm

Lot/Flat/Unit:

342

DP:

17541

Record of Title (unique identifier):

WN882/26

TENANCIES

Yes/No

Name of Tenant(s):

Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

1.0 Conditions of sale

- 1.1. The property and the chattels included in the sale are sold on these Particulars and Conditions of Sale, the General Terms of Sale and any Further Terms of Sale.
- 1.2. GST will be payable in accordance with the statement of the purchase price in the Memorandum of Contract.
- 1.3. The GST date is (subclause 15.0):
- 1.4. Land Act consent required (subclause 11.1): Yes/No
- 1.5. Land Act date (subclause 11.2):
- 1.6. The settlement date is:
- 1.7. The interest rate for late settlement is: 14 % p.a.

2.0 Conduct of tender

- 2.1 A tender must be submitted in this form in duplicate in a sealed envelope marked "Tender [address of property]" and must be received at the Delivery Address for Tenders by the Closing Date and Time (time being of the essence).
- 2.2 A tender offer must state the purchase price as an exact dollar amount without reference to any calculation or variation or to the purchase price contained in any other tender.
- 2.3 A tender must be accompanied by payment of the deposit, equivalent to 10% of the purchase price.
- 2.4 A tender must be executed as follows:
 - (1) Where it is signed by an agent, there must be attached an authority signed by the principal.
 - (2) In the case of a partnership, it must be signed by all partners or, if all partners have not signed, by a duly authorised partner whose signature must follow the name of the partnership, followed by the word "Partner".
 - (3) In the case of a company, it must be signed by an officer of the company authorised to sign or, where at least two directors are required to execute a document, two or more of such officers, and there must be attached evidence of that authority.
 - (4) Where it is signed by an attorney, there must be attached a copy of the power of attorney, together with a declaration or certificate of non-revocation.
- 2.5 A tender will not be opened before the Closing Date and Time.
- 2.6 All tenders, including the identity of the tenderer, will be kept confidential and will not be divulged to any other tenderer or third party, save that statistical data relating to successful tenders may be provided to the Real Estate Institute of New Zealand Incorporated.
- 2.7 The offer contained in each tender cannot be withdrawn until after the Tender Acceptance Date, being the fifth working day after the Closing Date and Time.
- 2.8 A tender is deemed to be accepted on signing by the vendor of the Acceptance of Tender. Acceptance will be communicated to the successful tenderer and/or the tenderer's lawyer as soon as reasonably practicable.
- 2.9 The vendor may:
 - (1) sell the property in such manner as the vendor sees fit at any time, whether before or after the opening of tenders;
 - (2) reject any tender even if it is the highest;
 - (3) negotiate with any tenderer to the exclusion of any others after the opening of tenders;
 - (4) re-advertise for tenders;
 - (5) ignore any irregularities in the tender process; and
 - (6) at any time before the Closing Date and Time, extend the Closing Date and Time by a maximum of twenty working days, in which case each of the dates mentioned in clauses 1.3, 1.5 and 1.6 of the Conditions of Sale shall be deemed to have been extended by an equivalent period.
- 2.10 A deposit lodged by an unsuccessful tenderer will be returned to the tenderer no later than two working days after the Tender Acceptance Date. No interest shall be payable on any deposit.
- 2.11 The tenderer must complete its GST information in Schedule 1 before submitting a tender, if applicable.

GENERAL TERMS OF SALE

3.0 Definitions, time for performance, notices, and interpretation

3.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) "Agreement" means this document including the Particulars and Conditions of Sale, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (8) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (9) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (10) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (11) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (12) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (13) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (14) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (15) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (16) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (17) "LINZ" means Land Information New Zealand.
- (18) "Local authority" means a territorial authority or a regional council.
- (19) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (20) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (21) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (22) "Property" means the property described in this agreement.
- (23) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (24) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (25) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 5.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (26) "Rules" means body corporate operational rules under the Unit Titles Act.
- (27) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (28) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under subclause 5.8.
- (29) "Settlement date" means the date specified as such in this agreement.
- (30) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (31) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (32) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (33) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (34) "Unit title" means a unit title under the Unit Titles Act.

