

BAYSWATER MARITIME PRECINCT

DEVELOPMENT SUMMARY

Disclaimer

This summary has been prepared as a guide only. As the development proceeds, its structure and documentation may vary. Readers should not confine themselves to the contents of this summary, but should make all necessary enquiries in order to satisfy themselves. Bayswater Marina Holdings Limited and its advisors accept no responsibility or liability whatsoever for any loss or damage arising out of or by virtue of reliance on this summary.



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1. Background

- 1.1 The Bayswater Maritime Precinct Development (**Development**) is to be undertaken on land at Bayswater Marina (**Marina**) owned by Bayswater Marina Holdings Limited (**Company**). The following summary is intended to assist stakeholders including Auckland Council and other consultants in their understanding of the structure and documentation associated with the Development. It is not intended to be an exhaustive or binding explanation as to the nature and effect of the Development or the documentation.
- 1.2 The Development will be a comprehensive multi stage master planned development of the land owned by the Company comprised in record of title 639741 (**Land**). When completed, the Development will comprise approximately 121 units (each a **Unit**) comprising 27 apartments and 94 terraced houses. The style and bulk of the Development will be highly modulated and will include a mixture of terraced homes and apartments, commercial offices, retail shops and hospitality areas.
- 1.3 Development infrastructure (roads, utilities etc) will be constructed by the Company. The Company will subdivide the Land under the Unit Titles Act (**Act**) to create a future development unit (**FDU**) for each Unit.
- 1.4 The Company will build some of the buildings in the Development but also intends to sell FDUs to enable construction of buildings on those FDUs them by others.
- 1.5 The Company has applied for a resource consent for the Development. Once approved, that consent may be varied over the course of the Development.
- 1.6 Purchasers will be required to build in a manner consistent with an overall scheme for the Development and must comply with the resource consent and also with a design and construction manual (**Design Manual**) prepared by the Company. Compliance with the Design Manual is expected to create and maintain high standards of design and utility for the Development.
- 1.7 Each Unit will be subject to covenants and rules which are intended to control the development process to and to ensure high standards of behaviour and visual amenities are maintained. Those controls include:
- 1.7.1 Body Corporate Operational Rules. The whole Development will be comprised within a single body corporate. The operational rules will apply to all units (**Operational Rules** – see Appendix 3).
 - 1.7.2 A covenant in favour of the Company to ensure that the Company is able to enforce the Design Manual (**Development Covenant** – see Appendix 4).
 - 1.7.3 A no-objection covenant in favour of the Marina to prevent any objection to the continuing operation and expansion of the existing Marina operation (**No-Objection Covenant** – see Appendix 5).
- 1.8 The Company's intention is to create a vibrant, tidy and safe community in which residents and occupiers can enjoy the amenity of the coastal edge location.
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2. The Scheme

- 2.1 A preliminary scheme of the Development is attached in Appendix 1. The scheme is in draft and is subject to change as the Company further refines its plans for the Development including through the resource consenting process.
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3. Staging

- 3.1 The Development will be undertaken in stages. The Development staging and structure may be adjusted and refined as the Development proceeds. It is important for the Company to preserve flexibility with the staging to enable it to meet the requirements of the various stakeholders such as purchasers, marina users, Auckland Council and the surrounding community.
- 3.2 Purchasers of Units must commence construction of a building on the Unit within 18 months and must complete construction within 12 months of commencing.
-

4. Agreement for Sale and Purchase

- 4.1 The agreement for sale and purchase of Units in Bayswater Maritime Precinct will be on the Company's standard form agreement for the Development.
- 4.2 The agreement will contain various provisions which protect the Company's ability to complete the Development. Purchasers must accept that the Company will require flexibility to meet the requirements of the marketplace and other stakeholders such as Auckland Council. The agreement will contain provisions which prohibit owners from objecting to the ongoing Development.
- 4.3 The Company reserves the right to not proceed with the Development if, due to matters beyond its reasonable control, it is prevented from doing so.
- 4.4 If the Company terminate the agreement, it will return the purchaser's deposit to the purchaser together with any net interest earned on that deposit.
- 4.5 The deposit must be held by the Company's solicitors in its trust account until the settlement date.
-

5. The Title

- 5.1 The title to be sold by the Company will be a FDU title under the Act. This is a bare land polyhedron title within which a purchaser will be required to construct a building in accordance with the resource consent, the applicable building consent and the Design Manual. Once the building has been completed, the purchaser will convert the FDU title into a Principal Unit (**PU**) title at Land Information New Zealand.

- 5.2 The Development will be comprised within a single body corporate. All unit owners will be members of that Body Corporate. Some buildings (e.g. Apartment Buildings) are likely to be subsidiary body corporates.
-

6. Development Covenant

- 6.1 The Development Covenant will give the Company power to enforce compliance with easements, covenants and Design Manual reflecting the critical importance of ongoing compliance with all rules, regulations and regulatory constraints for the Development. The Company will regard its responsibilities as the protector of standards (presentation and behaviour) and the environment as important to the success of the Development and the Development Covenant is an important tool to achieve that.
- 6.2 The Development Covenant will cease to have any effect when the Development is complete.
- 6.3 A copy of the draft Development Covenant is attached in Appendix 4. Some points to note are:
- 6.3.1 Approval must be obtained to erecting or altering any building on the Unit.
 - 6.3.2 Drawings for any improvements must be submitted for approval to a design review panel.
 - 6.3.3 Once plans are approved, the Owner must construct the building in accordance with those approved plans.
 - 6.3.4 Once the building is complete, the Owner must convert the FDU title to a PU title at LINZ.
 - 6.3.5 The Owner must provide a bond for performance of the Owner's obligations under the Development Covenant during the building process.
 - 6.3.6 The Owner's builder must acknowledge the terms of the Development Covenant and comply with it.
 - 6.3.7 The building cannot be used or occupied until it is complete.
 - 6.3.8 Construction must start within 18 months of the date that the Unit is transferred to the Owner and once started, must be completed within 12 months.
 - 6.3.9 The Unit must only be used for uses permitted by the Development Covenant.
 - 6.3.10 The Unit cannot be further subdivided.
 - 6.3.11 The building, landscaping and fencing must be well maintained.
 - 6.3.12 The Owner is not entitled to object to the ongoing Development and the permitted activities.
 - 6.3.13 The Owner grants the Company a power of attorney to enable it to complete the Development.

- 6.3.14 There are financial penalties for failing to comply with the terms of the Development Covenant.
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7. No-objection Covenant

- 7.1 All titles will be subject to the No-objection Covenant in favour of the neighbouring Marina. The purpose of the No-objection Covenant is to ensure that the ongoing operation of the Marina is not compromised by new residential activity in the vicinity.
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8. Operational Rules

- 8.1 The Development will have a body corporate structure under the Act. This means that all units will be subject to Operational Rules. All Owners proprietors and occupiers must comply with the Operational Rules.
- 8.2 A copy of the draft Operational Rules are attached as Appendix 3. Some points to note are:
- 8.2.1 The Owner has various duties to maintain the unit and make no alteration to it without Body Corporate approval.
 - 8.2.2 The Unit cannot be used for any use which may be illegal or injurious to the reputation of the Owners of the building or for any use which breaches the terms of any covenant.
 - 8.2.3 The Body Corporate has various powers and duties including the power to contract the management control administration of the building to a third party contractor.
 - 8.2.4 The Body Corporate will not permit any part of the common property to be used for any commercial purpose without the prior written permission of the committee.
 - 8.2.5 The Body Corporate may impose rules from time to time for parking vehicles on common property.
 - 8.2.6 Windows must be kept clean and replaced if broken.
 - 8.2.7 No clothes drying is permitted on balconies.
 - 8.2.8 Only certain pets can be kept in the unit.
 - 8.2.9 The Owner shall not make or permit any unreasonable or excessive noises in the Unit or on common property.
- 8.3 The Unit will be part of a single parent body corporate. Some Units (e.g. in apartment buildings) may also be part of a subsidiary body corporate.
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9. Management and Levies

- 9.1 Management of the body corporate will be undertaken by an independent body corporate manager to be appointed by the Company. The manager will be an arm's length party. Where possible, the parent body corporate manager will also be the manager of any subsidiary body corporates.
- 9.2 Owners will be required to contribute to body corporate expenses. Levies may be determined on (either or both) an owner's interest and utility interest basis.
- 9.3 Owners of the FDU titles will be required to pay body corporate levies from the date they purchase the FDU title irrespective of whether or not a building has been built on the Unit.
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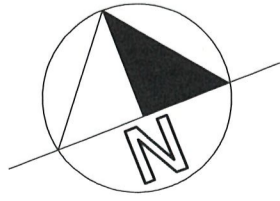
10. Public Access/Easements

- 10.1 The Development will provide for public access and use through the use of public right of way easements granted to Auckland Council plus an esplanade strip around the perimeter. The draft Esplanade Strip covenant is attached in Appendix 6.
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11. Drafts

- 11.1 The documents in the appendices are in draft form only and will be subject to further variation as the structure of the Development is further revised including through the resource consenting process.

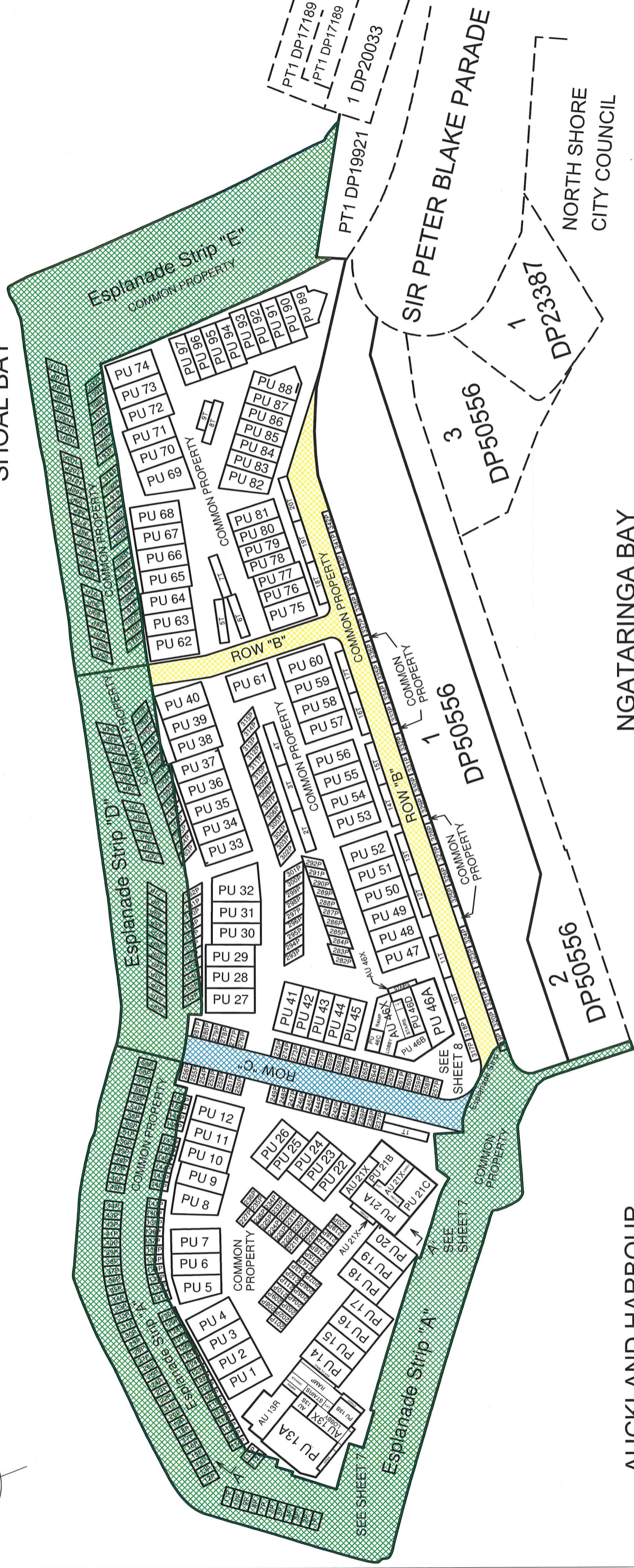
Appendix 1: Preliminary Scheme of Bayswater Marina Development



