
Memorandum of Understanding in relation to Ngunguru Sand Spit

Whangarei District Council (WDC)

Landco Limited (Landco)

MEMORANDUM OF UNDERSTANDING

1

Date:

PARTIES

Whangarei District Council (*WDC*)

Landco Limited (*Landco*)

BACKGROUND

- A Landco, through a subsidiary company owns the Ngunguru Sand Spit and associated land defined in the attached Schedule A (*Land*).
- B Whangarei District Council is the territorial authority with jurisdiction over the Land in relation to planning and other functions under the Resource Management Act 1991 (*RMA*).
- C Landco and WDC have agreed to co-operate to consider how, and to what extent, Landco's development intentions might be realised in relation to the Land.
- D Landco operates to achieve its commercial objectives as a land developer by working in good faith with interested parties and the local community to develop land in a manner that recognises and appropriately protects its special environmental and other characteristics.
- D The objective of this MOU is to enable the parties to better assess how they might achieve improved planning and environmental outcomes for the Land, the areas adjacent to it and for the people living in its vicinity and visiting it, through the use of holistic planning and development initiatives that reflect the principles and provisions of the RMA and WDC policy in relation to the development of land within its territorial boundaries.

1 MUTUAL COMMITMENTS

- 1.1 Landco and WDC separately acknowledge to each other that it is in their respective interests to secure the long term future of the Land in a manner which supports and protects the special cultural and environmental features of the Land and adjacent areas, has a high level of amenity and a strong sense of community, and which delivers commercially satisfactory outcomes that will enable these objectives to be achieved within the framework of the RMA.
- 1.2 The parties will use their best endeavours and exercise the utmost good faith towards each other to achieve the outcomes sought by each of them and which have been identified in this MOU.

1.3 WDC and Landco undertake to each other to expedite within their respective organisations the conduct and completion of the various processes, activities and other matters outlined in or otherwise contemplated by this MOU.

2 MASTERPLAN

2.1 Landco will develop a master plan of the proposed development of the Land (*Masterplan*).

3 REVIEW GROUP

3.1 The parties agree:

(a) to negotiate and endeavour to agree to the Masterplan through the establishment and operation of a review group (*Review Group*), which will:

- (i) comprise equal numbers of people appointed by Landco and by WDC, each with the necessary seniority and experience to properly represent their appointing party's interests;
- (ii) meet regularly to review progress towards the completion of the processes described in this MOU, and to consider any refinements or developments to the Masterplan proposed by any other party, or which are necessary as a consequence of matters arising during the development of the Land;
- (iii) review each party's performance of their various undertakings under this MOU;
- (iv) proceed by consensus; and
- (v) refer issues which cannot be resolved by consensus to the CEO's of Landco and WDC for resolution in accordance with clause 3.3.

(b) to consult together through the Review Group and use their best endeavours to reach a common understanding of how the Masterplan will address (with respect to the development of the Land):

- (i) the appropriate zoning and other planning requirements required to facilitate a form and density of development consistent with the capacity of the Land to support such development;
- (ii) Water supply;
- (iii) Sewage disposal;

(iv) Vegetation, landscaping and related ecological matters;

(v) Stormwater management;

(vi) Provision of utilities;

(vii) Geotechnical engineering and earthworks requirements;

(viii) Roading and the construction of new roads and intersections within and beyond the Land;

(ix) Construction;

(x) The provision and management of open spaces, reserves and other protected areas;

(xi) The local community response to any proposals for development of the Land;

(xii) Issues of significance to Iwi; and

(xiii) The payment of financial contributions and reserve contributions.

3.2 The parties will work together to enable Landco to undertake a process of public consultation and community comment on the development of the Land.

3.3 If the parties are unable to negotiate and execute a detailed agreement in accordance with clause 3.1 (b) or are unable to reach consensus in the Review Group then either party may refer the outstanding issues to the CEOs for Landco and WDC to resolve and if after 21 days no resolution is reached then either party may terminate this MOU by written notice to the other under clause 4.1.