- (35) "Unit Titles Act" means the Unit Titles Act 2010.
- (36) "Working day" means any day of the week other than:
- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
 - if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
 - the day observed as the anniversary of any province in which the property is situated.
- A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

3.2 Unless a contrary intention appears in subclause 1.7 of the Conditions of Sale or elsewhere in this agreement:

- the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
- a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

3.3 Time for Performance

- Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 3.3(2).

3.4 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- All notices must be served in writing.
- Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - on the party or on the party's lawyer:
 - by personal delivery; or
 - by posting by ordinary mail; or
 - by email; or
 - in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- In respect of the means of service specified in subclause 3.4(3)(b), a notice is deemed to have been served:
 - in the case of personal delivery, when received by the party or at the lawyer's office;
 - in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - in the case of email:
 - when sent to the email address provided for the party or the party's lawyer on the back page; or
 - any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 - if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
 - in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
 - in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

3.5 Interpretation

- If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- Headings are for information only and do not form part of this agreement.
- References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

4.0 Deposit

- The purchaser shall pay the deposit with the submission of the tender.
- If the deposit is not paid with the submission of the tender or if the payment is dishonoured, the vendor may cancel this agreement by serving notice of cancellation on the purchaser.
- The deposit shall be in part payment of the purchase price.

- 4.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
- (1) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
 - (2) where the property is a unit title:
 - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act; and
 - (b) an additional disclosure statement under section 148 of the Unit Titles Act (if requested by the purchaser within the time prescribed in section 148(2)),
- have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act to postpone the settlement date until after the disclosure statements have been provided; or
- (3) this agreement is:
 - (a) cancelled pursuant to sections 36 or 37 of the Contract and Commercial Law Act 2017; or
 - (b) avoided pursuant to subclause 11.4(5); or
 - (4) where the property is a unit title and the purchaser, having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act, has cancelled this agreement pursuant to that section, or has elected not to cancel by giving notice to the vendor, or by completing settlement of the purchase.
- 4.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to subclause 4.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008.

5.0 Possession and Settlement

Possession

- 5.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 5.2 If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
- (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
 - (2) to re-enter the property no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, the chattels and the fixtures.
- 5.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 5.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.

Settlement

- 5.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 5.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) certify and sign the transfer instrument.
- 5.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 5.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 5.12 or 5.13, or for any deduction allowed to the purchaser under subclause 7.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to subclause 12.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to subclause 12.8);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 5.7(1) so that the purchaser's lawyer can then submit them for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 5.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and

- (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.

5.9 All obligations under subclause 5.8 are interdependent.

5.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

Last-Minute Settlement

5.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last-minute settlement"), the purchaser shall pay the vendor:

- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last-minute settlement; and
- (2) if the day following the last-minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

5.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:

- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
- (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 5.12(1).
- (3) If the parties are unable to agree upon any amount payable under this subclause 5.12, either party may make a claim under clause 12.0.

Vendor Default: Late Settlement or Failure to Give Possession

5.13 (1) For the purposes of this subclause 5.13:

- (a) the default period means:
 - (i) in subclause 5.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 5.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 5.13(5), the period from the settlement date until the date when settlement occurs; and
- (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
 - (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
 - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
 - (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 5.13(2)(b) during the default period. A purchaser in possession under this subclause 5.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 5.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 5.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.

- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 5.13(2)(b) during the default period.
- (6) The provisions of this subclause 5.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) If the parties are unable to agree upon any amount payable under this subclause 5.13, either party may make a claim under clause 12.0.

Deferment of Settlement and Possession

- 5.14 If
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 5.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 5.16 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 5.14 or subclause 5.15; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 10.2(3),
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 5.14, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a deferment of the settlement date pursuant to subclause 5.15, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

- 5.17 (1) Where
- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,
- then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the date on which the vendor has given the purchaser notice that a search copy is obtainable.
- (2) Subclause 5.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

6.0 Residential Land Withholding Tax

- 6.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
 - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
 - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
 - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
 - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
 - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
 - (b) any costs payable by the vendor under subclause 6.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.