PT HARBOUR BED
SO67077

AUCKLAND
REGIONAL COUNCIL

SHOAL BAY



AUCKLAND HARBOUR

NGATARINGA BAY

2
DP50556

1
DP50556

3
DP50556

1
DP23337

1
DP19921

1
DP20033

1
DP17189

1
DP17189

SHEET 1 OF 16

Ground Level

Land District : North Auckland

Dataset : Survey

Datum : Mt Eden 2000

DRAFT UNIT PLAN

(SCHEME PLAN)

TERRITORIAL AUTHORITY: AUCKLAND COUNCIL

Surveyed By : Hampson & Associates Ltd

Scale : 1 : 1100 Date : June 2021

Comprised in : NA 639741

File : 6555A

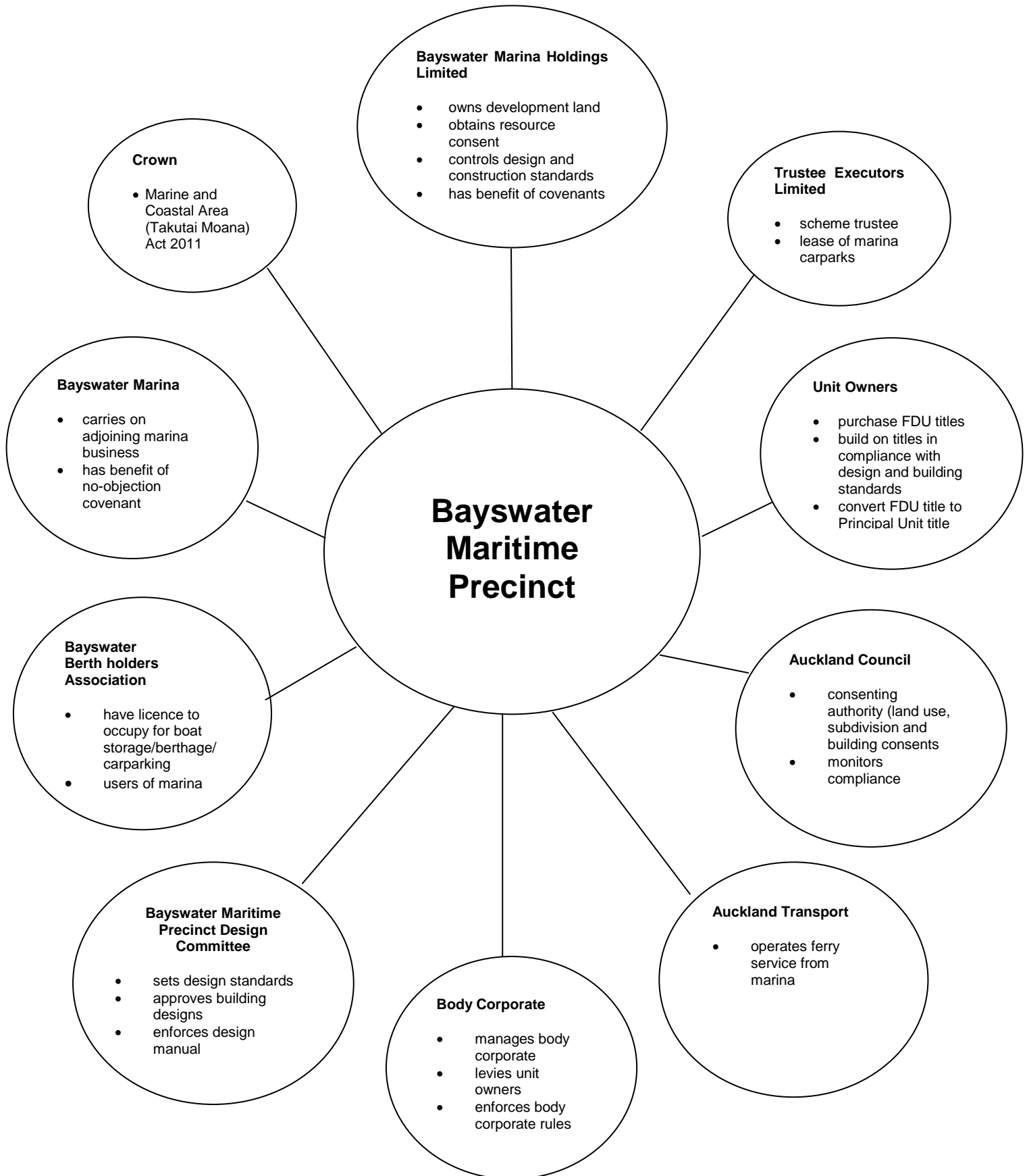
Received :

Class of Survey : A

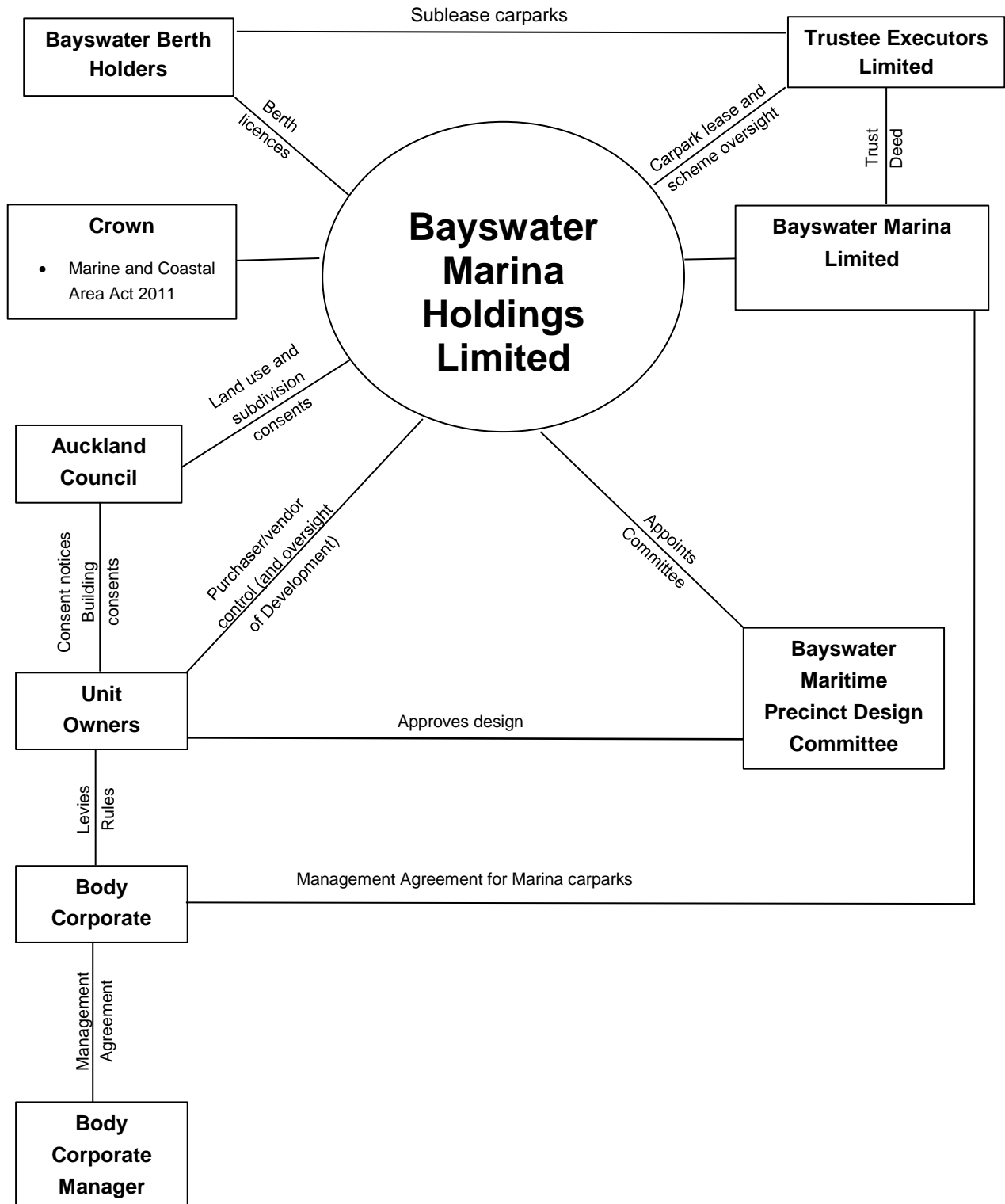
Rev 10

PROPOSED UNITS ON LOT 1 DP 309604

Appendix 2A: Stakeholder Diagram



Appendix 2B: Relationships between Stakeholders



Appendix 3: Body Corporate Operational Rules

**See attached
(draft – subject to amendment)**

OPERATIONAL RULES OF BODY CORPORATE No. **XXXXXX**

(North Auckland Land Registry)

BAYSWATER MARINA DEVELOPMENT

The Body Corporate Rules set out in Schedule 1 of the Unit Title Regulations 2011 are repealed and the following rules substituted in their place.

1. Definitions and Interpretation

1.1 Definitions: In these Rules, unless the context otherwise requires:

Act means the Unit Titles Act 2010 and includes any statutory modification or re-enactment of that Act.

Body Corporate means Body Corporate No, **XXXXXX** (North Auckland Land Registry) and/or the Committee where appointed under these Rules (as the case may be).

Body Corporate Assistant means the professional adviser appointed by the Body Corporate under Rule 3.2(b).

Building means the building and other improvements on the Lot.

Building Elements has the meaning as ascribed in the Act.

Building Manager means the building manager appointed to Rule 3.2(a).

Chairperson has the meaning ascribed under the Act.

