

**AUCTION**

# 203 Hot Water Beach Road, Whitianga, Coromandel

 **Thursday, 4th February, 2021 from 1pm** *(unless sold prior)*

 247 Cameron Road, Tauranga

 Auctioneer - Eves Realty Limited

Licensed under the REAA 2008



**Web ID** [eves.co.nz/EKTC07269](https://eves.co.nz/EKTC07269)

 **EVES**

# Introduction

Thank you for expressing interest in this property. Our objective is to be as helpful as possible as you complete your due diligence to reach an informed decision on your purchase.

**This booklet contains the following information:**

- › Full details on the property
- › Extra photographs to remind you of what is on offer
- › Pre-Auction Offer Procedure & Agreement
- › Guidelines for preparing to buy & bidding at auction
- › EVES Website Auction Livestream Guide
- › Code of Practice For Sale of Real Estate by Auction (REINZ)
- › Interest Registration & Telephone Bidding Authority
- › Purchasers Authority for Another Person to Bid on Their Behalf at Auction
- › Variation to Standard Particulars and Conditions of Sale
- › Property Sale and Purchase Agreements Guide (REAA)
- › Agent Profile
- › Our auction room locations
- › Draft Particulars and Conditions of Sale & Copy Certificate of Title
- › Additional Information (if applicable)



Some people find purchasing through the Auction process quite daunting. Please be assured there is no need to feel this and we welcome the opportunity to guide you through this so you can secure the property with comfort and ease.

We hope you find this booklet useful and we wish you the best in your purchase.

**Please feel free to contact us at any time, we are here to help.**

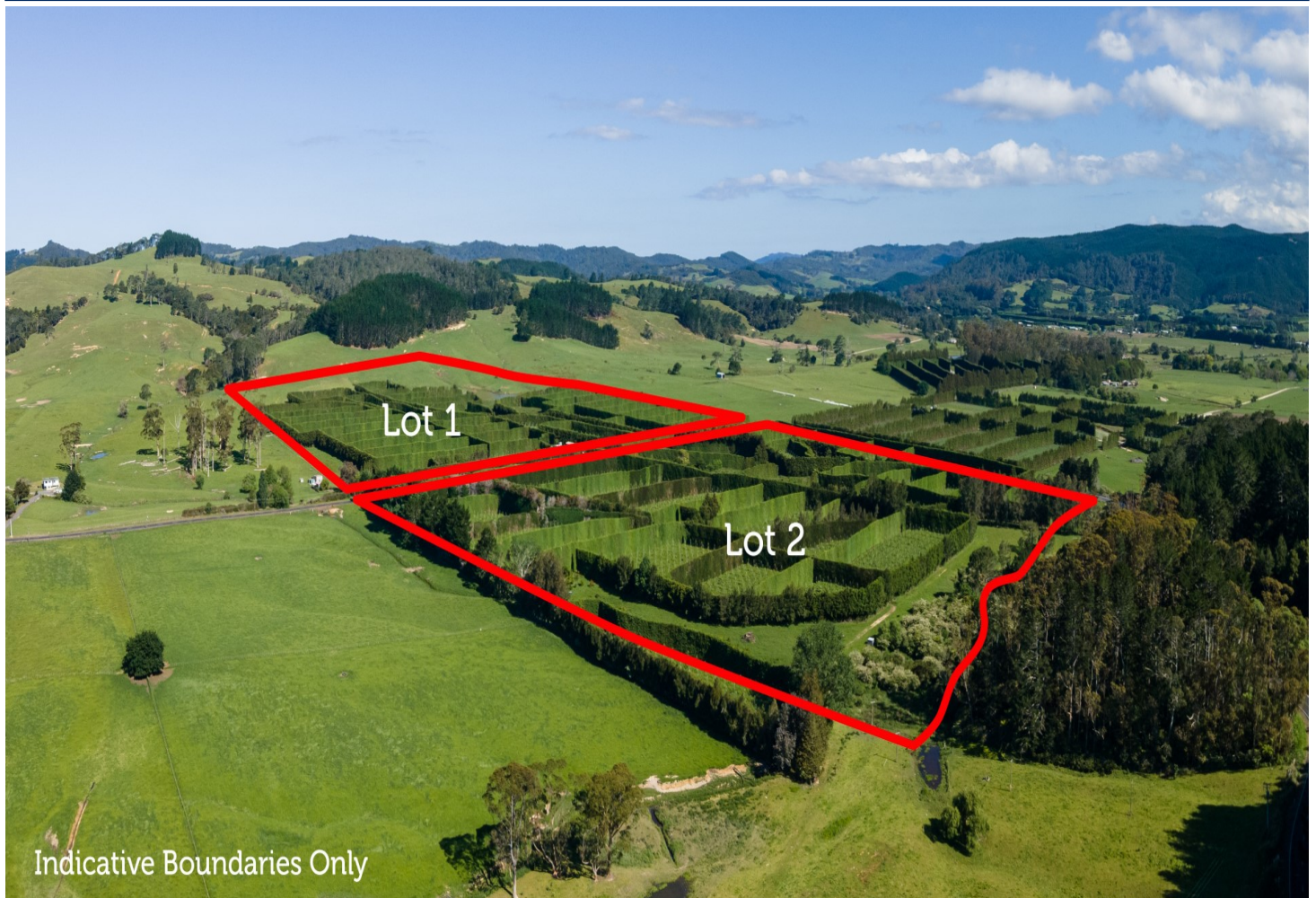
Kind regards,

Eves Realty Ltd

---

## Statement of Passing Over Information:

This information has been supplied by the vendor or the vendor's agents and Eves Realty Limited is merely passing over this information as supplied to us. We cannot guarantee its accuracy as we have not checked, audited, or reviewed the information and all intending purchasers are advised to conduct their own due diligence investigation into this information. To the maximum extent permitted by law we do not accept any responsibility to any party for the accuracy or use of the information herein.



## Massive Kiwifruit Property Portfolio for Sale

Open days Saturday 28th November, 5th December, 12th December 1-3pm This well-structured G3 & Hayward production orchard is situated at 203 Hot Water Beach Road, Whenuakite. An address conducive to holidaymakers and horticulturists with a great growing climate in close proximity to; Hot Water Beach, Hahei and Cooks Beach- some of Coromandel's most stunning beach destinations. Split into two separate titles. There is an opportunity to add an additional dwelling to one of the titles. This property has been in the same ownership for over 40 years. This orchard offers 34 hectares total land size with 11.25 canopy hectares of G3 and 3.17 canopy hectares of Hayward kiwifruit. In addition, there are approximately 10 hectares of grazing. This is an extremely tidy orchard, well set up with great assembly structures and all agbeam (Continued overleaf ...)

**AUCTION**

**4 Feb, From 1pm** (unless sold prior)  
247 Cameron Road, Tauranga

**VIEW** By appointment

**WEB** [www.eves.co.nz/ektc07269r](http://www.eves.co.nz/ektc07269r)



**Durrelle Green**

**M** 027 949 3725

**B** 07 549 3769

**E** [durrelle.green@eves.co.nz](mailto:durrelle.green@eves.co.nz)

**Web** [durrellegreen.eves.co.nz](http://durrellegreen.eves.co.nz)

<b>Property Address:</b>	203 Hot Water Beach Road, Whitianga
<b>Legal Description:</b>	<p>Firstly an estate in fee simple in all that parcel of land containing 16.1874 hectares more or less being Part Allotment 4 Parish of Hahei being comprised and described in Certificate of Title SA21D/864 (South Auckland Registry).</p> <p>Secondly an estate in fee simple in all that parcel of land containing 18.4258 hectares more or less being Part Allotment 4 Parish of Hahei being comprised and described in Certificate of Title SA21D/865 (South Auckland Registry).</p>
<b>Capital Valuation:</b>	\$6,390,000
<b>Land Area:</b>	346,132 square metres (approx)
<b>Bedrooms:</b>	4
<b>Bathrooms:</b>	1
<b>Garaging:</b>	Single
<b>Chattels:</b>	Stove, Fixed Floor Coverings, Curtains, Light Fittings, Dishwasher, Heat Pump x 2, HRV
<b>Continued:</b>	<p>pergola. Currently, the orchard is leased. The orchard has multiple consented water sources. There are 3 reservoir ponds, two working reservoirs for frost protection and irrigation with a combined capacity of 3.9 million litres and a 16 million litre winter storage reservoir. Support buildings include multiple sheds, stockyards, large harvest loadout area and a very tidy four bedroom family home, perfect for an orchard manager or owner. Benefits: Planted area: 3.5 hectares Hayward Green kiwifruit, 11.2 hectares of G3 kiwifruit Early harvest premium history Grazing: Approx. 10 hectares Contour: Easy to manage flat contour Support Structures: Loads of equipment storage buildings and sheds Water: Deepwater bore and 3 reservoir ponds, full irrigation and frost protection system throughout the orchard Great potential house sites on title 2 This combination of a large scale kiwifruit orchard combined with such an idyllic location so close to so many Coromandel beaches is rare to find. Contact Durrelle today for more information or to view this stunning holding.</p>

*\*Please note: the floor area and property information was sourced from Property Guru and/or LINZ.*

## Sales Prior to Auction

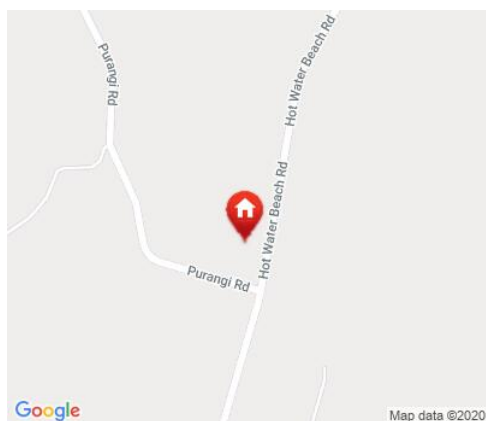
In most situations the Vendors reserve the right to receive offers and sell the property prior to auction day. To avoid disappointment please advise the agent should you wish the opportunity of entering into a pre-auction negotiation.