- 6.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 6.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
 - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 6.3 If pursuant to subclause 6.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
 - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 6.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 6.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 6.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under subclause 6.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
 - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

7.0 Risk and insurance

- 7.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 7.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
 - (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
 - (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
 - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 12.8 for when an amount of compensation is disputed.
- 7.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

8.0 Title, boundaries and requisitions

- 8.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 8.2 The purchaser is deemed to have accepted the vendor's title to the property and the purchaser may not make any requisitions or objections as to the title.
- 8.3 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

9.0 Vendor's warranties and undertakings

- 9.1 The vendor warrants and undertakes that at the date of release of the tender documentation, the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party; or
 - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 9.2 The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.

9.3 The vendor warrants and undertakes that at settlement:

- (1) The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure to do so shall only create a right of compensation.
- (2) All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
- (3) There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.
- (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
- (5) Where the vendor has done or caused or permitted to be done on the property any works:
 - (a) any permit, resource consent, or building consent required by law was obtained; and
 - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
 - (c) where appropriate, a code compliance certificate was issued for those works.
- (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
 - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - (b) the building has a current building warrant of fitness; and
 - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
- (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991; or
 - (c) from any tenant of the property; or
 - (d) from any other party,has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.

9.4 If the property is or includes part only of a building, the warranty and undertaking in subclause 9.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:

- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
- (2) the building has a current building warrant of fitness; and
- (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.

9.5 The vendor warrants and undertakes that on or immediately after settlement:

- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
- (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
- (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
- (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.

10.0 Unit title provisions

10.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.

10.2 If the property is a unit title, the vendor warrants and undertakes as follows:

- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
- (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
- (3) Not less than five working days before the settlement date, the vendor will provide:
 - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and

- (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
 - (4) There are no other amounts owing by the owner under any provision of the Unit Titles Act.
 - (5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Unit Titles Act.
 - (7) The vendor has no knowledge or notice of any fact which might result in:
 - (a) the owner or the purchaser incurring any other liability under any provision of the Unit Titles Act; or
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Unit Titles Act.
 - (8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - (9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
 - (10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - (a) the transfer of the whole or any part of the common property;
 - (b) the addition of any land to the common property;
 - (c) the cancellation of the unit plan; or
 - (d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan,
 which has not been disclosed in writing to the purchaser.
 - (11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 10.3 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of subclause 10.2(3), then in addition to the purchaser's rights under sections 149 and 150 of the Unit Titles Act, the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date.
- 10.4 If the property is a unit title, each party specifies that:
- (1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer, shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act; and
 - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.
- 10.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Unit Titles Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 5.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

11.0 Conditions

- 11.1 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date shown in subclause 1.5 of the Conditions of Sale.
- 11.2 If the Land Act date is not shown in the Conditions of Sale that date shall be the settlement date or a date 65 working days from the date of this agreement, whichever is the sooner.
- 11.3 Resource Management Act condition
 - (1) If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.
- 11.4 Operation of conditions

If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:

 - (1) The condition shall be a condition subsequent.
 - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

12.0 Claims for compensation

- 12.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 12.0.
- 12.2 The provisions of this clause apply if:
- (1) the purchaser claims a right to compensation for:
 - (a) a breach of any term of this agreement; or
 - (b) a misrepresentation; or
 - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986; or
 - (d) an equitable set-off, or
 - (2) there is a dispute between the parties regarding any amounts payable:
 - (a) under subclause 5.12 or subclause 5.13; or
 - (b) under subclause 7.2.
- 12.3 To make a claim under this clause 12.0:
- (1) the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date (except for claims made after the settlement date for amounts payable under subclause 5.12 or subclause 5.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
 - (2) the notice must:
 - (a) state the particular breach of the terms of the agreement, or the claim under subclause 5.12, subclause 5.13 or subclause 7.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
 - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 12.4 If the claimant is unable to give notice under subclause 12.3 in respect of claims under subclause 12.2(1) or subclause 12.2(2)(b) by the settlement date by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under subclause 13.1.
- 12.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- 12.6 If the purchaser makes a claim for compensation under subclause 12.2(1) but the vendor disputes the purchaser's right to make that claim, then:
- (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under subclause 12.3, time being of the essence; and
 - (2) the purchaser's right to make the claim shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society. The appointee's costs shall be met by the party against whom the determination is made.
- 12.7 If the purchaser makes a claim for compensation under subclause 12.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 12.6, the vendor is deemed to have accepted that the purchaser has a right to make that claim.
- 12.8 If it is accepted, or determined under subclause 12.6, that the purchaser has a right to claim compensation under subclause 12.2(1) but the amount of compensation claimed is disputed, or if the claim is made under subclause 12.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (2) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society;
 - (3) the interim amount must be a reasonable sum having regard to all of the circumstances, except that where the claim is under subclause 5.13 the interim amount shall be the lower of the amount claimed, or an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date;
 - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under subclause 7.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;
 - (6) the stakeholder shall lodge the interim amount on an interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (7) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (8) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.