Committee means the committee from time to time appointed by the Body Corporate.

Common Property means the common property comprised in the Unit Plan.

Contractor means any contractor engaged from time to time by the Body Corporate.

Covenant means any land covenant registered on the title for the Unit or on the supplementary record sheet.

Encumbrance means any encumbrance or covenant registered on a record of title of a Unit or on the supplementary record sheet for the Body Corporate.

Excluded Carpark means any carpark which is on common property but which is the subject of a licence lease or licence to occupy granted by the Body Corporate.

Infrastructure has the meaning as ascribed in the Act.

Lot means the lot which is the subject of the Unit Plan.

Owner means a person registered as an Owner of a stratum estate in leasehold in a Unit on the Unit Plan and any person under the control of the Owner and any lessee, tenant or occupier of a Unit.

Permitted Use means a use permitted for a Unit under Schedule 1.

Regulations mean the Unit Titles Regulations 2011.

Rules mean these rules and amendments made to them from time to time.

Security Key means a Key, magnetic card or other device used to open and close doors, gates or locks or to operate alarms, security systems or communication systems in the Building.

Unit means a principal unit on the Unit Plan and:

- (a) unless the context otherwise requires, includes all accessory units attached to that unit;
- (b) in relation to any Owner or occupier means the unit owned or occupied by that Owner or occupier.

Unit Plan means Unit Plan No. [] (North Auckland Land Registry).

1.2 Interpretation

- (a) Words importing one gender include the other genders.
- (b) Words importing the singular or plural include the plural and singular respectively.
- (c) Headings are inserted for the sake of convenience and ease of reference only. They do not form part of the text, and shall not affect the construction or interpretation of these Rules.

2. Duties of Owner

2.1 An Owner shall in relation to any Unit of which that Owner is the registered Owner:

- (a) maintain any garden, ground or balcony forming part of the Unit in a neat and tidy condition and ensure that all of such areas are not used for the storage or placement of items not related to the normal use and purpose of such area;
- (b) make no alteration to the colour scheme or appearance of the exterior of the Unit without first obtaining the consent in writing of the Body Corporate, such consent to be given (or withheld) at the absolute discretion of the Body Corporate,
- (c) make no alteration to any paved or sealed areas without first obtaining the consent in writing of the Body Corporate;
- (d) neither fix nor erect any sign to any part of the exterior of the Building without first obtaining:

- (i) the prior written approval of the Body Corporate, such approval to be given (or withheld) at the absolute discretion of the Body Corporate and upon such terms and conditions as the Body Corporate may determine;
 - (ii) all statutory and local authority approvals;
 - (iii) any requisite consent of the lessor of the Lot;
 - (iv) the directions of the Body Corporate as to position, size, colour and style of signs;
- (e) not fix signs to interior walls of the Building comprising part of the Common Property without the prior written approval of the Body Corporate, such approval to be given (or withheld) at the absolute discretion of the Body Corporate and upon such terms and conditions as the Body Corporate may determine;
- (f) without prejudice to the requirements of Rule 2.1(d) and Rule 2.1(e) maintain and clean to the satisfaction of the Body Corporate any signs which that Owner fixes to or erects on the exterior of the Building or fixes to any internal wall of the Building comprising part of the Common Property;
- (g) not use nor permit the use of any Unit for any purpose:
- (i) other than a Permitted Use for that Unit and subject to any restrictions on such use in Schedule 1;
 - (ii) other than a use permitted in accordance with the provisions of the district plan, or any review thereof, of the local territorial authority (or otherwise permitted at law), without the prior written consent of the Body Corporate, which consent may at any time and from time to time be revoked or varied by the Body Corporate provided that the power of revocation or variation shall not be unreasonably or arbitrarily exercised. An Owner shall not use nor permit the use of any accessory Unit at any time comprised within the same stratum estate as the Unit for any purpose other than the purpose for which the accessory Unit is designed or constructed;
 - (iii) which may be illegal or injurious to the reputation of the Owners of the Building or which may interfere with the peaceful enjoyment of any other Unit or the Common Property, or which may interfere with the general management of the Building, or the Lot;
 - (iv) for the sale of food or alcohol without the prior written approval of the Body Corporate, such approval to be given (or withheld) at the reasonable discretion of the Body Corporate and upon such reasonable terms and conditions as the Body Corporate may determine;
 - (v) which is in breach of the terms of any Covenant; and.
 - (vi) without first obtaining any necessary approvals or licence from Auckland Council or any other relevant authority.

- (h) ensure that the Owner, and any of the Owner's guests and invitees comply with all security arrangements established and prescribed in respect of access to and security generally in respect of the Building by these Rules;
 - (i) adhere to any security arrangements implemented by the Body Corporate which may include (but not be limited to) the following:
 - (i) the issue of security access cards upon conditions, including payment of a deposit;
 - (ii) the right to refuse admission to any person unless the identity of that person is given;
 - (iii) the right upon receiving a complaint from any person to remove any person from the Building or to refuse admission to any person the Body Corporate considers is likely to be a nuisance; and
 - (iv) the right to enter upon any part of the Building for the purpose of maintaining its security;
 - (j) not hold the security personnel liable for any damage caused by them to any person or property in carrying out their responsibilities in accordance with the terms of their appointment;
 - (k) where the Unit receives the benefit of telecommunications services pay on demand by the Body Corporate the Owner's proportion of the cost of providing those services and maintenance and upgrade of those services from time to time. If a relevant Owner does not pay such charges, the Body Corporate may, without prejudice to its other remedies, authorise the disconnection of any or all of the services provided to the Unit; and
 - (l) at all times comply with and not cause or permit a breach of any Covenant. .
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3. Powers and Duties of Body Corporate

- 3.1 The Body Corporate shall, on request, produce to any Owner, or a registered mortgagee of any Unit, or any person authorised in writing by any Owner or registered mortgagee of any Unit, all policies of insurance effected by the Body Corporate under the provisions of section 135 of the Act and the receipt for the last premiums paid in respect of such insurance.
- 3.2 The Body Corporate may, subject to Regulation 17 of the Regulations:
 - (a) appoint and enter into an agreement with a person to provide for the management control and administration of the Building or any part thereof and on such terms and conditions as may be agreed with such person and for such person to assist the Body Corporate in the carrying out of the Body Corporate's powers and rights as it deems necessary to enable such person to perform his duties properly. Such agreement may provide for:
 - (i) the cleaning, caretaking, security, supervision and service of the Common Property and any personal property vested in the Body

Corporate, and for the general repair, maintenance, renewal or replacement of that property;

- (ii) the provision of services to Owners;
- (iii) the supervision of any employees or Contractors of the Body Corporate;
- (iv) the control and supervision of the Common Property;
- (v) general repairs, maintenance, renewal or replacement of all Building Elements and Infrastructure;

(b) appoint and enter into an agreement with a professional body corporate adviser (Body Corporate Assistant) to provide assistance to the Body Corporate, the Chairperson and the Committee in carrying out their respective duties and obligations under the Act, the Regulations and these Rules.

3.3 Where the Body Corporate is a subsidiary body corporate then any person appointed by the Body Corporate under clauses 3.2(a) or (b) shall be the same as equivalent person appointed by the parent body corporate;

3.4 The Body Corporate shall not permit any part of the Common Property to be used for any commercial purpose whatever, without the prior written permission of the Committee.

3.5 The Body Corporate shall at all times comply with and not cause or permit a breach of any Encumbrance.

4. **General Rules**

4.1 **Matters to be directed to the Body Corporate Assistant:** All notifications and requests for consideration of any particular matter to be referred to the Committee or to the Body Corporate may be directed to the Body Corporate Assistant and not to the Chairperson or any member of the Committee.

4.2 **Interference and obstruction of common property**

An Owner of a unit must not:

- (a) Interfere with the reasonable use or enjoyment of the common property by other Owners;
- (b) Obstruct any lawful use of the common property by other Owners;
- (c) Restrict any light or air in any unit or common property, or obstruct or cover any windows, sky lights, lights or other means of illumination of any unit or common property; and.
- (d) Use any common property in a manner which is in breach of these Rules or any other restrictions determined by the Body Corporate or Committee from time to time.

4.3 **Damage to common property**

An Owner of a unit must not:

- (a) Damage or deface the common property; and

- (b) Drive operate or use, or permit to be driven, operated or used any vehicle or machinery on the common property of a size or weight that is likely to cause damage to the common property and any such damage caused or contributed to shall be paid for by the Owner responsible.

4.4 Use of facilities, assets, and improvements within the common property

- (a) An Owner of unit must not use any facilities contained within the common property or any assets and improvements that form part of the common property for any use other than the use for which those facilities, assets or improvements were designed and constructed and must comply with any conditions of use for such facilities or assets or improvements set by the Body Corporate from time to time.
- (b) Any part of the common property that is used as an entrance or accessway to the unit title development and any easement area giving access to the unit title development shall not be used by any Owner for any other purpose than for entering or leaving the unit title development.
- (c) Where any part of the common property and/or underlying land to the unit title development is subject to a registered easement (or other encumbrance), each Owner shall (when using or accessing that part of the common property and/or underlying land which is subject to the easement or encumbrance), comply with, and not do anything which would or may breach the terms of such easement (or other encumbrance).

4.5 Vehicle Parking

- (a) An Owner of a unit must not park a vehicle or permit a vehicle to be parked on any part of the common property unless the Body Corporate has designated it for vehicle parking by Owners or the Body Corporate has given prior written consent. Where the Body Corporate has designated any part or parts of the common property for vehicle parking, the Body Corporate is entitled to impose, and Owners must comply with, time restrictions and other rules on such vehicle parks.
- (b) An Owner who uses or permits the use of a vehicle park must:
 - (i) Only use (or allow the use of) the vehicle park for the purpose of parking vehicles;
 - (ii) Not use the vehicle park or permit it to be used for storage;
 - (iii) Ensure that any vehicle parked in the vehicle park is parked within the boundaries of the vehicle park.
- (c) The Body Corporate may remove a vehicle from the unit title development that the Body Corporate considers is parked in such a manner that is breach of this rule 4.5, at the expense of the owner of the vehicle concerned, and the Body Corporate shall not be liable for any resulting damage, loss or costs.

4.6 Maintenance: An Owner:

- (a) shall be responsible for the exterior and interior maintenance and decoration of the Owner's Unit;
- (b) shall not employ any contractor or worker for the purpose of repairing or altering or making good the Owner's Unit or the Infrastructure contained within and servicing any Unit other than a contractor or worker appointed or approved by the Committee for such purpose or under the supervision and to the satisfaction of the Committee, which may specify conditions under which the work shall be carried out;

- (c) may nominate and employ tradespersons for the purpose of repairing and making good any part of that Owner's Unit in an emergency if the contractor or workmen approved by the Committee under clause 4.6(b) are not available on short notice; and
- (d) must comply with any provisions or procedures of the Body Corporate for carrying out any work to the Owner's Unit.