## Auction Day

**To be a successful buyer at the auction the following process is carried out:**

The auctioneer will call the highest bid and the amount each bid will rise. To bid catch the auctioneer's eye by raising your hand or simply nodding your head when you have the auctioneer's attention. If you are a spectator do

not be concerned that you will buy a property by scratching your nose or moving your hand, our auctioneers are very experienced and can pick between casual movement and a determined bid. Should the property not reach a figure acceptable to the vendor the highest bidder will be given first opportunity during the auction to amend their bid to an acceptable level. If agreement is not reached at that time then the property will be set aside and negotiations will be entered into with all interested parties including conditional buyers. If you are the successful bidder you will be required to sign the contract and pay a 10% deposit. The balance is paid on settlement date as outlined in the Conditions of Sale and the Contract.



## LOOKING FOR A HOME LOAN?

Talk to the team at Lifetime. Our mortgage Advisers are qualified, experienced and committed to providing a friendly service to assist you along your journey.

### For all your lending needs:

- + First home buyers
- + Construction Loans
- + Top-ups
- + Investors
- + Refinances
- + Re-fixes

**0800 656 466 | lifetime.co.nz**

Level 1, ANZ Building,  
247 Cameron Road, Tauranga

**Lifetime**  
Advice For Life



# Pre-Auction Offer Procedure & Agreement

**SUBJECT PROPERTY ADDRESS** 203 Hot Water Beach Road, Whitianga, Coromandel

**VENDOR(S) NAME(S)**

**PROSPECTIVE PURCHASER(S) NAME(S)**

The following procedure will occur in the event of pre-auction offers:

## Terms of Offer:

Any pre-auction offer by prospective purchaser(s) will be:

- 1 Submitted in writing on the Particulars and Conditions of Sale of Real Estate by Auction contract approved by the vendor or the vendor(s) solicitor.
- 2 A deposit of 10% is payable upon the contract becoming unconditional in all respects.

## No Counter Offers:

If the pre-auction offer is not acceptable, no counter offer shall be made by the vendor(s) and the purchaser shall be advised that the offer is formally declined.

## The following clause will be inserted into the contract:

This agreement is conditional upon the vendor not receiving a bid at the auction at a purchase price higher than the purchase price set out in this agreement. If no higher bid is received, this agreement shall be unconditional. If a higher bid is received, this agreement shall be cancelled. As soon as reasonably practicable following the auction having been completed, the vendor or vendor's solicitor shall notify the purchaser in writing as to whether or not this condition has been satisfied. The vendor agrees that the date of the auction shall be brought forward and held before 5pm on the fourth working day after the date this agreement is signed by both parties but no earlier than 11.00am on the third working day after the date this agreement is signed by both parties. Nothing in this agreement shall prohibit the purchaser from attending the auction and bidding during the auction process. For the purpose of this clause the auction shall be deemed to have been completed when the auctioneer makes it clear that bidding is closed.

**Confidentiality** - 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 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 and this clause is inserted for the sole benefit of the vendor.

## Offer Presentation:

The offer will be presented to the vendor(s) by a company manager or one of the company auctioneers.

## Acceptable Offer:

**Other Interest:** If the offer is acceptable to the vendor(s) and all relevant parties have signed the contract then the agent shall take all reasonable steps to immediately contact all other parties and colleagues who have viewed the property throughout the campaign. They shall be advised that the property is about to be sold and informed of the new auction time, date and location.

Auction venue: ..... Date ..... / ..... / 20 ..... at ..... am/pm

**NOTE:** The new auction date will fall within the timeframe detailed in the pre-auction offer clause. The auction will be conducted in accordance with EVES auction policies and the REINZ Best Practice Guide for Auctions. The Auctioneer will call for bids above the 'acceptable offer' approved by the vendor having been confirmed in writing to the Auctioneer on a Confidential Reserve Authority and in the event of any further bids being submitted the property will be sold to the highest bidder.

Updated: 27 October 2020

Continued

## Calling Interest to Generate Multiple Offers:

In the event that the Vendor(s) elect to call interest, all parties will be notified and the EVES Multiple Offer Procedures shall be followed.

### Purchaser Acknowledgement:

..... (Purchasers Initials)

I/we the purchaser(s) confirm and acknowledge that I/we have read and understand the pre-auction procedure as outlined above and confirm that I/we have been advised to put my/our highest and best offer in writing to the vendor(s) as a pre-auction offer. We further confirm and acknowledge that at the time of entry into a contract with the vendor(s) I/we have done so, freely and voluntarily, without any pressure, undue influence or duress, and that I/we have been advised to seek legal, technical or specialist advice of our choice prior to signing:

### Signed:

Purchaser: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Purchaser: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

### Vendor Acknowledgement:

I/we the vendor(s) agree with the procedure as outlined above and by way of signing below, confirm my/our agreement to sell the property on the terms as offered by the purchaser(s) unless another offer is received in accordance with the pre-auction offer clause on terms that are in my/our sole judgement preferable to me/us. I/we further acknowledge that I/we have knowingly chosen this option freely and voluntarily without any influence or duress, and have been advised to seek legal advice prior to signing.

In consideration of this offer and upon our sole judgement and understanding of the level of interest expressed in my/our property, I/we the vendor(s) elect to: (Delete not applicable)

1. Reject the offer and continue with the marketing campaign
2. Accept the offer and bring the auction forward
3. Call all interest to generate multiple offers
4. Accept the offer without regard to any other expressed interest

### Signed:

Vendor: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Vendor: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

### Presented by:

Name: .....

**Signed:** ..... Dated ..... / ..... / 20 ..... at ..... am/pm

# Preparing to Buy at Auction

**Buying a property at auction is a very simple process so in preparation for this we recommend that you consider the following;**

- ✓ Register your interest with your sales consultant. This will enable us to notify you of any amendments to the Contract of Sale pertaining to Chattels, Settlement or inclusion/deletion of Clauses. You will also be advised if the Vendor receives an acceptable offer prior to the auction and may be given equal opportunity to purchase the property unless we are instructed otherwise by the vendor.
- ✓ You should view and be satisfied with things such as a LIM report, builders report, the title and any other relevant documentation for the property.
- ✓ Be in a position to purchase the property unconditionally, having arranged your finance to your upper limit.
- ✓ Have your 10% deposit prearranged.
- ✓ Check the possession arrangements and if they are not suitable have your preferred possession date agreed with the owner prior to Auction. Your sales consultant can assist you with this.
- ✓ If you are unavailable to attend the Auction, please talk to your sales consultant who can arrange for you to bid by telephone.
- ✓ Study our guide to bidding at auction; this contains some useful tips that will help you secure your new home.
- ✓ Should you have any further queries, please contact your sales consultant or one of our Auctioneers. We are happy to help.

## Bidding at Auction

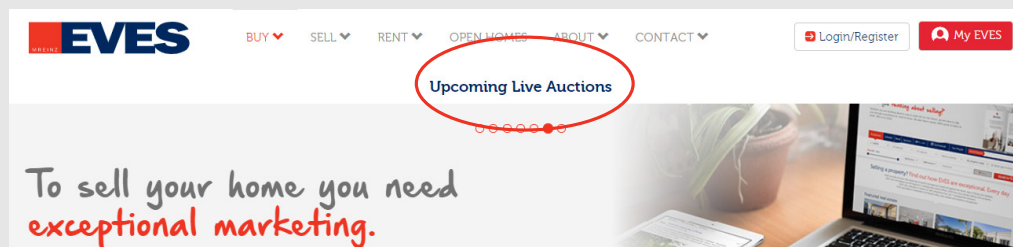
**Bidding at Auction is a simple process where buyers can bid with confidence. An Auction is open forum where all purchasers are able to compete openly and each bid is announced by the Auctioneer.**

- ✓ A confidential reserve is set by the owner.
- ✓ Each buyer will attend the auction with a figure in mind that they are prepared to pay for the property. It is advisable to have a little bit in reserve in the event that someone else wishes to pay the same.
- ✓ When the Auctioneer calls for a bid then simply raise your hand or nod your head and bid to the figure that you are comfortable paying for the property. The Auctioneer will guide you through the bidding sequence however it is advisable to ensure you are the highest bidder.
- ✓ Bid with confidence and establish your presence among other buyers. The Auctioneer will clearly advise you when the property is about to be sold.
- ✓ It is normal for the Auctioneer to be authorised by the owner to bid on their behalf. Be assured that this will only be executed if needed, and will only be used below the reserve. These are commonly known as vendor bids and should be viewed as a counter offer from the owner. All vendor bids will be clearly identified by the Auctioneer.
- ✓ In the event that the owners reserve is not reached, the highest bidder will be accorded the first opportunity during the auction to amend their bid to an acceptable level.
- ✓ In the event that agreement is not reached during the auction the property will be set aside and discussions will continue at which point conditional buyers will be included and given the same opportunity to secure the property.
- ✓ Finally, it's a good idea to talk to an Auctioneer prior to the Auction. They are able to assist you in developing your bidding strategy in a confidential manner. Your sales consultant can arrange this for you.