- 12.9 Where a determination has to be made under subclause 12.6(2) or subclause 12.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these subclauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations.
- 12.10 The procedures prescribed in subclauses 12.1 to 12.9 shall not prevent either party from taking proceedings for specific performance of the contract.
- 12.11 A determination under subclause 12.6 that the purchaser does not have a right to claim compensation under subclause 12.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 12.12 Where a determination is made by a person appointed under either subclause 12.6 or subclause 12.8, that person shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination.

13.0 Notice to complete and remedies on default

- 13.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with clauses 5.0 and 12.0 or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 13.2 Subject to subclause 13.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
- (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 13.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 13.1.
- (3) The vendor may give a settlement notice with a notice under this subclause.
- (4) For the purpose of this subclause a deposit is not an instalment.
- 13.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 13.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
- (a) sue the purchaser for specific performance; or
- (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
- (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
- (ii) sue the purchaser for damages.
- (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
- (3) The damages claimable by the vendor under subclause 13.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
- (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
- (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
- (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
- (4) Any surplus money arising from a resale shall be retained by the vendor.
- 13.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
- (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 13.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 13.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 13.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

14.0 Non-merger

- 14.1 The obligations and warranties of the parties in this agreement shall not merge with:
- (1) the giving and taking of possession;
 - (2) settlement;
 - (3) the transfer of title to the property;
 - (4) delivery of the chattels (if any); or
 - (5) registration of the transfer of title to the property.

15.0 Goods and Services Tax

- 15.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement, then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 - (2) where the GST date has not been inserted in subclause 1.3 of the Conditions of Sale the GST date shall be the settlement date;
 - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST;
 - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 5.8(1).
- 15.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 15.3
- (1) Without prejudice to the vendor's rights and remedies under subclause 15.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 - (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 13.1.
 - (3) The vendor may give a settlement notice under subclause 13.1 with a notice under this subclause.

16.0 Zero-rating

- 16.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 16.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 16.3 Where the particulars stated on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 16.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 16.5
- (1) If any of the particulars stated by the purchaser in Schedule 1:
 - (a) are incomplete; or
 - (b) alter between the date of this agreement and settlement,the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
 - (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.
 - (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement, if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 16.6 If
- (1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
 - (2) that part is still being so used at the time of the supply under this agreement,
- then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 16.7 If
- (1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
 - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,

then the references in subclauses 16.3 and 16.4 to “the property” shall be deemed to mean the remainder of the property excluding that part and the references to “the supply under this agreement” shall be deemed to mean the supply under this agreement of that remainder.

- 16.8 If the particulars stated on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 indicate in terms of subclause 16.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:

- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) in the Memorandum of Contract; and
- (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with subclause 16.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

17.0 Supply of a Going Concern

- 17.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated in this agreement:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 17.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 15.0 of this agreement shall apply.

18.0 Limitation of Liability

- 18.1 If any person enters into this agreement as trustee of a trust and if that person has no right to or interest in any assets of the trust, except in that person's capacity as a trustee of the trust, then that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time (“the limited amount”).
- 18.2 If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

19.0 OIA Consent not required

- 19.1 The purchaser warrants that the purchaser does not require OIA Consent or that the purchaser has obtained OIA Consent.