Nothing in this Rule shall prevent an Owner from employing an interior decorator for the purpose only of decorating or redecorating the interior of any Unit.

4.7 **Contractors and building works**

An Owner of a unit who carries out any repair, maintenance, additions, alterations, or other such work on a unit must ensure that any contractors or other such persons employed by the Owner cause a minimum inconvenience to all other Owners and ensure that such work is carried out in a proper workmanlike manner. An Owner must not carry out any works requiring temporary isolation of fire alarms, sprinklers or smoke alarms without the prior written consent of the Body Corporate.

- 4.8 **Windows and glass surfaces:** All windows shall be kept clean and if broken or cracked shall be promptly replaced by the Owner of the Unit (at the expense of the Owner or occupier) with fresh glass of the same or better quality and weight. Where the Owner fails to replace the broken glass promptly in accordance with the provisions of this Rule and in any event within 7 days after the glass was broken or cracked, the Body Corporate or the Committee shall be entitled to affect such replacement at the cost of the Owner. The Owner shall not affix any stickers, signs, posters, decals, window film or foil or any other material on any windows or glass surfaces.

4.9 **Blinds, awnings, curtains etc:** An Owner:

- (a) shall not erect external blinds, louvers or awnings to any part of the Building or to any part of the Owner's Unit at any time;
- (b) shall not hang on any window visible from the outside the Unit any blind, louvers or curtain except for white Sunshade Roller, white wooden blinds, and/or curtains with white backing, so that viewed externally all window treatments will be white;
- (c) must not cover or coat any window of a Unit with aluminium foil or any other reflective material; and
- (d) must keep all blinds and curtains in a good clean condition and must replace or repair such blinds and curtains when the same reasonably requires replacement or repair.

4.10 **Balconies:** The following shall apply to all Owners and all balconies in the Building:

- (a) all internal and external surfaces comprised in a balcony must be kept clean and in a good order and repair;
- (b) rule 4.8 shall apply to all surfaces comprised in a balcony;
- (c) no clothes drying shall be permitted on balconies;
- (d) only furniture and furnishings that do not detract from the overall appearance and standing of the Building shall be permitted on balconies;

- (e) no rubbish or objects which may cause offence shall be placed on any balcony;
 - (f) no charcoal barbecues shall be permitted on balconies (for the avoidance of doubt, gas barbecues are permitted on balconies); and
 - (g) no combustible, hazardous materials or substances shall be placed on any balcony.
- 4.11 **Water:** An Owner shall not allow any cross boundary egress of water or any other substance from the Unit onto or into any other unit or the Common Property.
- 4.12 **Gully Traps:** An Owner must ensure regular maintenance and inspections are undertaken to internal floor waste gully traps and any external gutters adjoining any Unit and any balcony remain clear and free of debris at all times.
- 4.13 **Garden Maintenance:** The Body Corporate will ensure any hedges, shrubs and plants that form any part of the common property are regularly maintained. The Owner shall follow any instructions from the Body Corporate as to maintenance of any gardens or landscaping where it is the responsibility of the Owner to maintain. The Owner will allow any contractor instructed by the Body Corporate for the purposes of maintaining the garden or landscaping access to the unit in order to undertake maintenance of the gardens or landscaping. The Body Corporate will provide the Owner with reasonable notice in writing of any access required by any such contractor.
- 4.14 **Satellite dishes and solar panels:** An Owner must not erect a satellite dish without first obtaining the approval of the Committee as to its location, which must be as unobtrusive as possible.
- 4.15 **Solar Panels:** An Owner must not erect any solar panels on the Unit unless such solar panels are integrated with the roof design.
- 4.16 **Immobile vehicles and rubbish:** An Owner will not:
- (a) bring onto or allow to remain on the Unit any vehicle or rubbish (inorganic or organic) which is unsightly, or which is likely to become a nuisance to the other owners; nor
 - (b) allow to remain on the Unit or the Development for more than 7 days any equipment or machinery which is unsightly, or which is likely to become a nuisance to other owners; nor
 - (c) place or leave at any time any immobile or broken down vehicle on any common property.
- 4.17 **No temporary or ancillary buildings:** The Encumbrancer must not Erect or place on any Unit any caravan, mobile home or other temporary accommodation, hut or shed for permanent or temporary use of any kind.
- 4.18 **Water, blockage of pipes, etc:** An Owner shall not waste water and shall ensure that all water taps in the Unit are promptly turned off after use and that tap washers are replaced when required.
- 4.19 **Proper purpose:** The toilets, wash basins, sinks, wastemasters, dishwashers, and any other apparatus or equipment attached to the water supply and drainage system and all supply and waste pipes and drains, shall only be used for the purpose for which they were constructed, and the responsibility for any damage or loss caused or cost of repair incurred

or caused by misuse or negligence shall be borne by the Owner of the Unit in which the misuse or negligence occurred.

- 4.20 **Notice of defects:** An Owner, on becoming aware of any defect, damage or defilement to the exterior of the Building or the Common Property or the failure or defect of any of the Building Elements or Infrastructure, shall notify the Body Corporate immediately. The Committee shall have authority to make such repairs or renovations as the Body Corporate considers necessary for the safety and preservation of the Building (or, in an emergency, such repairs or renovations as the Committee considers necessary). The Body Corporate shall be entitled to recover the costs of the repairs or renovations from an Owner if the act or neglect of that Owner necessitated the repairs or renovations.
- 4.21 **Cleanliness and removal of rubbish:** An Owner:
- (a) shall ensure that the Owner's Unit is kept clean at all times and that rubbish is regularly collected from the Unit and not allowed to accumulate. All rubbish shall be disposed of in bins or receptacles for removal on the usual days by the local authority or by independent contractors when required by the Body Corporate;
 - (b) shall not allow litter or rubbish to accumulate on the Common Property, and the cost incurred in removing any rubbish from or the cleaning of any part of the Common Property where there is a breach of this Rule shall be borne by the Owner responsible;
 - (c) shall, in disposing of rubbish ensure that bottles are completely drained, cleaned and deposited in unbroken condition in the area designated for bottles and that all other rubbish is drained and securely wrapped in small parcels and deposited in the area designated for rubbish.
- 4.22 **Animals:** An Owner may keep small domestic animals in the Unit without the prior written consent of the Body Corporate provided that such animals are at all times controlled by the Owner and do not at any time create a nuisance or disturbance to other Owners. The Owner acknowledges that the Body Corporate may determine at its discretion whether any animals have, are or are likely to create a nuisance or disturbance, and authorises the Body Corporate to take any action necessary or desirable to stop or prevent such nuisance or disturbance which may include removing any animals from the Building.
- 4.23 **No dangerous substances:** An Owner shall not permit anything to be done or bring or keep anything in the Unit or in the Building which may create a fire hazard, or which increases the rate of fire insurance on the Building, or which may contravene the fire regulations, or the rules, regulations, ordinances or bylaws of any authority having jurisdiction over the Building or the services supplied to the Building.
- 4.24 **Conduct:** A Owner shall behave in an orderly and considerate manner on the Common Property and shall not smoke cigarettes, cigars or pipes on Common Property and shall not make a nuisance of themselves or cause offence or disturb other residents and persons in or about the Building. Any Owner behaving in a disorderly, inconsiderate, lewd, noisy or offensive manner or in breach of this Rule, may be removed from the Common Property by the Building Manager or security personnel.
- 4.25 **Noise:** An Owner shall not make or permit any objectionable noise in the Building or on the Common Property or interfere in any way with the peaceful enjoyment of other Owners or lessees or occupiers of other Units or those having business with them or of any person lawfully using the Common Property. An Owner shall ensure that all noise is contained within that Owner's Unit. An Owner shall ensure that all audio noise (whether from stereos,

televisions or other home entertainment systems, appliances or musical instruments) is contained within that Owner's Unit and that no such noise can be heard from other Units in the Building or from balconies of other Units of the Building. Any breach of this Rule by the Owner shall entitle the Body Corporate (through the Building Manager) to enter into the relevant Unit and remove and/or switch off the offending stereo, television, home entertainment system or appliance and the Owners unanimously and irrevocably authorise such entry for such purpose.

4.26 **Heavy objects:** An Owner shall not, without first providing the Body Corporate with a written engineer's certificate and obtaining the prior written consent of the Body Corporate, bring into or install in or permit to be brought into or installed in the Unit any goods, merchandise, machinery, plant or any other object of such weight, nature or description as shall impose or throw upon the Unit any stress, strain or weight likely to damage, weaken or cause any movement or structural defect in the Unit or the Building or any part of it. All damage done to the Building or Unit by installing, moving or removing heavy objects shall be made good and paid for by the Owner who or whose agent causes the damage. Before any heavy article is moved into or out of the Unit at least 24 hours' notice in writing of the intention to move such article shall be given to the Body Corporate, and the moving of the article into or out of the Unit shall only be done under the supervision of a responsible person approved by the Body Corporate.

4.27 **Security:** An Owner:

- (a) shall keep the Owner's Unit secure and all doors and windows locked and fastened whenever the Unit is unoccupied; and
- (b) may not install, or permit to be installed, any security system in any Unit or on Common Property without the prior written consent of the Body Corporate.

4.28 **Leasing:** An Owner:

- (a) shall ensure that any tenant, licensee or occupier of the Owner's Unit has received a copy of these Rules (and any amendments); and
- (b) shall notify the Committee of all tenants, licensees and occupiers from time to time of the Owner's Unit.

4.29 **Compliance with Rules by visitors, invitees etc**

An Owner of a unit:

- (a) Must ensure compliance with these Rules by the clients, visitors, invitees, agents and employees of the Owner that Owner's tenant or occupier.
- (b) Must not nor permit any person under their control to conduct any auction sale, garage sale or similar activity in their unit or on the common property.
- (c) Shall be responsible for the actions of and the consequent damage (including all costs of cleaning and repair) to any part of the unit title development caused by the deliberate or negligent acts of the Owner's employees, agents, invitees, licensees and tenants.

4.30 **Airconditioning:** An Owner shall comply with operating instructions for all airconditioning equipment (if any) and shall when necessary use protection devices provided to ensure that the design performance of the airconditioning equipment is achieved as far as possible.