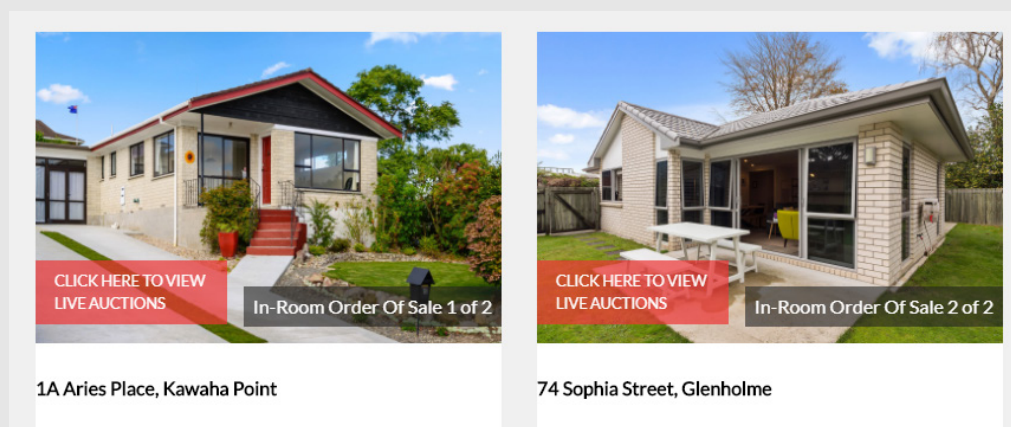
# EVES Website Auction Livestream Guide

## Step 1

✓ Connect to [www.eves.co.nz](http://www.eves.co.nz) and click on Upcoming Live Auctions on the homepage as below.

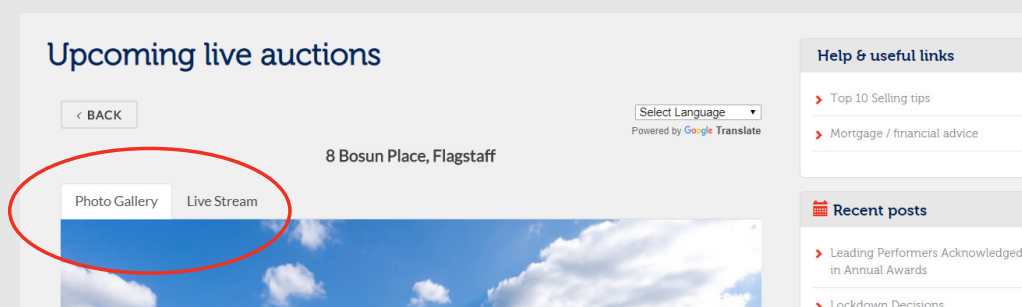


This will take you to a landing page with property photos as shown below.



## Step 2

✓ Click on **"Click here to view live auctions"** in the first photograph. (In the event that you join the livestream after the auctions have commenced, scroll down to the highlighted property to join the current livestream) This will take you to the following page where at the top of the photograph you will see two tabs – Photo Gallery and Live Stream as circled in red below. The Photo Gallery enables you to scroll through the photos of the respective property - the Live Stream tab triggers the Live Video.



## Step 3

✓ Click the Live Stream tab. A small red dot next to this tab will flash red once Streaming has commenced and you will be able to watch the auctions live from start to finish. Don't be alarmed if you can't hear anything before the Auctioneer starts calling as the video microphone will be on mute.

**Important points to note:** You must obtain access via Google Chrome as the livestream system does not recognise other web browsers like Firefox etc. Secondly, if you have any restrictions placed on YouTube i.e. restricted access for children these must be cleared before you will be able to connect.

DISCLAIMER: The information contained in this document is not intended to form professional legal advice or legal opinion on any particular matter.

### 1. General

- 1.1 When conducting the sale of a property by auction, members shall not engage in any conduct which is misleading or deceptive or is likely to mislead or deceive. This principle applies to conduct prior to, at and after the auction.
- 1.2 Nothing in this Guide limits or diminishes members' obligations to report suspected misconduct or unsatisfactory conduct of a licensee to the Real Estate Agents Authority as required under the Real Estate Agents Act 2008 and/or its regulations.

### 2. Before the Auction

- 2.1 Members shall not advertise a property as being for sale by auction unless there is intended to be an auction and unless a written auction authority form has been duly executed by or on behalf of the seller.
- 2.2 Members shall provide a copy of this Best Practice Guide to prospective sellers prior to having them sign the auction authority.
- 2.3 Sellers must sign an acknowledgment of acceptance of the terms of this Guide, which shall form part of the auction authority.
- 2.4 Prior to the auction, the member shall make available for inspection the terms and conditions under which the sale of the property by auction will be undertaken.
- 2.5 If applicable, the member shall specify in such terms and conditions of sale that the seller reserves the right to bid either personally or through an agent.
- 2.6 The member shall make this Guide available for inspection prior to the auction.
- 2.7 Members must make reasonable endeavours to inform all interested parties if a property is to be withdrawn from auction or is to be sold prior to auction.

### 3. At the Auction

- 3.1 The auctioneer shall conduct the auction at all times with integrity and in compliance with the law of New Zealand and this Guide.
- 3.2 The terms and conditions of sale shall be on display and available for inspection, together with this Guide, at the auction. Any portion of the terms and conditions of sale relating to the description of the property will be read aloud by the auctioneer at the commencement of the auction of that property.
- 3.3 Before commencement of the bidding for a property, the auctioneer shall announce whether the seller has set a reserve price. The reserve price, if any, shall not be disclosed to bidders.
- 3.4 Before commencement of the bidding for a property, the auctioneer shall announce whether the seller has reserved the right to bid one or more times at any level below the reserve price at the auction and, if so:
  - (a) Whether the member has been appointed to bid on behalf of the seller and, in such case, that all bids made on behalf of the seller will be made and declared by the auctioneer; or
  - (b) Whether the seller or some other person will be bidding on behalf of the seller and shall identify that person in which case any bid made by that person shall be declared by the auctioneer.

Neither the member nor any salesperson engaged by the member shall make or assist any other person to make any bid on behalf of the seller in contravention of any announcement by the auctioneer pursuant to this clause. The member, or any salesperson engaged by the member, shall immediately advise the auctioneer of any bid which they believe to be made in contravention of this clause.

- 3.5 Where the seller does not provide the auctioneer with a written reserve prior to the auction, the auctioneer shall announce that the property is to be sold without reserve and no bid shall be made by or on behalf of the seller at the auction.
- 3.6 In making a bid on behalf of the seller at the auction, the auctioneer shall exercise his/her independent judgement.
- 3.7 Where in advance of the auction, any contractor/employee of the member or the auctioneer has been requested to bid for a prospective buyer, whether that buyer is present or absent, the auctioneer will announce that fact and identify those contractors/employees who will be so bidding.
- 3.8 The auctioneer shall ensure that the amount of any bid is clearly stated.
- 3.9 The auctioneer may refuse any bid.
- 3.10 The auctioneer shall resolve any disputed bid in accordance with the terms and conditions of sale governing the auction. If such terms and conditions do not specify how disputed bids are to be resolved, then the auctioneer shall resolve any disputed bid in accordance with the Particulars and Conditions of Sale by Auction 4th Edition (or any document approved by the REINZ in substitution thereof).
- 3.11 Under no circumstances will a bid by or on behalf of the seller be exercised by the auctioneer at or in excess of the seller's reserve price.
- 3.12 The auctioneer will always clearly announce if the property is about to be sold under the hammer.
- 3.13 Subject to the reserve price being reached, the highest bidder shall be the buyer.
- 3.14 If the seller so instructs, the auctioneer will announce during the course of the auction that in the event of the property being passed in the highest bidder will have the first right of purchase of the property at the seller's reserve price.

#### **4. After the Auction**

- 4.1 If a property is passed in at auction, no post auction advertising for the property shall make any reference to any seller bid made for the property at the auction.

# Registration of Interest & Telephone Bidding Authority

**PROPERTY ADDRESS** ..... 203 Hot Water Beach Road, Whitianga, Coromandel .....

**AUCTION DATE** ..... Thursday, 4th February, 2021 .....

**PURCHASER(S) NAME(S)** .....

**PHONE** ..... **LAWYER** .....

**AGENT(S) NAME(S)** .....

**1. I WOULD LIKE TO** ☐ Register my interest ☐ Bid by telephone

**2. I/we acknowledge and confirm that I/we have** ☐ Obtained ☐ DO NOT require (tick one) OIA Consent in accordance with the Overseas Investment Act 2005.

Please keep me/us fully informed regarding the above property including changes to auction date and pre-auction negotiation and potential prior sales, unless you are instructed otherwise by the Vendor.

Should for some reason I/we are not able to be in the room on auction day, I/we request that EVES Realty Limited accept bidding from me/us via the telephone subject to the vendor's approval.

I/we understand that if the bidding on my/our behalf is successful at auction then I/we agree to be bound as Purchaser(s) of the property under the Terms and Conditions of sale that apply to that property, and that the Auctioneer acting on behalf of EVES Realty Limited is authorised to sign the Contract of Sale on my/our behalf and I/we agree to pay the deposit, by bank cheque or electronic transfer to EVES Realty Ltd Trust Account by 1.00 pm (time being of the essence) on the first working day following the Auction.

I/we acknowledge that I/we have been supplied and had reasonable time to consider a copy of the REA Property Sale and Purchase Agreement Guide and the subject Contract of Sale. I/we further acknowledge that at the time we entered into this Registration of Interest I/we did so freely and voluntarily, without any influence or duress.