4 TERMINATION

4.1 If the rights to terminate this MOU arise pursuant to the provisions of this MOU, and the parties do not agree to extend the time to negotiate and reach agreement on the matters outlined in clause 3.1(b) above then this MOU may be terminated by either party giving written notice of termination to the other. It is agreed:

(a) Time is of the essence in reaching agreement on the matters outlined in clause 3.1(b) above; and

(b) Each party will give reasonable consideration to any requests for extensions of time to reach such agreement if further time is required and

It can be demonstrated that reasonable progress is being made towards reaching agreement. In particular but without limitation, where any consent from a third party or authority is required to satisfy a condition and a party is using its best endeavours to obtain that consent, extension of time will be permitted to give that party the opportunity to utilise all reasonable rights of appeal or other lawful and reasonable methods of obtaining actual or deemed consent.

- 4.2 In the event that this MOU is terminated pursuant to clause 4.1 then neither party shall have any claim against the other and both parties shall be free to deal with their respective interests as they see fit without any requirement to obtain any approval from the other, save as required by law.

5 GENERAL PROVISIONS

Assignment

- 5.1 Neither party will have any right to assign its interest in this MOU without the consent of the other party, except that Landco will be entitled to assign its interest to Landco's financiers or third parties who acquire any interest in the Land provided such parties enter into a deed of covenant with WDC agreeing to be bound by this MOU.

Default

- 5.2 If events of default are alleged then the alleging party shall be required to serve written notice notifying the details of the default and specifying a reasonable time for rectification to the other party. If the alleged default is not rectified within the specified time, the alleging party may terminate this MOU but without prejudice to all rights either party may have under this MOU.

Non Partnership

- 5.3 Nothing in this MOU shall constitute a partnership between the parties.

Confidentiality

- 5.4 Landco and WDC agree to treat all information disclosed during pre-MOU and post-MOU discussions and negotiations and any other agreements arising out of this MOU as strictly private and confidential and will take all reasonable steps to preserve that confidentiality provided that a party may make such disclosures in relation to this MOU and/or the Masterplan as it may in its absolute discretion think necessary:

- (a) In respect of WDC: to its Councillors and those staff of WDC engaged on any aspect of the matters covered by this MOU; and
- (b) In respect of Landco: to any party which has entered into a confidentiality agreement on similar terms to this clause with Landco; and

- (c) To any interested parties involved in any submission to any resource consent application or plan change under the RMA affecting the Land; and

- (d) In respect of both parties: to their professional advisors, bankers, financial advisors or to any person whose consent is required under this MOU or so as to comply with any applicable law or the requirements of any regulatory body (including any relevant stock exchange).

Costs

- 5.5 Each party shall bear its own costs and other expenses in respect to the negotiation and preparation of this MOU, all associated agreements, and the satisfaction of all conditions, other than as required by statute or registration.

Notices

- 5.6 Any notices or other communications which are required or permitted to be given under this MOU shall be in writing and shall be deemed to have been duly given upon the delivery or receipt, if delivered personally, or by facsimile transmission as follows:

To: **Landco**

Landco Limited
PO Box 106249
Downtown Auckland
Attention: Greg Olliver/Bruce Waters
Fax No: 09 377 7727

To: **WDC**

Whangarei District Council
Forum North
Private Bag 9023
Whangarei
Attention: Chief Executive Officer
Fax No: 09 438 9582

or to such other address or facsimile number as may be advised in writing by either party to the other in relation to itself.

Effect of this MOU

- 5.7 The parties acknowledge and confirm that they intend to be bound in all respects to the provisions of this MOU.

Regulator

5.8 WDC has certain public or regulatory functions as a territorial authority. Landco acknowledges that WDC's obligations under this MOU cannot fetter WDC undertaking its public or regulatory functions and the exercise of those functions will not be a breach of this MOU to any extent whatsoever.

EXECUTION**Landco Limited**

by:

Sole Director

in the presence of:

Name:

Occupation:

Address:

Whangarei District Council

by:

Councillor

Councillor

SCHEDULE A**THE LAND**

Title Identifier	Legal Description
NA61D/169	Horahora 1A4F Block
NA61D/138	Horahora 1A4E Block
NA61D/137	Horahora 1A4B Block
NA3A/1438	Horahora 1A4A Block