- 4.31 **Emergency contact:** An Owner shall advise the Committee of the Owner's private address and telephone number or, if the Owner is a corporation, of the secretary or other responsible person employed by the Owner, and shall keep the Body Corporate promptly informed of any change of such address or telephone number.
- 4.32 **Vehicles:** An Owner shall not park or stand any vehicle (including, but not limited to, a motorcycle or e-scooter) upon Common Property or interfere with or obstruct access by other persons to the Building. An Owner shall not wash or valet any vehicle upon the Common Property.
- 4.33 **Clothes Drying:** An Owner must not erect on the exterior of the Unit or in any part of the balcony in a Unit a clothes line or apparatus for a similar purpose (either permanently or temporarily) or hang to dry clothes or any other thing on or from the exterior of the Unit. Where the Owner is in breach of this Rule, the Body Corporate or the Committee shall be entitled to issue a default notice to the Owner requiring rectification of this breach. Where the Owner fails to comply with the default notice within 3 days of the date of the default notice, the Body Corporate or the Committee shall be entitled (in addition to any other remedy available to the Body Corporate or the Committee under the Act and these Rules) to effect the removal of clothes that are hanging or being dried in contravention of this Rule or the clothes line or clothes drying apparatus at the cost of the Owner.
- 4.34 **Security Keys:** If the Committee restricts the access of any Owner to any part of the Common Property for security purposes the Committee may make available to the Owner free of charge the number of the Security Keys which the Committee considers necessary. The Committee will charge a reasonable fee for any additional Security Key required by an Owner
- 4.35 An Owner:
- (a) must exercise a high degree of caution and responsibility in making a Security Key available for use by an occupier of a Unit and must take all reasonable steps to ensure return of the Security Key to the Owner or the Committee;
 - (b) in possession of a Security Key must not duplicate or permit the Security Key to be duplicated and must take all reasonable steps to ensure that the Security Key is not lost or handed to any person other than another Owner and is not disposed of otherwise than by returning it to the Owner or Committee; and
 - (c) must promptly notify the Committee if a Security Key is lost, stolen or destroyed.
- 4.36 **Disorderly Behaviour:** A drunken, idle or disorderly person found in or upon the Common Property may be ejected and removed from the Building by a security officer or a member of the New Zealand Police.
- 4.37 **Recovery of Funds to Rectify Breach:** Where the Body Corporate spends money as a result of a breach of the Act or of the Rules by any Owner or the tenant, guests or licensees of any Owner, the Body Corporate will be entitled to recover the amount so spent as a debt in any action in any court of competent jurisdiction from the Owner together with the Body Corporate's legal costs (on a solicitor/client basis).
- 4.38 Where the Owner is in breach of any provision of this Rule in this section 4, the Body Corporate or the Committee shall be entitled to issue a default notice to the Owner requiring the Owner to rectify the breach, Where the Owner fails to rectify the breach within 3 days of

the Default Notice, the Body Corporate or the Committee shall be entitled to rectify the breach at the cost of the Owner.

- 4.39 **General:** The duties and obligations imposed by these Rules on the Owners shall be observed not only by an Owner but also by the occupiers of Units and an Owner's or occupier's guests, employees, agents, workers, children, invitees, licensees and tenants.

Signed by Body Corporate []

in the presence of:

Body Corporate Chairperson

Witness sign

Print name

Occupation

Address

DRAFT

SCHEDULE 1

Permitted Uses

Unit Type	Permitted Use	Restrictions on Permitted Use

DRAFT

Appendix 4: Development Covenant

**See attached
(draft – subject to amendment)**

Approved for ADLS by Registrar-General of Land under No. 2018/6263
COVENANT INSTRUMENT TO NOTE LAND COVENANT
Sections 116(1)(a) & (b) Land Transfer Act 2017



Covenantor

Surname(s) must be underlined or in CAPITALS.

Bayswater Marina Holdings Limited

Covenantee

Surname(s) must be underlined or in CAPITALS.

Bayswater Marina Holdings Limited

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule, if required

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
		Lot 1 DP 309604 (Record of Title 639741) [and/or individual unit titles]	In gross

Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017.]

[Annexure Schedule _____].

Insert instrument type

Land Covenant (in gross) – Building Design and Construction

Background

1. The Covenantor as registered owner of the land contained in record of title 639741 (**Land**) has subdivided the Land in the manner shown on deposited plan [].
2. The Land is intended to be developed into a high quality maritime village incorporating mixed uses such as commercial retail, hospitality and residential accommodation (**Development**).
3. To better protect the quality of the Development, it is the Covenantor's intention to create, for the benefit of the Covenantee, the covenants in gross set out in Schedule A (**Covenants**) over the Covenanting Lots TO THE INTENT that:
 - (a) the Covenanting Lots will be bound by the stipulations and restrictions set out in the Covenants; and
 - (b) the Covenantee (and its successors and assigns) may enforce the observance of the Covenants against the owners for the time being of the Covenanting Lots.

Operative Clauses

4. So as to bind the Covenanting Lots, and for the benefit of the Covenantee (and its successors and assigns), the Covenantor DOES HEREBY COVENANT AND AGREE in the manner set out in Schedule A so that the Covenants run with the Covenanting Lots for the benefit of the Covenantee and its successors and assigns PROVIDED HOWEVER that:
 - (a) the Covenantee will not be required or obliged to enforce all or any of the stipulations and restrictions contained in the Covenants; and
 - (b) the Covenantor will not be liable to the Covenantee for any breach of any of the Covenants by any of the other registered owners of the Covenanting Lots; and
 - (c) the Covenantor will as regards the stipulations and restrictions contained in the Covenants be liable only in respect of breaches which occur while the Covenantor is registered owner of any of the Covenanting Lots in respect of which any breach occurs.

**SCHEDULE A
Covenants**

Definitions and Interpretation

1. In this Instrument, unless the context requires otherwise:

Act means the Unit Titles Act 2010.

Insert instrument type

Land Covenant

Body Corporate means the body corporate under the Act which incorporates the encumbered Unit(s).

Bond means the sum of \$25,000 (or such lesser sum as the Covenantee may determine from time to time and case by case) to be deposited by the Covenantor with the Bondholder.

Bondholder means the Covenantee's lawyer from time to time.

Building means any building or improvements to the Lot including (but without limitation) any building, out building, garage, car port, shed, vehicle crossing, fence, swimming pool, verandas, pergolas and includes any additions, alterations or demolition of the same and where not repugnant to the context, includes construction works, such as excavations, siteworks, landscaping and earthworks;

Building Approval Process means the process for approving or declining the Covenantor's design for any building by the Design Review Panel at each of the preliminary design stage and the detailed design stage, as is detailed in the Design Manual;

Construction means the process of constructing any Building.

Construction Manual means the most current version of the Bayswater Marina Construction Manual compiled by or on behalf of the Covenantee, containing information to guide the construction of the Buildings for each Unit, including (but not limited to) requirements for building form, foundations, structure and cladding.

Construction Period means the period from the date that the Covenantor or its contractors, subcontractors, employees and/or agents take access to the Unit for the purpose of undertaking Construction until completion of Construction in accordance with this Covenant.

Covenants means any land covenants (either in the form of land covenant or encumbrances) registered on the record of title for the Unit or on the supplementary record sheet for the Body Corporate.

Design Manual means the most current version of the Bayswater Maritime Village Design Manual compiled by or on behalf of the Covenantee, containing information to guide the design of the Buildings for each Unit, including (but not limited to) requirements for building form, materials, colour and landscaping;

Design Review Panel means any person(s) appointed by the Covenantee to evaluate the Covenantor's Building design for compliances with the Design Manual;

Covenant means this Covenant instrument including the Annexure Schedules;

Covenantee means [Bayswater Marina Holdings Limited] and includes its successors and assigns and (for the purposes of clauses 4 and 5, the Design Manual, Building Approval Process and the Construction Manual), the Design Review Panel and any other person nominated by the Covenantee;

Insert instrument type

Land Covenant

Erect means place, build, erect, install, attach, situate, or construct or permit to be placed, built, erected, installed, attached, situated, or constructed;

FDU means a future development unit as that term is defined in the Act.

Land the land at 21 Sir Peter Blake Parade, Bayswater upon which the Subdivision is to be undertaken.

Landscaping means all plantings and garden structures as shown on the plan approved by the Design Review Panel.

Marina means the marina business including all related infrastructure and authorities, licences and consents known at the date of this instrument as "Bayswater Marina" located at 21 Sir Peter Blake Parade.

Operational Rules means any body corporate operational rules of the Body Corporate.

Permitted Activities means:

- (a) *the undertaking and completion of the Subdivision; and*
- (b) *the business of the Marina;*
- (c) *any expansion of the Marina; and*
- (d) *any ferry service operated from or near the Marina.*

Relevant Authority means any corporation, including any government, local or regional territorial authority, statutory or non-statutory authority or body having jurisdiction over the Units or the Land or any part thereof;

Resource Consent means any local or territorial resource or building consent obtained from time to time by or on behalf of the Covenantee in relation to the Subdivision.

RMA means the Resource Management Act 1991;

Subdivision means the subdivision of the Land to create separate records of title for the Units and includes any future re-subdivision of any Unit or boundary adjustment or redevelopment.

Unit has the meaning given to that term in the Act and means any one of the Units affected by this Covenant (being Units [TBA] (inclusive) on deposited plan [TBA]) and any Units into which those Units are further subdivided;

Insert instrument type

Land Covenant

Covenantor's Covenants

Compliance with Design Manual

2. The Covenantor will, when Erecting or altering any Building on the Unit and carrying out any decorative works such as external painting, comply in all respects with:
- (a) the provisions of this Covenant, the Design Manual, the Building Approval Process and the Construction Manual;
 - (b) the terms of all Covenants;
 - (c) any conditions of the Design Review Panel's consent;
 - (d) the requirements of any Relevant Authority;
 - (e) the Operational Rules; and
 - (f) the Resource Consent.

Submission of drawings

3. The Covenantor must submit drawings, at both the preliminary design stage and the detailed design stage, to the Design Review Panel of any Building, driveway, fencing and Landscaping to be constructed on the Unit.
4. The Covenantor must not Erect any Building or driveway, fencing or Landscaping on the Unit without first:
- (a) obtaining prior written approval from the Design Review Panel to the preliminary design drawings and the detailed design drawings in accordance with the Building Approval Process, such approval to be evidenced by affixing the seal of approval of the Design Review Panel to the approved drawings or such other method of approval as may be determined by it from time to time;
 - (b) obtaining from the Relevant Authority, all consents and permits required under any relevant legislation for the Building and will satisfy all terms and conditions of the same; and
 - (c) depositing the Bond with the Bondholder.
5. The Covenantor must obtain the approval of the Design Review Panel prior to the Covenantor making an application to the Relevant Authority for a building consent for any Building to be constructed on a Unit. The Design Review Panel may grant or refuse such approval or may grant approval subject to such conditions as the Design Review Panel may determine in its reasonable opinion.

Insert instrument type

Land Covenant

6. The Design Review Panel will not consider the drawings or grant any approval to the Covenantor's drawings at the detailed design stage unless such drawings contain complete details of the primary dwelling (including garage), driveway, fencing, landscaping and all necessary site works.
7. Any prior approval or non-approval of any design or construction method will not bind the Covenantee in respect of the exercise of any future exercise of its discretion.
8. The Covenantee may, from time to time make variations to the Design Manual and the Construction Manual at its discretion. Any such variation shall not invalidate any approval of the Design Review Panel issued prior to such variation.