I/we understand that EVES Realty Limited is the agent to the vendor and that as such the agent is obliged to disclose to the vendor any information which the vendor may be entitled to in relation to the sale of the vendor's property.

## Signed

Purchaser: ..... Dated: ..... / ..... / 20 ..... at ..... am/pm

Purchaser: ..... Dated: ..... / ..... / 20 ..... at ..... am/pm

Purchaser: ..... Dated: ..... / ..... / 20 ..... at ..... am/pm

## Signed (authorised by Vendor/s)

Vendor: ..... Dated: ..... / ..... / 20 ..... at ..... am/pm

Vendor: ..... Dated: ..... / ..... / 20 ..... at ..... am/pm

Vendor: ..... Dated: ..... / ..... / 20 ..... at ..... am/pm

Updated: 8 November 2019

# Purchasers Authority for Another Person to Bid on Their Behalf at Auction

**PROPERTY ADDRESS** ..... 203 Hot Water Beach Road, Whitianga, Coromandel .....

**AUCTION DATE** ..... Thursday, 4th February, 2021 .....

I/We: ..... (print full name of purchaser/s)

Hereby appoint and authorise: ..... (print full name of authorised person)

to bid on my behalf at the auction of the above property. In consideration of acceptance of my bids through my duly authorised person I undertake that should I be the highest bidder and become the successful purchaser I authorise the Auctioneer to sign the contract of sale on my behalf. I acknowledge and accept that my bids through my duly authorised person are binding upon me in terms of the Particulars and Conditions of Sale, which I have studied and accept, in the same manner as if I was personally present at the auction. I further undertake to pay the deposit to EVES Realty Limited Trust Account by 1pm (time being of the essence) on the first working day following the auction.

**I/we acknowledge and confirm that I/we have** ☐ **Obtained** ☐ **DO NOT require** (tick one) OIA Consent in accordance with the Overseas Investment Act 2005.

I/We acknowledge that this authority is subject to the consent of the vendor as outlined below.

I/We acknowledge that I/We have been supplied and had reasonable time to consider a copy of the REA property Sale and Purchase Agreement Guide and the subject Contract of Sale.

## Signed

Purchaser(s): ..... Date: .....

My residential address is: .....

My telephone numbers are: .....

Lawyer: .....

## Authorised Nominated Bidder

I: ..... accept appointment as authorised person as above.  
(print full name of authorised person)

Signed: ..... Date: .....  
(authorised person)

## Vendors Consent

I/We: ..... As vendor(s) of the property hereby approve the authorised person to bid on behalf of purchaser and to the special provisions contained herein.

Signed: ..... Date: .....  
(Vendor/s)

Updated: 8 November 2019

# Variation to Standard Particulars and Conditions of Sale

**VENDOR** .....

**BIDDER(S)** .....

**ADDRESS OF PROPERTY** 203 Hot Water Beach Road, Whitianga, Coromandel .....

**DATE OF AUCTION** Thursday, 4th February, 2021 .....

I/we the undersigned hereby agree to the bidder(s) named herein, to bid on our property on the basis of the following variation(s) to the Particulars and Conditions of Sale.

## **Variation(s) as follows:**

**SETTLEMENT DATE** .....

**DEPOSIT PAYABLE** .....

**VENDOR WARRANTIES** .....

**OTHER** .....

## **Signed**

Bidder(s): ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Bidder(s): ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Bidder(s): ..... Dated ..... / ..... / 20 ..... at ..... am/pm

## **Signed**

Vendor: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Vendor: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Vendor: ..... Dated ..... / ..... / 20 ..... at ..... am/pm

Updated: 31 October 2017



# Can you buy a home in New Zealand to live in?

**Most overseas people are not able to buy homes in New Zealand to live in, but some can apply to the Overseas Investment Office for consent.**

**You don't need consent if...**



- You are a New Zealand, Australian or Singaporean citizen.
- You have a New Zealand, Australian or Singaporean Permanent Resident visa and live in New Zealand.\*
- You have a New Zealand Resident visa and live in New Zealand.\*

\*You have lived in New Zealand for at least 183 days in the past 12 months.

**You must apply for consent to buy one home to live in if...**



- You have a New Zealand Permanent Resident or Resident visa and do not live in New Zealand.\*
- You have an Australian or Singaporean Permanent Resident visa and do not live in New Zealand.\*

\*To get consent you'll need to live in New Zealand, and if you stop living here, you'll have to sell.

**You can't buy one home to live in if...**



- You have a Temporary visa, such as a visitor, student, working holiday, or work visa (you don't have a Permanent Resident or Resident visa).

There are other ways you may be able to invest in property.

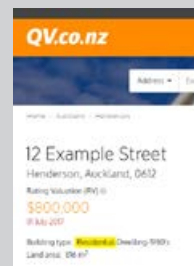
## Check if you can buy

Visit the Ministry of Business, Innovation & Employment website at <https://www.newzealandnow.govt.nz/overseas>



## What types of homes are affected?

These laws apply to homes that are classed as 'residential' or 'lifestyle' on the District Valuation Roll. You can check properties on websites, such as [www.qv.co.nz](http://www.qv.co.nz), or ask the local council.



## Everyone must make a 'Statement'

All buyers must complete a Residential Land Statement to say whether they are eligible to buy. Your conveyancer can help you do this.

If you must apply or cannot buy, it is especially important that you first talk to your conveyancer before you sign the sale and purchase agreement. If you need to sign it urgently, you can make the agreement conditional on the consent of the Overseas Investment Office.

If you need consent, but sign an unconditional agreement without it, you may face significant penalties. If you make a false statement, you could be fined up to \$300,000.

## Apply for consent

To apply to the Overseas Investment Office for consent to buy one home to live in visit [www.linz.govt.nz/oio/live](http://www.linz.govt.nz/oio/live).

## Learn more

This leaflet gives general guidance for people who want to buy a home to live in. There are special rules for overseas people who want to invest in New Zealand property, but not live in it, including buying rental property or land that is rural or next to a lake, river, reserve or the sea.

These rules are complex, and you will need the help of a New Zealand property lawyer. Visit the Overseas Investment Office at [www.linz.govt.nz/oio](http://www.linz.govt.nz/oio) to learn more.

## 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](mailto:oio@linz.govt.nz)

**Website address:** [www.linz.govt.nz/oio](http://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

---



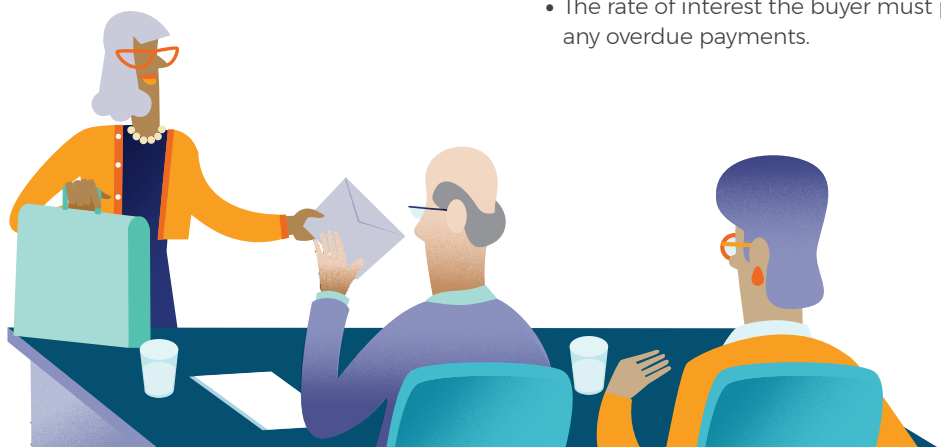
- A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property.
- You must sign a written sale and purchase agreement to buy or sell a property.
- You need to read and understand the sale and purchase agreement before you sign it.
- 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**

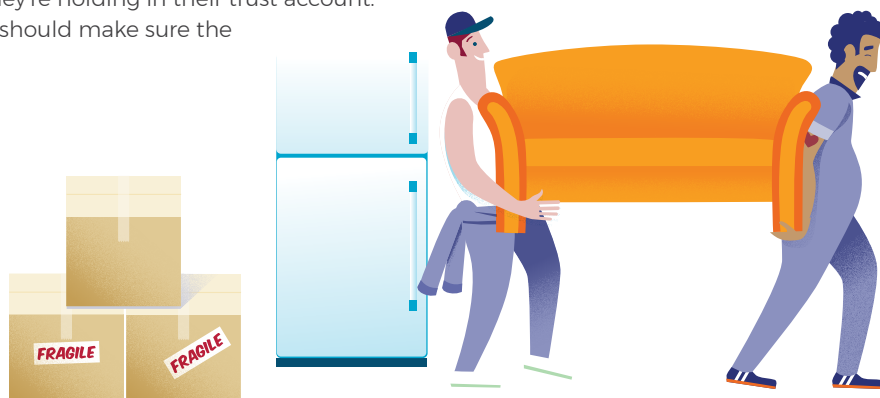
The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer.

## **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).<sup>\*</sup> 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.

<sup>\*</sup> Settled.govt.nz is brought to you by REA.

Call us on  
0800 367 7322,  
email us at  
[info@rea.govt.nz](mailto:info@rea.govt.nz)  
or visit us  
online at  
[rea.govt.nz](http://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](http://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](http://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](http://communitylaw.org.nz)

Citizens Advice Bureau  
[cab.org.nz](http://cab.org.nz)

Consumer Protection  
(Ministry of Business, Innovation and Employment)  
[consumerprotection.govt.nz](http://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](http://rea.govt.nz).