20.0 Counterparts

- 20.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 20.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 20.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.
- 20.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

21.0 Agency

- 21.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor has appointed as the vendor's agent according to an executed agency agreement.
- 21.2 The scope of the authority of the agent under subclause 21.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 21.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

22.0 Collection of Sales Information

- 22.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to the Real Estate Institute of New Zealand Incorporated (REINZ).
- 22.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 1993.
- 22.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 22.4 Despite the above, if REINZ does come to hold any of the vendor or purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

FURTHER TERMS OF SALE

23.0 Settlement Date (COVID-19 Alert Level)

23.1 As at the date of this agreement, New Zealand is at Alert Level [Two] of the COVID-19 Alert System (the Alert Level) as a result of the COVID-19 pandemic (the Pandemic). Under Alert Level [Two], personal movement associated with the settlement of property transactions is permitted to occur.

23.2 The parties acknowledge that the Government may change the Alert Level if there is a change to the public health risks in New Zealand as a result of the Pandemic. Any change to the Alert Level may apply nationally or in specified regions.

23.3 The parties agree that in circumstances where:

- a. the Alert Level is increased, either nationally or in the region in which the property is located; and
 - b. the relevant order made by the Director-General of Health under the Health Act 1956 (or other legislative instrument, if applicable) which gives effect to the Alert Level provides that it would be unlawful for the personal movement associated with settlement to occur; then
- the date of settlement under this agreement will be deferred to the date that is [five] working days after New Zealand (or, in the case of a regional Alert Level change, the region in which the property is located) enters into an Alert Level where the personal movement associated with settlement is permitted, or to such other date as may be agreed between the parties in writing.

23.4 Neither party will have any claim against the other in relation to the deferral of settlement in accordance with this clause.

24.0 INSURANCE

This agreement is conditional upon the Purchaser arranging building insurance in respect of the buildings and any other improvements on the property on terms and conditions satisfactory to the Purchaser in all respects, within 2 working days of the date of this agreement.

25.0 LAWYERS APPROVAL AS TO TITLE (TITLE SEARCH)

This agreement is conditional upon the purchaser's lawyer approving in all respects the title and all encumbrances and other interests or instruments registered against the title to the property no later than 4pm of the 2nd working day from the date of this agreement. This condition is inserted for the sole benefit of the purchaser. This condition is inserted for the sole benefit of the Purchaser.

26.0 SOLICITORS APPROVAL AS TO FORM

This agreement and completion hereof is conditional upon and subject to the Purchasers Solicitor approving this agreement in all respects as to form. However if the Purchaser's Solicitor shall not notify the Vendor's Solicitor or his agent within 2 working days of this agreement being executed of any disapproval of this agreement by him then this clause will be of no further effect and the agreement will be binding upon the parties in all other respects.



SCHEDULE 1**(GST Information – see clause 16.0)**

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

Section 1 Vendor	
1(a) The vendor's registration number (if already registered):	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
Section 2 Purchaser	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e).	
2(c) The purchaser's details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No

SCHEDULE 2

List all chattels included in the sale
(strike out or add as applicable)

Stove	Rangehood	Wall oven	Cooktop
Dishwasher	Kitchen waste disposal	Light fittings	Smoke detector(s)
Burglar alarm	Heated towel rail(s)	Heat pump(s)	Garage door remote control(s)
Blinds	Curtains	Fixed floor coverings	

Mains Gas, Double Garage Workshop

SCHEDULE 3

Residential Tenancies

Name of Tenant(s):

Rent:

Term:

Bond:

Commercial/Industrial Tenancies

(If necessary, complete on a separate schedule)

Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

Name of Tenant(s):

Rent:

Term:

Right of Renewal:

Other:

MEMORANDUM OF CONTRACT

WARNING *(This warning does not form part of this agreement)*

This is a binding contract. **Read the information set out on the back page before signing.**

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a licensed real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Agents Authority.

Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act.