Construction
9. The Covenantor must (and procure its contractors, subcontractors, employees and/or agents (as the case may be) to):
 - (a) effect Construction strictly in accordance with the detailed design drawings duly approved by the Design Review Panel and in accordance with any conditions of the Design Review Panel's approval;
 - (b) effect Construction strictly in accordance with the Construction Manual;
 - (c) not leave the Building incomplete or without substantial work being carried out for a period longer than 3 months;
 - (d) comply with all relevant legislation and licences; and
 - (e) arrange and maintain (and provide to the Covenantee on request) relevant insurance including public liability insurance for not less than \$5,000,000 during the Construction Period.
10. **Conversion of FDU titles and payment of levies**
- 10.1 The Covenantor must without delay following completion of Construction complete the conversion of the FDU title to a principal unit title at LINZ and deliver a copy of that principal unit title to the Covenantee.
- 10.2 The Covenantee must make payment of the body corporate levies to the Body Corporate in respect of the Unit from the date of creation of the Body Corporate irrespective of whether the Building is complete or occupied and notwithstanding any provision to the contrary under the Act PROVIDED THAT the Covenant in this clause 10.2 shall not apply which the Covenantee is the registered proprietor of the Unit.
- 10.3 The Covenantor shall not vote in favour of any change to the Operational Rules without the prior written approval of the Covenantee.

Insert instrument type

Land Covenant

11. Bond

11.1 Before commencing Construction, the Covenantor must deposit the Bond with the Bondholder. The Bond will be retained by the Bondholder as security for the Covenantor's compliance with the terms of this Covenant. The Bond shall be released by the Bondholder to the Covenantee if the Covenantor is in breach of the terms of this Covenant. Any demand for release of the Bond by the Covenantee must provide reasonable detail of the breach.

11.2 The Bondholder shall be entitled to rely on any demand made by the Covenantee and shall not be required to enquire into the nature or status of any alleged breach by the Covenantor or obtain the Covenantors approval to release the Bond. The Covenantor will not make any claim or demand on the Bondholder to retain the Bond in the event of any demand by the Covenantee to release the Bond.

11.3 Upon:

- (a) completion of the Building, in accordance with the terms of this Covenant;
- (b) the issue of all relevant licences including code compliance certificates;
- (c) the repair by the Covenantor of any damage and removal of rubbish;
- (d) the issue of a new certificate of title for the Unit showing the conversion of the title for Unit from a FDU to a principal unit;

the Bond (or any remaining balance of it) shall be returned to the Covenantor.

11.4 If the Bond (or any remaining balance of it) is released to the Covenantee, the Covenantor shall immediately top up the Bond to the defined or agreed amount by making payment to the Bondholder.

Building Contract

12. The Covenantor must ensure that all builders and other contractors undertaking work on the Unit comply with the provisions of this Covenant and must include in any building contract for the Building a clause which states:

'The Contractor shall comply with the requirements of the Covenant on the title for the property (which the Contractor acknowledges it has reviewed) for the duration of the works under contract and will not commence work on the site unless they have sighted or are in possession of a copy of the letter of approval of the Building issued through the Design Review Panel building approval process issued by Bayswater Marina Holdings Limited (or its successors, assigns or nominee).'

Completion prior to occupation

13. The Covenantor must not sell, transfer, use, occupy or move into or permit any other person to use, occupy or move into any Building, until such time as the Building has been completed in the reasonable opinion of the Covenantee.

Insert instrument type

Land Covenant

Timely completion of Building

14. The Covenantor must (and must procure its contractors, subcontractors, employees and/or agents (as the case may be) to:
- (a) commence construction of the Building on the Unit within 18 months of the date on which the title for the Unit is first transferred from the Covenantee; and
 - (b) complete construction of the exterior to the Building, the Unit's driveway, fencing and Landscaping within 12 months of commencement of construction of the Building.

Landscaping, driveways and fencing

15. The Covenantor must:
- (a) Erect fencing;
 - (b) carry out Landscaping; and
 - (c) construct a driveway,
- on the Unit in accordance with the Design Manual and the plans approved by the Covenantee under this Covenant.
16. The Covenantor must obtain the Design Review Panel's approval via the Building Approval Process for such fencing, Landscaping and driveway construction, as if such fencing, Landscaping and driveway were a Building, before the Covenantor can commence such fencing, Landscaping and driveway construction.

Subdivision or amalgamation

17. The Covenantor must not further subdivide or adjust the boundary of any Unit in order to create any additional Unit or Units, whether by fee simple title, unit title, cross-lease or otherwise without the prior written approval of the Covenantee which approval may be given or withheld at the Covenantee's entire discretion.

No Alterations

18. The Covenantor must not materially alter, or permit to be altered, the exterior appearance of the Building without the prior written consent of the Covenantee.

No Objection

19. The Covenantor irrevocably agrees and undertakes to waive all rights of complaint, submission, appeal, or objection it may have under the RMA or otherwise in respect of the Permitted Activities and any subdivision, use or future Subdivision of any part of the Marina or the Subdivision.

Insert instrument type

Land Covenant

20. For the avoidance of doubt, clause 19 shall include (but not be limited to):
- (a) the undertaking of the Permitted Activities;
 - (b) any application for a Resource Consent made by any person to the Relevant Authority under section 88 of the RMA relating to the Permitted Activities;
 - (c) any application for change or cancellation of consent conditions under section 127 of the RMA, or any review of consent conditions by the Relevant Authority under sections 128 and 129 of the RMA in relation to the Permitted Activities;
 - (d) any request for a change to the district plan made under clause 21 of the First Schedule to the RMA which relates to the Permitted Activities;
 - (e) any preparation by the Relevant Authority of a proposed district plan under the First Schedule to the RMA which relates to the Permitted Activities;
 - (f) any application for renewal or variation of the licence; and
 - (g) any application for variation of the design or staging of the Subdivision.
- (referred to in this document as an **Application**).
21. The Covenantor surrenders with immediate effect:
- 21.1 its rights as a person who may be directly or indirectly affected by an Application to receive notice of the Application under sections 95-95E of the RMA and any other relevant coastal and marine legislation and shall not request that the Relevant Authority serve on them notice of an Application.
 - 21.2 the right to make submissions or further submissions about an Application and shall not make a submission about an Application.
 - 21.3 the right to appeal to the Environment Court against the whole or any part of a decision by the Relevant Authority on an Application (including any rights of further appeal on a question of law or to the High Court) and shall not exercise any right of appeal against the decision of the Relevant Authority on an Application.
 - 21.4 the right to become a party to proceedings under the RMA, and the right to appear and be heard on appeal under the RMA, and shall not exercise any such rights in relation to an appeal against the decision of the Relevant Authority on an Application.
 - 21.5 its right to make a claim against the Covenantee in nuisance or any other action in law in relation to any adverse effect on the environment arising out of, or in relation to, the subdivision, Subdivision or use of any part of the Benefiting Lots, Subdivision or the Marina and any actual or potential effects of such activities (including, without limitation, dust, noise and vibration) (referred to in this document as an **Adverse Effect**).

Insert instrument type

Land Covenant

22. In addition:
- (a) the Covenantor further agrees not to seek an enforcement order or abatement notice under the RMA from any Relevant Authority in respect of any Adverse Effect and shall if required by the Covenantor sign and deliver to the Relevant Authority a written consent to the Adverse Effect.
 - (b) this Covenant shall also apply to any right of complaint or application under sections 17, 311, 316, 322, 338, and 343A of the RMA relating to the use, and Subdivision of any part of the Benefiting Lots, the Subdivision or the Marina for the purposes of residential and/or business activities;
 - (c) for the avoidance of doubt, the Covenantor also covenants and agrees that it shall not at any time after the date of this Covenant aid, abet, counsel, or procure any other person to exercise any of the rights under the RMA referred to in this Covenant (either on behalf of the Covenantor or otherwise) in relation to the use, or Subdivision of any part of the Benefiting Lots, the Subdivision or the Marina and any actual or potential effects of such activities on the Covenantor; and
 - (d) the Covenantor shall if required by the Covenantee provide its written consent or approval to any Application or any works in respect of the Benefiting Lots, the Subdivision or the Marina and shall sign all documents and do all things necessary to provide such consent or approval to the Relevant Authority in order for the Covenantee to complete any works or process any such Application.
23. The Covenantor further agrees that the terms and conditions of this Covenant may be enforced against the Covenantor to ensure compliance with the requirements of this Covenant.
24. The Covenantor acknowledges and accepts that:
- (a) completion of the Subdivision will be staged, and that the Subdivision may be varied; and
 - (b) the Covenantee may require the Covenantor to consent to such variations and may be required to execute documents to evidence or give effect to such consent.
- Power of Attorney**
25. The Covenantor irrevocably and unconditionally nominates, constitutes and appoints the Covenantee or any nominee of the Covenantee to be the true and lawful attorney of the Covenantor for the purposes of executing all documents and plans and Consents and to perform all acts matters and things as may be necessary to:
- 25.1 Complete the Subdivision (including any stage of the Subdivision);
 - 25.2 Carry out the Subdivision;
 - 25.3 Deposit any plan of the Subdivision, any variation of the Subdivision and any other plan to obtain issue of a separate certificate of title for all Units in the Subdivision;

Insert instrument type

Land Covenant

- 25.4 Withdraw any caveat improperly lodged by the Covenantor;
- 25.5 Execute all resolutions (including Body Corporate resolutions), consents or other documents and exercise all powers necessary to sign, approve and lodge with any Relevant Authority all plans for the Subdivision or any part thereof;
- 25.6 Consent to and execute all necessary resource management or building consents or execute such other applications or consents which may be necessary or desirable in connection with the Subdivision or any part thereof and conduct all appeals which may be necessary or desirable to obtain such consents;
 - 25.6.1 Execute all other documentation required for continuation and completion of the Subdivision, including any stage of the Subdivision.
 - 25.6.2 To do any other thing necessary or desirable (at the Covenantee's discretion) to continue and complete the Subdivision.
- 26. The power of attorney is given for valuable consideration and will operate and continue and will be irrevocable until such time as the Covenantee or its assignee resigns as the attorney or the Subdivision has been completed, or this Covenant ceases to have effect.
- 27. The Covenantee may appoint in its place one or more attorney or attorneys to exercise any or all of the powers and authorities conferred in this section and from time to time to revoke any such appointment and appoint any further one or more attorney or attorneys in place of such attorney.
- 28. The Covenantee may require the Covenantor to enter into and deliver to the Covenantee:
 - 28.1 A separate power of attorney deed to be prepared by the Covenantee appointing the Covenantee the attorney of the Covenantor for the purposes set out in this section. Any such power of attorney will be prepared by the Covenantee's solicitor; and
 - 28.2 A written confirmation from the Covenantor's mortgagee (if any) that the mortgagor has received and will comply with the Covenantor's irrevocable instructions to co-operate with the Covenantee for the purposes of giving effect to the Covenantee's rights under this Covenant and the power of attorney;and the Covenantor shall promptly upon request procure and deliver those documents to the Covenantee.
- 29. The Covenantor and the Covenantor's successors in title will not sell, transfer or mortgage the Unit or enter into any agreement which supports a caveat on the title to the Unit or the Land except to a transferee or mortgagee or other interested party who has first agreed to be bound by the agreements on the part of the Covenantor herein and who executes a power of attorney in favour of the Covenantee or its assignee in the same form and for the same duration as the power of attorney in this section.