# Agent Profile



## Durrelle Green

Eves Real Estate (KatiKati), Cnr Jocelyn Street and Main Road

+64 7 549 3769

027 949 3725

durrelle.green@eves.co.nz

<http://durrellegreen.eves.co.nz>

Raised on a farm, I have an incomparable passion and understanding of our rural landscape. Surrounded by horses, tractors and cattle, I had a "Jack of all Trades" practicality instilled in me from a young age. I've always been entrepreneurial, starting my own furniture painting business at just 17, so it seemed only natural when my career progressed into real estate. I enjoy what I do and find it incredibly rewarding combining the things I love, with the skills I've gained. It allows me to help my clients bring their dreams to life.

My background is varied and colourful (literally), and I've cultivated a career in the art and farming industries. I thrive on personal growth and during my time managing and owning a variety of small companies, developed astute communication skills, and perfected the art of skilful negotiation. Teamed with my ambitious enthusiasm, I'm able to provide a superior level of service and achieve the very best results for my clients. I'm a bit like Cupid - successfully playing matchmaker between buyer and seller.

Surrounded by beaches, picturesque countryside and a fantastic lifestyle, there's so much to love about the Bay of Plenty. But what I love most is the people - the incredible support I've received from friends and family is astonishing.

Since joining the team at EVES, I have established and nurtured a strong network of clients, built from foundations based on honesty and trust.

My younger sister and professional assistant Anna brings her own qualities and enthusiasm to team 'Green'. Her balancing skill set completes and enhances the level of service we offer to the real estate industry. Working as a family, we share the same values and principles; respect, trust and above all - belief in one another. Together we have a

common goal: to consistently deliver outstanding results and achieve the best result when it comes to your greatest asset.

You can be confident that I have both the capacity and the level of care to achieve the best result for you and your biggest asset.

# Agent Feedback



## Durrelle Green

Eves Real Estate (KatiKati), Cnr Jocelyn Street and Main Road

+64 7 549 3769

027 949 3725

durrelle.green@eves.co.nz

<http://durrellegreen.eves.co.nz>

### Carl Bullivant and The Dreschlers

*Our family were looking for our special slice of paradise in the Western Bay of Plenty for over 16 months. During that time and numerous encounters with varied and rude real estate agents, from the get go, Durrelle always made us feel at ease. She went above and beyond to help us, always put us first and gained our respect from day one.*

*We went through it all with her: a failed tender offer and one close but lost auction attempt. Despite the heartache, she stuck with us and told us she would find us our property one way or another. Being a lady of her word, she finally sold us our orchard in Katikati. Our dream property. Woohoo!!*

*Where other real estate agents seemed slightly arrogant and only after a cheque, Durrelle's classic Kiwi vibe and character were a welcoming change. With her cute dog Charlie in toe, her distinctive bright green Jeep and her red band gumboots, she's as much a part of Katikati and the surrounding areas as the Kaimai ranges!*

*We are all extremely grateful for her (and her lovely assistant Anna's) efforts and highly recommend their services to anyone looking to buy or sell. Durrelle has a wide range of contacts, knows the area better than anyone we meet and has a vast knowledge of avocados and orchards. If you want to get serious and find a house or sell, don't beat around the bush... go see the Green team!*

### Carl Bullivant and The Dreschlers

*A big thank you to Durrelle and the Green Team, also the team at the auction rooms.*

*Together they got us a result we did not even hope to achieve, and it would not have happened without their expert guidance. Well done Eves.*

*Durrelle is loud and never wastes a minute. She has awesome and inspiring energy and confidence and is literally 'on the run' working day and night. No one could have got more attention for the property and the sale came from her database of nurtured*

*prospective buyers.*

*Vendors do not get 'pampering' from Durrelle – they get results!! She runs things in her own unique way- trust her- it works.*

*We would definitely recommend Durrelle to anyone thinking of selling.*

### Ann & Bob

*We became aware of Durrelle and Eves through the successful sale of a local avocado orchard.*

*From the first meeting, we knew Durrelle was the agent for us, her knowledge of avocados was a very important factor, as was her and Annas enthusiasm and assurance that the sale process would be stress-free and enjoyable- which it was.*

*The large advertising board at the end of the road and the awesome photos on the internet drew many positive comments from many people.*

*From listing on 2/11/18 to a successful sale at auction on 7/12/18 the whole process for us was a breeze. We highly recommend The Green Team from Eves Katikati.*

### Stewart and Kate (owners)



# LOVE TO OWN YOUR OWN HOME?

Buying a home doesn't have to be as daunting as it sounds. Deciding on a place to live is one of the biggest yet most exciting decisions you will make.



**Let our Mortgage Advisers focus on finding you the finance, so you can focus on finding the home. Using an Adviser offers a lot more freedom and flexibility and is likely to result in a better financial outcome in the short and long term.**

## Key areas we can assist with include;

- + Finding the right lender to suit your goals.
- + The process you'll go through from working out your budget to moving in.
- + How to get started with a deposit and how KiwiSaver can help.
- + How much you can borrow.
- + What your repayments would be to meet goals.
- + The types of loan and how best to structure yours.
- + How to protect against the unexpected.


Life doesn't always go to plan – babies arrive, illness can strike and interest rates can change. We take a 360-degree view of your life and find the best solution for you so that you can have greater financial certainty.

## Let's talk.

It doesn't matter if this is your very first home or an addition to your investment portfolio. Take the time now to talk to one of our trusted Advisers to secure a home loan that will work for you now and in the future.

**Call us on 0800 656 466**

Level 1, ANZ Building, 247 Cameron Rd, Tauranga

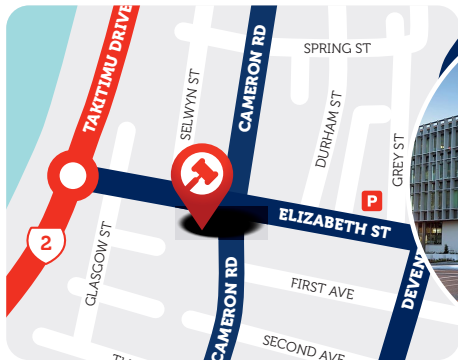
 Helping our clients create greater financial certainty through all life stages. 

**Lifetime**   
Advice For Life

[lifetime.co.nz](https://lifetime.co.nz)

A disclosure statement is available on request and free of charge by calling 0800 65 64 66.

# Our Auction Rooms



## Tauranga 247 Cameron Road

We have parking available at the back of 247 Cameron Road. There is also parking available in First Avenue or in the parking building on Elizabeth Street. (P)

Elizabeth Café & Larder is on the same floor as the auction room so if you have some time to spare, pop in for lunch or maybe just a coffee.

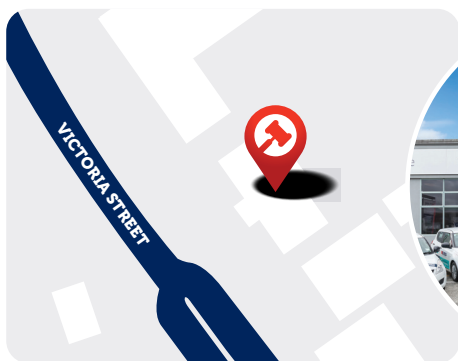
Contact your agent for further details.



## Rotorua Cnr Eruera & Amohia Street

There is metered parking within the immediate area surrounding our office, however there is free parking a short stroll from the office in Eruera Street over the other side of Randolph Street. Capers and Abracadabra cafés are close by for a bite to eat or a coffee.

Contact your agent for further details.



## Hamilton (Waikato) 1030 Victoria Street

Limited parking is available at our Victoria Street entrance, however we have ample parking available at the rear of the building which is accessible from Hardley Street.

There are numerous bars and cafés, a petrol station and supermarkets in close proximity for refreshments either prior to, or to celebrate after the auction.

Contact your agent for further details.

**PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION**

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

**AUCTION DETAILS**

Auctioneer: **Eves Realty Limited**

Place of Auction: **247 Cameron Road, Tauranga**

Date and Time of Auction: **Thursday 4th February 2021 at 1PM**

Licensed Real Estate Agent acting for Vendor: **Eves Realty Limited**

**Vendor: Refer Further Terms**

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: **203 Hot Water Beach Road, Whitianga, Thames-Coromandel**

Estate: **FREEHOLD**

**STRATUM-IN-LEASEHOLD**

**LEASEHOLD**

**CROSS-LEASE (FREEHOLD)**

**STRATUM-IN-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):**

**Lot/Flat/Unit:**

**DP:**

**Record of Title (unique identifier):**

**34.6132ha**

**Refer the Further Terms of Sale for legal description**

**TENANCIES**

**Yes/No**

**Name of Tenant(s):** Seeka Limited - Refer to attached Value Plus Lease

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 14.0): **Same as settlement date**
- 1.4 The settlement date is: **25th February 2021 or such other date as mutually agreed between both parties**
- 1.5 The interest rate for late settlement is **14.00** % p.a.

**2.0 Conduct of auction**

- 2.1 The property is offered for sale subject to a reserve price and, subject to the reserve price being met, the highest bidder whose bid is accepted by the auctioneer shall be the purchaser.
- 2.2 The auctioneer may nominate the sum by which the bidding can be raised.
- 2.3 The auctioneer may refuse any bid.
- 2.4 The auctioneer or the licensed real estate agent acting for the vendor in respect of the sale may submit a bid on behalf of any person. The auctioneer shall identify a person so acting before the commencement of bidding.
- 2.5 The vendor may bid personally, or by a representative, or through the auctioneer, provided that the bid is less than the reserve price. The auctioneer shall identify each vendor bid as it is made.
- 2.6 The vendor may withdraw the property at any time before it has been sold and without declaring the reserve price.
- 2.7 If a dispute arises concerning any bid, the auctioneer may determine the dispute or re-offer the property at the last undisputed bid.
- 2.8 The purchaser shall immediately on the completion of the auction:
  - (a) sign the Memorandum of Contract, failing which the auctioneer may sign on behalf of the purchaser;
  - (b) pay to the vendor's licensed real estate agent the deposit being 10% of the purchase price unless otherwise agreed; and
  - (c) complete its GST information in Schedule 1, if applicable.