OFFER BY TENDERER TO PURCHASE

PURCHASER'S NAME:

and/or nominee ("the purchaser")

offers by tender to purchase the property and the chattels included in the sale on the Particulars and Conditions of Sale, General Terms of Sale and Further Terms of Sale (if any) set out above for a purchase price of:

Purchase price: \$

~~Plus GST (if any)~~ OR Inclusive of GST (if any)

If neither is deleted, the purchase price includes GST (if any)

[The tender offer must state the purchase price as an exact dollar amount and without reference to any calculation or variation or to the purchase price stated in any other tender]

Signature of purchaser(s):

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

ACCEPTANCE OF TENDER

The vendor accepts the offer by tender of the purchaser.

Signature of vendor(s):

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Director / Trustee / Authorised Signatory / Agent / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Date:

*If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ); or
- (iii) where the attorney signs for a trustee, a Certificate in the relevant form in Schedule 4 to the Trustee Act 1956.

Also insert the following wording for the Attorney's Signature above:

Signed for [full name of the donor] by his or her Attorney [attorney's signature].

BEFORE SIGNING A TENDER

- It is recommended you seek professional advice before signing and lodging this tender. This is especially so if:
 - there are any doubts. On acceptance this will be a binding contract with only restricted rights of termination.
 - the purchaser is not a New Zealand citizen. There are strict controls on the purchase of property in New Zealand by persons who are not New Zealand citizens.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross-lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - you wish to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- Both parties may need to have customer due diligence performed on them by their lawyer or conveyancer in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 which is best done prior to the signing of this agreement.
- You should investigate the status of the property under the local Council's District Plan. The property and those around it may be affected by zoning and other planning provisions regulating their use and future development.
- You should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a Land Information Memorandum (LIM) from the Council.
- You should check the title to the property because there is no right of objection or requisition.
- You should compare the title plans against the physical location of existing structures where the property is a unit title or cross-lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before you enter into the agreement:
 - the vendor must provide you with a pre-contract disclosure statement under section 146 of the Unit Titles Act;
 - you should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long-term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long-term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 9.0 and 10.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 2 is accurate.
- You should ensure that you understand the GST position, and whether or not GST is payable in addition to the price you are offering.
- Both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.
- You should read the Conduct of Tender in clause 2.0.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

YOU SHOULD KEEP A COPY OF THIS FORM WHEN LODGING YOUR TENDER.

SALE OF REAL ESTATE BY TENDER

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Address of Property:

4 Thackeray St, Trentham, Upper Hutt City

Closing Date & Time:

7th October 2020 at 2pm

Delivery Address for Tenders:

62 Queen Street, Upper Hutt

VENDOR:

Brian Norman Pedersen, Straco Trustees Limited and John Brian Pedersen

Contact Details:

4 Thackeray Street

Upper Hutt

pedys@xtra.co.nz

Trentham

5018

027 247 5608 (John)

VENDOR'S LAWYERS:

Firm: Strachan O'Connor

Individual Acting: Phyllis Strachan

Email: phyllis@justlaw.co.nz

Contact Details:

PO Box 40643

Upper Hutt

Upper Hutt

Ph: 04 5287676

5140

Fax: 04 5287675

Email Address for Service of Notices:

(subclause 3.4)

PURCHASER:**Contact Details:****PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

Email:

Contact Details:

Email Address for Service of Notices:

(subclause 3.4)

LICENSED REAL ESTATE AGENT: a Member of the Bayleys Realty Group

Agent's Name: Bayleys Real Estate Limited - Upper Hutt

Manager: Grant Henderson

Salesperson: Stephen Taylor

stephen.taylor@bayleys.co.nz

(020 4002 7720)

Contact Details:

62 Queen Street

Upper Hutt WELLINGTON 5018

Ph: 04 568 6044

huttvalley@bayleys.co.nz

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**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**




R.W. Muir
Registrar-General
of Land

Identifier **WN882/26**
Land Registration District **Wellington**
Date Issued 16 February 1960

Prior References
WN653/57

Estate Fee Simple
Area 782 square metres more or less
Legal Description Lot 342 Deposited Plan 17541
Registered Owners
Brian Norman Pedersen, Straco Trustees Limited and John Brian Pedersen

Interests
2284 Order in Council imposing Building Line Restriction

Image Quality due
to Condition
of Original