Insert instrument type

Land Covenant**Breach and remedies**

30. If there should be any breach or non-observance by the Covenantor of any one or more of the restrictions and stipulations contained in this Covenant, the Covenantee will give written notice of such breach to the Covenantor. Without prejudice to any other liability which the Covenantor may have to the Covenantee, or any other remedy available to the Covenantee, the Covenantor will upon written demand being made by the Covenantee:
- (a) within 7 working days (or such shorter period as is provided elsewhere in this Covenant or by the Relevant Authority or such other relevant regulatory authority) of receipt of notice in writing from the Covenantee, pay to the Covenantee as liquidated damages the sum of \$500 for each day that the breach or non-observance continues (such amount to be adjusted annually from the date of this Covenant by the percentage movement in the Consumer Price Index (all groups)); and/or
 - (b) where the breach or non-observance of any one or more of the restrictions and stipulations in this Covenant will affect the value of the Land or Subdivision, the Covenantor must pay the Covenantee (in addition to any other amounts payable hereunder) the sum of \$10,000 for each such breach or non-observance together with interest accruing on such amount at 10% per annum calculated on a daily basis (such amount to be adjusted annually from the date of this Covenant by the percentage movement in the Consumer Price Index (all groups)); and/or
 - (c) within 7 working days (or such shorter period as is provided elsewhere in this Covenant or by the Relevant Authority or such other relevant regulatory authority) of receipt of notice in writing from the Grantee, remedy any breach if capable of remedy on terms and conditions imposed by the Covenantee which may involve being required to remove any vehicle or moveable items, structure or building material which breaches the terms of this Covenant; and/or
 - (d) allow the Covenantee the right to lodge a caveat against the record of title to the Unit in breach to protect the sum of any unpaid debt owing to the Covenantee on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Unit owing to the Covenantee until such time that any debt is fully discharged or otherwise satisfied.
31. If the Covenantor and/or the tenant of the Covenantor fails to remedy the breach within a reasonable time of receipt of such notice, the Covenantee may take whatever legal action it or they consider necessary to remedy the breach.
32. All expenses and costs incurred in enforcing the Covenant will constitute a debt due that shall be a charge against the Unit of the Covenantor who is in breach of the Covenant and shall be recoverable as liquidated damages.
33. Any amounts payable by the Covenantor under this section may be deducted from the Bond.

Insert instrument type

Land Covenant

Severability

34. If any part of this instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this instrument.

Liability for Damage

35. In the event that the Covenantor or any contractor, agent, employee or invitee of the Covenantor causes any damage to the road, footpath, curb, Berm, streetlight or other structure within the Subdivision, the Covenantor must make good the damage at its cost. If the Covenantor fails to make good the damage within a reasonable time, the Covenantee may rectify the damage and recover the costs from the Covenantor and/or deduct them from the Bond.

Indemnity

36. The Covenantor will at all times indemnify and keep the Covenantee indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any breach or non-observance by the Covenantor of this Covenant.

Not liable to enforce and no waiver

37. The Covenantee will not be required, or obliged, to enforce all or any of the stipulations or restrictions in this Covenant nor will the Covenantee be liable for any breach of stipulations or restrictions by the registered owners of any of the other Units or the Land or the Subdivision.
38. No failure, delay, or indulgence by the Covenantee in exercising any power or right conferred on the Covenantee by this Covenant will operate as a waiver of such power or right. A waiver by the Covenantee of any breach or non-observance of any restriction or stipulation by the Covenantor will not be, nor be deemed to be, a waiver of any other or subsequent breach or non-observance.

General

39. This Covenant will be binding on all transferees, tenants, lessees, mortgagees, chargeholders and their respective successors in title and assigns of any estate or interest in the Land.
40. Where this Covenant binds or benefits a party, it shall bind or benefit that party jointly and severally.
41. In this Covenant a reference to legislation or to a provision of legislation includes a modification, re-enactment or substitution of that legislation or legislative provision and any regulation or statutory instrument issued under it.
42. If at any time any provision of this Covenant is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
- (a) that part or provision shall be severed from this Covenant;

Insert instrument type

Land Covenant

- (b) such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Covenant; and
- (c) in any event the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Covenant.

43. The Covenantor and the Covenantee agree to preserve for the period of time set out in this Covenant the integrity of the agreements reached in this Covenant and to always act in good faith and do all acts and things and enter into and execute all documents, instruments (including any replacement encumbrance) and/or easement or land covenant whenever reasonably required by the Covenantee and otherwise obtain any necessary consents all of which may be reasonably necessary and appropriate to give full force and effect to the intentions and understandings of the Covenantor and the Covenantee.

44. The Covenantor acknowledges that this Covenant has been granted for valuable consideration received, in full compensation for the grant of this Covenant.

Conflict

45. If there is any conflict between the term of any other Covenant and the term of this Covenant, the terms of this Covenant shall prevail.

Expiry

This Covenant shall cease to have any effect on the earlier of:

- (a) the date upon which the Covenantee agrees to discharge this Covenant; or
- (b) the date the Subdivision is complete as determined by the Covenantee at the Covenantee's sole discretion.

at which time this Covenant shall be discharged by the Covenantee upon request and at the cost in all things of the Covenantor requesting the discharge.

Appendix 5: No Objection Covenant

**See attached
(draft – subject to amendment)**

Approved for ADLS by Registrar-General of Land under No. 2018/6263
COVENANT INSTRUMENT TO NOTE LAND COVENANT
Sections 116(1)(a) & (b) Land Transfer Act 2017



Covenantor

Surname(s) must be underlined or in CAPITALS.

Bayswater Marina Holdings Limited

Covenantee

Surname(s) must be underlined or in CAPITALS.

Bayswater Marina Limited

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule, if required

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
		Lot 1 DP 309604 (Record of Title 639741)	In gross

Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017.]

[Annexure Schedule **1**].

Insert instrument type

Land Covenant (in gross) – No Objection to Marina Activities

Background

1. The Covenantor as registered owner of the land contained in record of title 639741 (**Land**) has subdivided the Land in the manner shown on deposited plan [].
2. The Covenantee operates a marina and associated activities in close proximity to the Land.
3. It is the Covenantor's intention to create, for the benefit of the Covenantee, the covenants in gross set out in Schedule A (**Covenants**) over the Covenanting Lots TO THE INTENT that:
 - (a) the Covenanting Lots will be bound by the stipulations and restrictions set out in the Covenants; and
 - (b) the Covenantee (and its successors and assigns) may enforce the observance of the Covenants against the owners for the time being of the Covenanting Lots.

Operative Clauses

4. So as to bind the Covenanting Lots, and for the benefit of the Covenantee (and its successors and assigns), the Covenantor DOES HEREBY COVENANT AND AGREE in the manner set out in Schedule A so that the Covenants run with the Covenanting Lots for the benefit of the Covenantee and its successors and assigns PROVIDED HOWEVER that:
 - (a) the Covenantee will not be required or obliged to enforce all or any of the stipulations and restrictions contained in the Covenants; and
 - (b) the Covenantor will not be liable to the Covenantee for any breach of any of the Covenants by any of the other registered owners of the Covenanting Lots; and
 - (c) the Covenantor will as regards the stipulations and restrictions contained in the Covenants be liable only in respect of breaches which occur while the Covenantor is registered owner of any of the Covenanting Lots in respect of which any breach occurs.

**SCHEDULE A
Covenants**

Definitions and Interpretation

1. In this Instrument, unless the context requires otherwise:

Act means the Unit Titles Act 2010.

Body Corporate means the body corporate under Act which incorporates the Covenanting Lot(s);

Insert instrument type

Land Covenant

Covenantee means the party named as the covenantee in this instrument and includes its successors, assigns and nominees;

Covenanted Lot(s) means any one of Units [] (inclusive) on deposited plan [] or any of them, and any lots into which those lots are further subdivided;

Covenantor means the registered owner of the Covenanted Lots and includes the agents, employees, contractors, tenants, licensees, and other invitees of the Covenantor;

Development means the Bayswater Maritime Village which is a staged mixed use development carried out by the Covenantee on land comprised or formerly comprised in Computer Freehold Registers 639741 (North Auckland) and includes the Land;

Permit means any current or future seabed licence, coastal permit or resource consent applying to the operation of the Marina.

Marina means the marina and associated businesses operated near to the Covenanted Lots and known as "Bayswater Marina".

Permitted Activities means:

- (a) the undertaking and completion of the Development;
- (b) the business of the Marina;
- (c) any expansion of the Marina; and
- (d) any ferry service operated from or near the Marina.

Relevant Authority means any corporation, including any government, local or regional territorial authority, statutory or non-statutory authority or body having jurisdiction over the Covenanted Lots or the Land or any part thereof; and

Land Covenants to Enure

2. The Covenantor for itself and its successors in title covenants and agrees with the Covenantee to always observe and perform all of the agreements, stipulations and restrictions set out in the Covenants to the intent that they shall forever enure to benefit the Covenantee.

For the avoidance of doubt the covenants in this instrument are covenants in gross.

Insert instrument type

Land Covenant

Compliance with other covenants

3. The Covenantor must at all times comply with the terms of any other covenant easement or encumbrance registered on the record of title for the Covenanting Lot.

No Objection

4. The Covenantor irrevocably agrees and undertakes to waive all rights of complaint, submission, appeal, or objection it may have under the RMA or otherwise in respect of the Permitted Activities and any subdivision, use or future development of any part of the Marina.

5. For the avoidance of doubt, clause 4 shall include (but not be limited to):

- (a) the undertaking of the Permitted Activities;
- (b) the general operation of the Marina for the storage and servicing of boats;
- (c) any application for a resource consent made by any person to the Relevant Authority under section 88 of the RMA relating to the Permitted Activities or the use of the Benefiting Lots;
- (d) any application for change or cancellation of consent conditions under section 127 of the RMA, or any review of consent conditions by the Relevant Authority under sections 128 and 129 of the RMA in relation to the Permitted Activities;
- (e) any request for a change to the district plan made under clause 21 of the First Schedule to the RMA to provide for the Permitted Activities or the Marina;
- (f) any preparation by the Relevant Authority of a proposed district plan under the First Schedule to the RMA to provide for the Permitted Activities or the Marina;
- (g) any application for renewal or variation of the Permit; and

(referred to in this document as an **Application**).

6. The Covenantor surrenders with immediate effect:

- 6.1 its rights as a person who may be directly or indirectly affected by an Application to receive notice of the Application under sections 95-95E of the RMA and any other relevant coastal and marine legislation and shall not request that the Relevant Authority serve on them notice of an Application.
- 6.2 the right to make submissions or further submissions about an Application and shall not make a submission about an Application.
- 6.3 the right to appeal to the Environment Court against the whole or any part of a decision by the Relevant Authority on an Application (including any rights of further

Insert instrument type

Land Covenant

appeal on a question of law or to the High Court) and shall not exercise any right of appeal against the decision of the Relevant Authority on an Application.