**Release date: 16 July 2020**

© AUCKLAND DISTRICT LAW SOCIETY INC. & REAL ESTATE INSTITUTE OF NEW ZEALAND INC. All Rights Reserved. See full terms of copyright on the back page.

EKTC07269 - 22038

# 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 front page, 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) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (27) "Rules" means body corporate operational rules under the Unit Titles Act.
- (28) "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.
- (29) "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.
- (30) "Settlement date" means the date specified as such in this agreement.
- (31) "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.
- (32) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (33) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (34) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (35) "Unit title" means a unit title under the Unit Titles Act.

- (36) "Unit Titles Act" means the Unit Titles Act 2010.
- (37) "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 on the front page 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 to the vendor's licensed real estate agent immediately on the completion of the auction or, where the property has been sold prior to, or subsequent to, the auction, on the execution of this agreement by both parties, time being of the essence.
- If the deposit is not paid as set out in subclause 4.1, 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 If the property is a unit title, the person to whom the deposit is paid shall hold it as a stakeholder until:
- (1) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act; and
  - (2) 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 cancelled pursuant to sections 36 or 37 of the Contract and Commercial Law Act 2017; or
  - (4) where 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 11.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to subclause 11.8);
  - (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 11.0.

**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 11.0.

**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 11.8 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 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 this agreement, 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 outgoing 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 Claims for compensation

- 11.1 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 11.0.
- 11.2 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.
- 11.3 To make a claim under this clause 11.0:
  - (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.
- 11.4 If the claimant is unable to give notice under subclause 11.3 in respect of claims under subclause 11.2(1) or subclause 11.2(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 12.1.
- 11.5 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.
- 11.6 If the purchaser makes a claim for compensation under subclause 11.2(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 11.3, 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.
- 11.7 If the purchaser makes a claim for compensation under subclause 11.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 11.6, the vendor is deemed to have accepted that the purchaser has a right to make that claim.

- 11.8 If it is accepted, or determined under subclause 11.6, that the purchaser has a right to claim compensation under subclause 11.2(1) but the amount of compensation claimed is disputed, or if the claim is made under subclause 11.2(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.
- 11.9 Where a determination has to be made under subclause 11.6(2) or subclause 11.8(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.
- 11.10 The procedures prescribed in subclauses 11.1 to 11.9 shall not prevent either party from taking proceedings for specific performance of the contract.
- 11.11 A determination under subclause 11.6 that the purchaser does not have a right to claim compensation under subclause 11.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 11.12 Where a determination is made by a person appointed under either subclause 11.6 or subclause 11.8, 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.

## 12.0 Notice to complete and remedies on default

- 12.1 (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 11.0 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.
- 12.2 Subject to subclause 12.1(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.
- 12.3 (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 12.1.
- (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.
- 12.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 12.1(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 12.4(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.

12.5 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.

12.6 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.

12.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.

12.8 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.

### 13.0 Non-merger

13.1 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.

### 14.0 Goods and Services Tax

14.1 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 on the front page of this agreement 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).

14.2 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.

14.3 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, 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 12.1.

(3) The vendor may give a settlement notice under subclause 12.1 with a notice under this subclause.

### 15.0 Zero-rating

15.1 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.

15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.

- 15.3 Where the particulars stated on the front page and 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.
- 15.4 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.
- 15.5 (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.
- 15.6 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.
- 15.7 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 15.3 and 15.4 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.
- 15.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of subclause 15.3 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 15.3 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).

## 16.0 Supply of a going concern

- 16.1 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%.
- 16.2 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 14.0 of this agreement shall apply.

## 17.0 Limitation of liability

- 17.1 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").
- 17.2 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.

## 18.0 OIA Consent not required

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

**19.0 Counterparts**

- 19.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 19.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 19.3 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.
- 19.4 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.

**20.0 Agency**

- 20.1 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.
- 20.2 The scope of the authority of the agent under subclause 20.1 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.
- 20.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

**21.0 Collection of sales information**

- 21.1 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).
- 21.2 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.
- 21.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 21.4 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](mailto:info@reinz.co.nz) or by post or telephone.



**FURTHER TERMS OF SALE**

Legal Description: Firstly an estate in fee simple in all that parcel of land containing 16.1874 hectares more or less being Part Allotment 4 Parish of Hahei being comprised and described in Certificate of Title SA21D/864 (South Auckland Registry).

Secondly an estate in fee simple in all that parcel of land containing 18.4258 hectares more or less being Part Allotment 4 Parish of Hahei being comprised and described in Certificate of Title SA21D/865 (South Auckland Registry).

**22.0 Vendors Legal Name**

Johanna Hendrina Barbera Bonnar and Erin Renee Thorne as to a 1/2 share as Executors

Johanna Hendrina Barbera Bonnar and Brian Webster Trustee Limited as to a 1/2 share as Trustees of the Bonnar Orchard Trust

**23.0 23.1** As at the date of this agreement, the Bay of Plenty is at Alert Level One of the COVID-19 Alert System (the Alert Level) as a result of the COVID-19 pandemic (the Pandemic). Under Alert Level One, 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** The Vendor shall not remove any improvement or fixture from the land including but not by way of limitation any building, wireless or television aerial and wiring, oven and/or stove, part of the existing water supply including troughs and tanks, fences and gates or other fixtures.**25.0** The parties acknowledge that for GST purposes the value of the dwelling house on the property excluding house chattels and value of the curtilage not exceeding 4000m<sup>2</sup> is \$750,000 and that such house and curtilage are included in the purchase price evidenced by this agreement.**26.0** The Vendors shall from the signing of this agreement until possession date maintain at their expense the orchard on the land in a good husbandlike manner commensurate with good orchard practice in the local district and shall maintain the export spray programme applicable to the orchard, keep the spray diary up to date and make the spray diary and fertiliser history available to the Purchasers upon settlement. The Vendors will not do or permit to be done and act matter or thing which may in any way adversely affect the orcharding business being carried out on the land or the carrying on of the same by the Purchasers.**27.0** The Vendor acknowledges that the entire Kiwifruit Crop growing on the land and the nett proceeds shall belong to the Purchaser. If any crop Proceeds are due to be paid to the Vendor prior to the settlement date. The Vendor warrants that there will be no crop liens or securities in existence at settlement date in respect of the crop.  
(Subject to the Value Plus Lease with Seeka Limited dated 2nd May 2019.)

## FURTHER TERMS OF SALE

### 28.0 G.3 Licences

Included in the purchase price is the Vendors Zespri New Zealand Grower Licences for the kiwifruit cultivar known as ZESY002(G3) ("the G3 Licence")

(a) The Vendor shall transfer to the Purchaser the benefit of the G3 Licences;

(b) The Purchaser shall within 5 working days of this Agreement being signed, sign and deliver to the Vendor a "Transfer Application Form - Sale or Transfer of Property" form and the provisions of Clause 12 in the G3 Licences (attached) shall apply;

(c) The Vendor warrants that by the date of settlement the G3 Licences are unencumbered. The Vendor warrants that it shall pay any remaining instalments due to Zespri for the G3 Licences by the date of settlement;

(d) The Vendor warrants that it is licenced for 11.23 hectares for ZESY002(G3) and that the actual G3 area on the property subject to this Agreement is 11.23 can. ha.

(e) The parties agree the G3 Licences sold with the property have a value of \$4,255,047 plus GST for 11.23 can. ha.

### 29.0 The Vendors agree to complete all Globalgap documentation relating to the property the subject of this agreement, in accordance with Zespri Group Limited specifications and deliver it to the Purchasers by date of settlement.

The Vendors warrant that the property complies with the Globalgap standards required by Zespri International Limited to be able to export the kiwifruit crop and that the property has been audited and passed by the appropriate authority.

### 30.0 The Vendor warrants that he will apply the export spray programme relating to the Class 1 crop protection standard of the Zespri Group Ltd up to the possession date, and has kept the spray diary up to date and will deliver it to the Purchaser upon settlement.

### 31.0 The Vendor shall on the day of settlement disclose to the Purchaser any amount of development expenditure (if any) which shall not have been written off for taxation purposes as at the day of settlement of this Agreement.

Development - Agbeams- \$120,913  
 Development - Water Reservoir 2015 - \$35,346  
 Development - Frost Protection- \$5,147  
 Development - Underground Water- \$6,651  
 Development - Fencing Structures- \$24,109  
 Development - Dam- \$7,348  
 Development - Drainage- \$24,562  
 Development - Vines- \$1,485  
 Development - Grafting- \$22,372  
 Development Costs - 2 Bores- \$10,792

### 32.0 Included in this agreement for sale and purchase without further consideration are the following orchard chattels now situated on the property valued for GST purposes as specified:

2008 Yamaha AG100 Motorbike \$500  
 Burkhart Spreader \$800  
 Diesel Tank \$3,100  
 Portable Diesel Tank \$400  
 Gallagher Fence Unit \$900  
 Berands Slasher \$1,500  
 Frost Protection -Irrigation Diesel Unit \$13,500  
 Frost Protection - Various Pumps \$1,000  
 Flow Meter Telemetrics \$3,800  
 Submersible Bore Pump \$3,800  
 Irrigation Motor & Pump \$4,500  
 Irrigation Piping \$16,000

## FURTHER TERMS OF SALE

### 33.0 Lease/Management

The Purchaser agrees that:

(a) Seeka Limited (Seeka) shall continue with the existing Value Plus Lease in relation to the orchard ending 31 May 2022;

(b) The Purchaser shall within 5 working days of this Agreement being signed, sign and deliver to the Vendor a deed of novation in the form attached to this Agreement for novation of the Value Plus Lease dated 2 May 2019 to the Purchaser.