6.4 the right to become a party to proceedings under the RMA, and the right to appear and be heard on appeal under the RMA, and shall not exercise any such rights in relation to an appeal against the decision of the Relevant Authority on an Application.

6.5 its right to make a claim against the Covenantee in nuisance or any other action in law in relation to any adverse effect on the environment arising out of, or in relation to, the subdivision, development or use of any part of the Benefiting Lots Development or the Marina and any actual or potential effects of such activities (including, without limitation, dust, noise and vibration) (referred to in this document as an **Adverse Effect**).

7. In addition:

(a) the Covenantor further agrees not to seek an enforcement order or abatement notice under the RMA from any Relevant Authority in respect of any Adverse Effect and shall if required by the Covenantor sign and deliver to the Relevant Authority a written consent to the Adverse Effect.

(b) this encumbrance shall also apply to any right of complaint or application under sections 17, 311, 316, 322, 338, and 343A of the RMA relating to the use, and development of any part of the Benefiting Lots or the Permitted Activities for the purposes of residential and/or business activities;

(c) for the avoidance of doubt, the Covenantor also covenants and agrees that it shall not at any time after the date of this Covenant aid, abet, counsel, or procure any other person to exercise any of the rights under the RMA referred to in this Covenant (either on behalf of the Covenantor or otherwise) in relation to the Permitted Activities use, or development of any part of the Marina and any actual or potential effects of such activities on the Covenanting Lots; and

(d) the Covenantor shall if required by the Covenantee provide its written consent or approval to any Application or any works in respect of the Permitted Activities and shall sign all documents and do all things necessary to provide such consent or approval to the Relevant Authority in order for the Covenantee to complete any works or process any Application in respect of the Permitted Activities..

8. The Covenantor further agrees that the terms and conditions of this Covenant may be enforced against the Covenantor to ensure compliance with the requirements of this Covenant.

Insert instrument type

Land Covenant

Severability

9. If any part of this instrument is held by any court or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of this instrument.

Breach and remedies

10. If there should be any breach or non-observance by the Covenantor of any one or more of the restrictions and stipulations contained in this Covenant, the Covenantee will give written notice of such breach to the Covenantor. Without prejudice to any other liability which the Covenantor may have to the Covenantee, the Covenantor will upon written demand being made by the Covenantee:
- (a) within 7 working days (or such shorter period as is provided elsewhere in this Encumbrance or by the Relevant Authority or such other relevant regulatory authority) of receipt of notice in writing from the Covenantee, pay to the Covenantee as liquidated damages the sum of \$500 for each day that the breach or non-observance continues (such amount to be adjusted annually from the date of this Encumbrance by the percentage movement in the Consumer Price Index (all groups)); and/or
 - (b) where the breach or non-observance of any one or more of the restrictions and stipulations in this Encumbrance will affect the value of the Marina or Development (as determined by the Covenantee), the Covenantor must pay the Covenantee (in addition to any other amounts payable hereunder) the sum of \$10,000 for a significant breach together with interest accruing on such amount at 10% per annum calculated on a daily basis (such amount to be adjusted annually from the date of this Covenant by the percentage movement in the Consumer Price Index (all groups)); and/or
 - (c) within 7 working days (or such shorter period as is provided elsewhere in this Covenant or by the Relevant Authority or such other relevant regulatory authority) of receipt of notice in writing from the Grantee, remedy any breach if capable of remedy on terms and conditions imposed by the Covenantee which may involve being required to remove any vehicle or moveable items, structure or building material which breaches the terms of this Covenant; and/or
 - (d) allow the Covenantee the right to lodge a caveat against the record of title to the Unit in breach to protect the sum of any unpaid debt owing to the Covenantee on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Unit owing to the Covenantee until such time that any debt is fully discharged or otherwise satisfied.
11. If the Covenantor and/or the tenant of the Covenantor fails to remedy the breach within a reasonable time of receipt of such notice, the Covenantee may take whatever legal action it or they consider necessary to remedy the breach.

Insert instrument type

Land Covenant

12. All expenses and costs incurred in enforcing the Encumbrance will constitute a debt due that shall be a charge against the Unit of the Covenantor who is in breach of the Encumbrance and shall be recoverable as liquidated damages.
- Indemnity**
13. The Covenantor will at all times indemnify and keep the Covenantee indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any breach or non-observance by the Covenantor of this Covenant.
- Not liable to enforce and no waiver**
14. The Covenantee will not be required, or obliged, to enforce all or any of the stipulations or restrictions in this Covenant nor will the Covenantee be liable for any breach of stipulations or restrictions by the registered owners of any of the other Lots or the Land or the Marina.
15. No failure, delay, or indulgence by the Covenantee in exercising any power or right conferred on the Covenantee by this Covenant will operate as a waiver of such power or right. A waiver by the Covenantee of any breach or non-observance of any restriction or stipulation by the Covenantor will not be, nor be deemed to be, a waiver of any other or subsequent breach or non-observance.
- General**
16. This Covenant will be binding on all transferees, tenants, lessees, mortgagees, chargeholders and their respective successors in title and assigns of any estate or interest in the Land.
17. Where this Covenant binds or benefits a party, it shall bind or benefit that party jointly and severally.
18. In this Covenant a reference to legislation or to a provision of legislation includes a modification, re-enactment or substitution of that legislation or legislative provision and any regulation or statutory instrument issued under it.
19. If at any time any provision of this Covenant is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
- (a) that part or provision shall be severed from this Covenant;
 - (b) such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Covenant; and
 - (c) in any event the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Covenant.

Insert instrument type

Land Covenant

20. The Covenantor and the Covenantee agree to preserve the integrity of the agreements reached in this Covenant and to always act in good faith and do all acts and things and enter into and execute all documents, instruments (including any replacement encumbrance) and/or easement or land covenant whenever reasonably required by the Covenantee and otherwise obtain any necessary consents all of which may be reasonably necessary and appropriate to give full force and effect to the intentions and understandings of the Covenantor and the Covenantee.
21. The Covenantor acknowledges that this Covenant has been granted for valuable consideration received, in full compensation for the grant of this Covenant.

DRAFT

Appendix 6: Esplanade Strip Covenant

**See attached
(draft – subject to amendment)**

Bayswater Marina

Instrument Creating Esplanade Strip

Section 232 and 235, Resource Management Act 1991

1. Background

- 1.1. Bayswater Marina Holdings Limited, a company registered in New Zealand with company number 199875 (**the Grantor**) is registered as proprietor of the Land described in Schedule A (**the Land**).
- 1.2. Auckland Council (**the Grantee**) is a local authority (within the meaning of the Local Government Act 2002) in whose district the Land is located.

2. Creation of Esplanade Strip

- 2.1. The Grantor creates in favour of the Grantee in perpetuity from the date of this Instrument, the esplanade strips described in Schedule B (each a **Strip** and collectively the **Strips**) on the Land for the purpose of enabling public access to the Strips and to Waitemata Harbour, Auckland on the following terms.

3. Covenants

- 3.1. The Grantor and Grantee covenant as follows:
 - 3.1.1. The following acts are prohibited on the Strips:
 - (a) wilfully endangering, disturbing, or annoying a lawful user of the Strips (including the owner or occupier of the Strips);
 - (b) wilfully damaging or interfering with a structure adjoining or on the Strips (including a building, fence, gate, stile, marker, bridge, or notice).
 - 3.1.2. The prohibitions in clause 3.1.1(b) do not apply to the owner or occupier of the Strips or to employees or agents authorised by the owner or occupier.
 - 3.1.3. The following acts are also prohibited on the Land over which the Strips have been created:
 - (a) lighting a fire;
 - (b) carrying a firearm;
 - (c) discharging or shooting a firearm;
 - (d) camping;
 - (e) taking an animal on to, or having charge of an animal on, the Strips, other than domestic pets on a leash;
 - (f) wilfully damaging or removing a plant (unless acting in accordance with the Biosecurity Act 1993);
 - (g) laying poison or setting a snare or trap (unless acting in accordance with the Biosecurity Act 1993).
 - 3.1.4. The following other permissions and restrictions apply to the Strips:
 - (a) for Strips 'A' and 'E'
 - (i) The Grantor is permitted:

- (aa) vehicular access over those parts of the Strips which are constructed for vehicular access (**Road**);
 - (bb) to park vehicles on those parts of the Strips constructed for vehicle parking and delineated as separate principal or accessory units or lots on the Plan (**Carparks**).
 - (ii) The Grantee and general public are prohibited from:
 - (aa) parking any vehicles on the Strips or;
 - (bb) having vehicular access to the Strips (except in respect of any Road on Strip A but only to the extent required to access Strip D).
 - (b) for Strip 'D'
 - (i) The Grantor is permitted:
 - (aa) vehicular access over the Road on the Strip;
 - (bb) to park vehicles on any Carparks in the Strip.
 - (ii) The Grantee and general public are:
 - (aa) permitted to have vehicular access over the Road on the Strip;
 - (bb) prohibited from parking any vehicles on the Strip.
- 3.1.5. Subject to the provisions of this instrument, access to the Strips is on the following terms:
- (a) Any person shall have the right, at any time, to pass and re-pass over and along the Strips, subject to any other provisions of this Instrument.
 - (b) Nothing in this Instrument shall prevent the Grantor from using the Strips for the purposes of vehicular circulation and parking pursuant to clause 3.1.4.

3.1.6. The Strips may be closed to public access from time to time for security and maintenance purposes provided that at no time shall any Strip be closed to the public while the Grantor is entitled to continue to use that Strip (except in relation to parking by the Grantor in accordance with clause 3.1.4 which rights shall continue to apply notwithstanding any closure of the Strip to public access).

3.2. References to the Grantor in this Instrument include the Grantor's successors, tenants, licensees, employees, agents and invitees.

4. **Maintenance and Management of the Strip**

4.1. The Grantor shall be responsible for the maintenance and management of the Strips at the Grantor's cost. The Grantor shall use all reasonable endeavours to:

4.1.1. keep the Strips clean; and

4.1.2. repair damage to structures or facilities on the Strips.

4.2. The obligations of the Grantor under clause 4.1 may be performed by or on behalf of the Grantor.

5. **Restrictions on Buildings and Structures within the Strip**

- 5.1. The Grantor shall not construct any buildings or structures on the Strips without first obtaining all necessary consents and permissions from the Grantee.

Signed for and on behalf of **Bayswater**

Marina Holdings Limited

Director

Director/Authorised Person

Executed by **Auckland Council** common seal or by 2 officers, as provided by the territorial authority's rules

Authorised Person

Authorised Person

Date: _____

Schedule A - Land

An estate in fee simple being Lot 1 Deposited Plan 309604 comprised in record of title 639741.

Schedule B – Esplanade Strips A, D and E as shown on Deposit Plan [] **(Plan)**.