### 34.0 PSA

The Vendor gives no warranties or representations in relation to the property being free from PSA or infected by PSA. The Vendor shall not be liable in any way to the purchaser for any direct or indirect losses incurred by the purchaser as a result of the property being infected by PSA now or in the future. The purchaser relies on their own judgement and investigations of the property.

### 35.0 KPIN Transfer

Both parties agree to take all steps necessary and liaise with Zespri Group Limited to ensure the smooth transition of the KPIN applicable to the property from the vendor to the Purchaser as at the date of settlement.

DRAFT

Copyright

July 2020

Auckland District Law Society Inc & Real Estate Institute of New Zealand Inc

**SCHEDULE 1****(GST Information – see clause 15.0)**

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.

<b>Section 1 Vendor</b>	
1(a) The vendor's registration number (if already registered): 104-338-631	
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
<b>Section 2 Purchaser</b>	
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
<b>If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)</b>	
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
<b>OR</b> 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
<b>If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.</b>	
<b>Section 3 Nominee</b>	
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
<b>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.</b>	
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
<b>OR</b> 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	

Heat Pumps x 2, HRV

Excluded chattels : 3 x lead light shades

**SCHEDULE 3****Residential Tenancies**

**Name of Tenant(s):** Seeka Limited - Refer to attached Value Plus Lease

**Rent:**

**Term:**

**Bond:**

**Commercial/Industrial Tenancies**  
(If necessary, complete on a separate schedule)

**1. Name of Tenant(s):**

**Rent:**

**Term:**

**Right of Renewal:**

**Other:**

**2. Name of Tenant(s):**

**Rent:**

**Term:**

**Right of Renewal:**

**Other:**

## MEMORANDUM OF CONTRACT

## Date of Memorandum:

At the auction of the property, or prior to, or subsequent to, the auction (*delete as applicable*),

## PURCHASER'S NAME:

and/or nominee ("the purchaser")

became the purchaser of the property by being the highest bidder, or by agreeing with the vendor to purchase the property.

The vendor agrees to sell and the purchaser agrees to purchase the property and the chattels included in the sale for the purchase price stated below in accordance with these Particulars and Conditions of Sale, General Terms of Sale and Further Terms of Sale (if any).

Purchase price: \$

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

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

Deposit: \$ **10% of the Purchase Price**

## 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.

## Signature of purchaser(s) or auctioneer:

\_\_\_\_\_  
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*

## Signature of vendor(s) or auctioneer:

\_\_\_\_\_  
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*

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

**BEFORE BIDDING AT THE AUCTION**

If you are the successful bidder or you sign this agreement before or after the auction this sale will be legally binding on you.

If you are the successful bidder, the auctioneer may sign the Memorandum of Contract on your behalf if you should fail or refuse to do so.

- It is recommended you seek professional advice before bidding or, if you sign this agreement before or after the auction, before signing. This is especially so if:
  - there are any doubts.
  - 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.
  - 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 at which you are bidding.
- 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 Auction in clause 2.

**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 ENTERING A BID AT THE AUCTION.**

**PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF BECOMING THE SUCCESSFUL BIDDER AT THE AUCTION.**

**PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION**

© The copyright to the form is owned by the Real Estate Institute of New Zealand Incorporated and Auckland District Law Society Incorporated

**DATE:****Address of Property:**

203 Hot Water Beach Road, Whitianga, Thames-Coromandel

**VENDOR:**

Refer Further Terms

**Contact Details:**

Phone Pvt: 0274663726 Johanna

Phone Bus: jhbbonnar@xtra.co.nz; erin@thorneaccounting.co.nz

**VENDOR'S LAWYERS:**

Firm: Miller Poulgrain

Individual Acting: Brian Crabb

Email: brian@millerpoulgrain.co.nz

Contact Details: Ph: 07 863 6046 Mob: 027 868 2041

**Email Address for Service of Notices:**

(subclause 3.4)

brian@millerpoulgrain.co.nz

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

Firm:

Individual Acting:

Email:

Contact Details:

**Email Address for Service of Notices:**

(subclause 3.4)

Auctioneer: Eves Realty Limited

Licensed Real Estate Agent listing property:  
Eves Realty Limited

Manager: David Sylvester

Salesperson: Durrelle Green (027 949 3725)

Contact Details:

Cnr Jocelyn Street and Main Road Katikati 3129

Phone: 07 549 0052 Fax: 07 549 0864

Email: katikati@eves.co.nz

© Auckland District Law Society Inc. (ADLS) & Real Estate Institute of New Zealand Inc. (REINZ)

**IMPORTANT WARNING:** All copyright in and associated with this form and its contents is owned by ADLS & REINZ. A user of this form only acquires a limited non-exclusive licence to use it *once within a single transaction only*. The standard ADLS & REINZ contract terms apply, which also prohibit any form of distribution, on-selling, or reproduction, including copying, digitising or recreating the form by any means whatsoever.

ADLS & REINZ monitor the use of this form and may take enforcement action against any person acting in breach of these obligations. Copying or digitising this form and altering its standard text, without clearly identifying the alterations, is prohibited, and, in addition to copyright infringement, may also be a breach of the Fair Trading Act 1986 and misrepresentation.



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

**Limited as to Parcels**

**Guaranteed Search Copy issued under Section 60 of the Land  
Transfer Act 2017**



  
R.W. Muir  
Registrar-General  
of Land

**Identifier** SA21D/864  
**Land Registration District** South Auckland  
**Date Issued** 22 February 1977

**Part-Cancelled**

**Prior References**

SA1092/223

---

**Estate** Fee Simple  
**Area** 16.1874 hectares more or less  
**Legal Description** Part Allotment 4 Parish of Hahei

**Registered Owners**

Johanna Hendrina Barbera Bonnar and Erin Renee Thorne as to a 1/2 share as Executors  
Johanna Hendrina Barbera Bonnar and Brian Webster Trustee Limited as to a 1/2 share

---

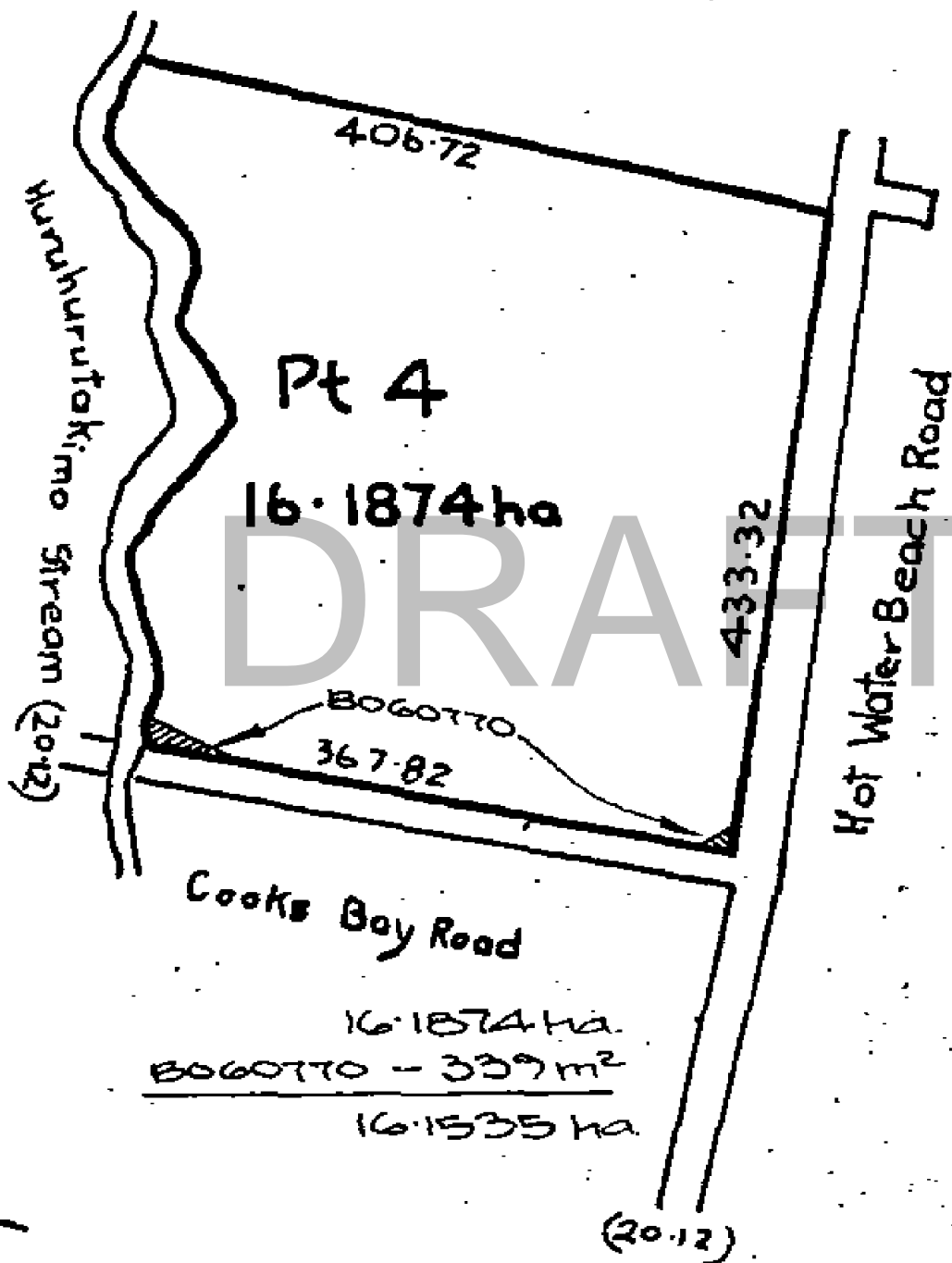
**Interests**

B037485 Compensation Certificate by The Thames-Coromandel District Council - 16.8.1991 at 2:20 pm  
B060770 Gazette Notice declaring parts within land (200m<sup>2</sup>, 139m<sup>2</sup>) to be road and vesting the same in The Thames-Coromandel District Council - 9.1.1992 at 2:58 pm  
8454508.3 Mortgage to Bank of New Zealand - 1.4.2010 at 2:21 pm

Identifier

SA21D/864

31K II Whitianga S.D.



Measurements are Metric



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

**Limited as to Parcels**

**Guaranteed Search Copy issued under Section 60 of the Land  
Transfer Act 2017**



  
R.W. Muir  
Registrar-General  
of Land

**Identifier** SA21D/865  
**Land Registration District** South Auckland  
**Date Issued** 22 February 1977

**Prior References**

SA1092/223

---

**Estate** Fee Simple  
**Area** 18.4258 hectares more or less  
**Legal Description** Part Allotment 4 Parish of Hahei

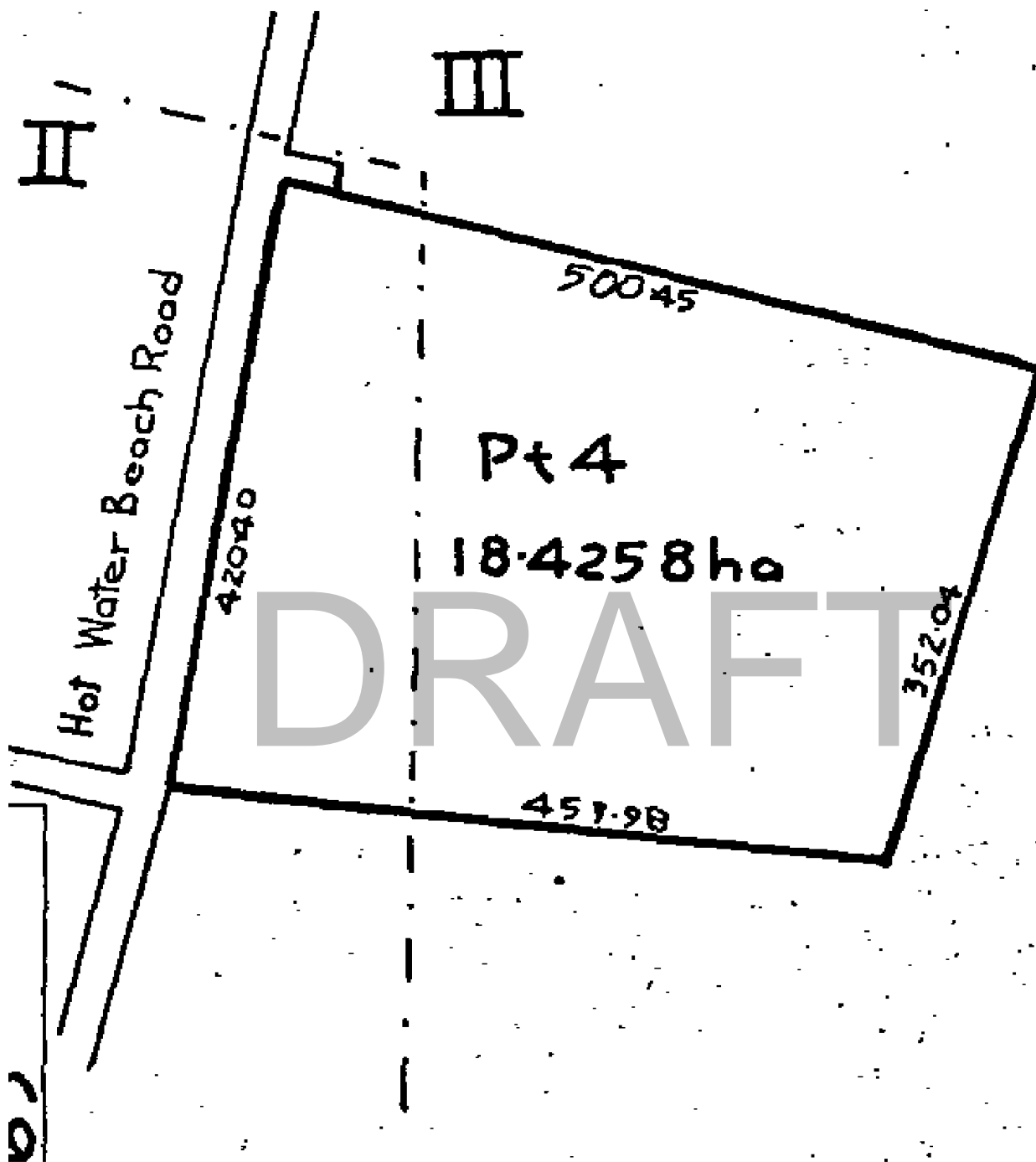
**Registered Owners**

Johanna Hendrina Barbera Bonnar and Erin Renee Thorne as to a 1/2 share as Executors  
Johanna Hendrina Barbera Bonnar and Brian Webster Trustee Limited as to a 1/2 share

---

**Interests**

5983143.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 28.4.2004 at 9:00 am



## Novation of contract

THIS AGREEMENT is made on

BETWEEN

**JOHANNA HENDRINA BARBERA BONNAR, ERIN RENEE THORNE & BRIAN WEBSTER TRUSTEE LIMITED (Retiring Party)**

AND

---

**(Substitute Party)**

Address:

Telephone:

AND

**SEEKA LIMITED (Seeka)**

BACKGROUND:

- A. By Deed of Lease dated 2 May 2019 between the retiring party as owner and Seeka (**Lease**) the retiring party granted Seeka a lease of an orchard at 203 Hot Water Beach Road, Whitianga (**Orchard**).
- B. The retiring party has entered into an unconditional agreement for the sale of the Orchard to the substitute party subject to the Lease, and the substitute party is willing to assume all of the retiring party's rights and obligations under the Lease.
- C. The parties to this agreement have agreed that with effect from 25 February 2021 (**Effective Date**), the Lease shall be novated.

OPERATIVE PROVISIONS

### **1 Novation**

---

With effect on and from the effective date:

- (a) the substitute party shall be substituted for the retiring party under the Lease as if it had originally been a party to the Lease instead of the retiring party, and all references in the Lease to the retiring party in any capacity shall read and be construed as if they were references to the substitute party; and
- (b) the substitute party shall be bound by and comply with the provisions of the Lease binding upon the retiring party, and shall enjoy all the rights and benefits of the retiring party under the Lease.

## **2 Assumption and release**

---

With effect on and from the effective date the retiring party is released from, and the substitute party assumes, all the obligations of the retiring party under the Lease and all actions, claims or proceedings that the continuing party may have against the retiring party under or in respect of the Lease relating to any act or omission of the retiring party on or after the effective date.

## **3 Indemnity**

---

- (a) The retiring party agrees with the substitute party to, with effect on and from the effective date, indemnify and keep indemnified the substitute party from and against all costs, claims, damages, losses, liabilities and expenses (including legal expenses on a solicitor and client basis) incurred by the substitute party as a result of any action, demand, claim or proceeding against the substitute party by Seeka under or in respect of the Lease relating to any act or omission of, or breach of contract by, the retiring party prior to the effective date.
- (b) The substitute party agrees with the retiring party to, with effect on and from the effective date, indemnify and keep indemnified the retiring party from and against all costs, claims, damages, losses, liabilities and expenses (including legal expenses on a solicitor and client basis) incurred by the retiring party as a result of any action, demand, claim or proceeding against the retiring party by Seeka under or in respect of the Lease.

## **4 Governing law and jurisdiction**

---

This agreement shall be governed by and construed in accordance with the laws of New Zealand and each of the parties submits to the non-exclusive jurisdiction of the Courts of New Zealand.

## **5 Counterparts**

---

- (a) This agreement may be executed in any number of counterparts, each of which, when taken together, are to constitute one and the same instrument.
- (b) Each party may enter into this agreement by executing separate counterparts.

SIGNED on behalf of

the retiring party by:

**JOHANNA HENDRINA BARBERA BONNAR**

**ERIN RENEE THORNE**

**BRIAN WEBSTER TRUSTEE LIMITED**

in the presence of:

SIGNED on behalf of

Seeka by:

---

in the presence of:

SIGNED on behalf of

the substitute party by:

---

---

in the presence of:

DRAFT





## Get in touch

- ☎ 0800 743 837
- @ info@eves.co.nz
- 📍 eves.co.nz
- 📺 @eves.co.nz

*Licensed under the REAA 2008*



For all your Mortgage and  
Insurance needs call Rothbury on  
**0800 33 34 35**

